

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

68.

OA 2306/2024

Ex PO (HS) Kailash Chand Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Dr. V.S. Mahndiyan, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
21.05.2025

The applicant has filed this OA invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007. The reliefs claimed in Para 8 of the application are as follows:

a) To direct the respondents to place on record all relevant records pertaining to the enrollment form of applicant, policy/rules pertaining to the promotion and re-engagement on promotion to the rank of CPO (HS).

(b) To quash and set aside the impugned orders and direct the respondents re-instate the applicant in the Indian Navy w.e.f. 01 Sep 2022, with consequential benefits.

(c) To direct the respondents to grant the applicant promotion from the due date of promotion, i.e. 01 Aug 2022, in accordance with promotion order dated 30 Aug 2022 with consequential benefits, in terms of terms of engagement.

(d) to Grant such other relief or pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. The facts of the case are that the applicant was enrolled as a sailor in the Indian Navy on 17.08.1994 and was discharged prematurely on expiry of his term of engagement

with pensionary benefits in the rank of Petty Officer (Hygiene Supervisor) on 31.08.2022. It is the case of the applicant that he was duly authorized for promotion to the next higher rank of Chief Petty Officer (Hygiene Supervisor) w.e.f. 01.08.2022, prior to his discharge. However, the promotion order was neither issued nor given effect to in time, resulting in denial of the benefits of promotion and consequent premature discharge at the lower rank of Petty Officer (HS) after completing 28 years and 15 days of pensionable service.

3. The applicant contends that the promotion to the rank of Chief Petty Officer (HS) with effect from 01.08.2022 entitled him to serve for a term of 32 years in accordance with the provisions stipulated in NO (Str) 02/2007. However, due to delay in release and communication of the promotion order dated 30.08.2022 to his parent unit, i.e., National Hydrographic Office, Dehradun, the applicant was released from service on 31.08.2022, causing grave injustice to him.

4. The respondents, in their counter affidavit, admit that the applicant was granted promotion to the rank of Chief Petty Officer (HS) with effect from 01.08.2022 vide CABS letter No. PR/0301/153731R dated 30.08.2022, which was

issued just one day prior to his discharge. However, the promotion could not be implemented as the applicant was discharged on 31.08.2022. It has further been submitted that the promotion order was delayed as the applicant's personal record sheet was not updated on the bureau website and, as per NO(Str) 1/2019, the procedure for re-engagement after discharge requires approval from the Government of India under Regulation 272 of Regs Navy Part-III. Since such re-entry is not a matter of right and requires government approval, no further action was taken by the respondents.

5. Having heard learned counsel for the parties and perused the records, we find from Annexure R3 dated 11.10.2023 issued by the Bureau of Sailors, Sion- Trombay Road, Mankhurd, Mumbai-400088, addressed to the Chief of Naval Staff (Commodore Personnel), Integrated Headquarters of Ministry of Defence (Navy) Sena Bhawan, New Delhi- 110011, that a recommendation was made for the Government of India to consider the applicant's case for re-entry into service. The communication clearly records that the applicant was willing to serve the additional four years permissible to a Chief Petty Officer under the applicable rules, but as he had already been discharged, the matter required approval from the Government of India under

Regulation 272 of Regulations Navy Part- III. Thereafter in Para 5 the comments of the Bureau for seeking such a benefit have been indicated in the following manner.

5. Bureau Comments. 5. Bureau Comments. As per records, the sailor has been released from service post completion of 28 years' service (maximum permissible service as POHS) in the rank of POHS. The sailor would have been eligible for further re-engagement in the rank of CPO HS upto 32 years of service iaw para 9(d) of NO(Str) 01/19. The ex-sailor was S1A1 and would've met all requirements for promotion to CPO. The case qualifies as 'exceptional circumstance' as the sailor/ unit were not aware of the sailor's promotion from PO to CPO, limited time available with the unit for promoting the sailor and retention in service could benefit the service as the experienced sailor can be employed for additional four years in CPO rank.

6. The communication further acknowledges that this is an exceptional case and recommends that the matter be forwarded to the Government of India for approval. A perusal of the communication and the accompanying recommendations establishes that the applicant met all eligibility conditions for promotion and was duly approved for promotion w.e.f. 01.08.2022, but owing to administrative lapses and delays in communication, the promotion could not be given effect to before his discharge.

7. It is also clear that the delay was purely ministerial in nature and not attributable to any fault on the part of the applicant. Had the promotion order been timely communicated and acted upon, the applicant would have been entitled to continue in Naval service for a further term

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of four years up to completion of 32 years of service as per the applicable rules. Therefore, this Tribunal, vested with statutory powers under Section 14 of the Armed Forces Tribunal Act, 2007, is empowered to ensure that the benefits legitimately accruing to Armed Forces personnel are not denied due to administrative lapses or procedural delays for which the individual is not responsible.

8. We are of the considered opinion that this is a fit case where the applicant should be reinstated into service on the post of Chief Petty Officer (HS) and permitted to serve until the age or tenure applicable to the said post.

9. Accordingly, the following directions are issued:

- (a) The applicant shall be deemed to have been promoted to the rank of Chief Petty Officer (HS) with effect from 01.08.2022.
- (b) The respondents are directed to reinstate the applicant into service in the rank of Chief Petty Officer (HS) within a period of 60 days from the date of receipt of a certified copy of this order, subject to the applicant fulfilling all requisite medical and fitness requirements for joining the said post. Upon such reinstatement, the applicant shall be permitted to serve in the promoted rank,

till permitted by rules for serving in the rank of Chief Petty Officer (HS).

(c) The period between 31.08.2022 and the actual date of his rejoining shall be treated as “on duty” for all purposes in the rank of Chief Petty Officer (HS), and the salary and allowances of the said rank shall be paid to the applicant after adjusting the pensionary benefits already disbursed to him for the said period.

(d) All consequential benefits, including seniority, pay fixation, and allowances, shall be granted to the applicant as if he had continued uninterrupted in service as Chief Petty Officer (HS) from 01.08.2022.

10. The OA is accordingly allowed and stands disposed of in the above terms.

JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)