

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

O.A. No. 2381 of 2022

In the matter of :

**Sub/M Tech (B Veh) Pawan
Kumar Lal Das (Retd)**

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. S.S. Pandey, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 thereof read as under:

“(a) Call for the Records based on which the Respondents have not held any Review DPC against the DPC, 2018 as well as 2019, subsequent to the expunction of ACR 2017 vide EME Records letter dated 19,08,2019 on the

directions of GOC, HQ 41 Bub Area and the expunction of ACR, 2019, vide 7010 EME Bn letter dated 21.01.2020 and thereby, denying him the benefit of getting promoted to the rank of Subedar Major; and also the records based on which the Respondents had not responded and disposed off the letter of the Applicant dated 04.03.2022 for seeking holding of review DPC, 2018,

- (b) Direct the Respondents to hold the review DPC firstly, against the DPC, 2018 and thereafter, for DPC, 2019 and subsequently, promote the Petitioner to the next rank of Subedar Major in case he is found above the last officer on merit who was so promoted after such restoration of marks and accordingly, re-instate him back to the service in the rank of Sub Maj w.e.f. the date of declassification of the result of DPC, 2018 or 2019 as the case may be, alongwith all the consequential benefits including Pensionary benefits in the rank of Subedar Major.*
- (c) In case, reinstatement is not possible then, grant the arrears of consequential benefits in the pay of the Applicant in the rank of Subedar Major and subsequently, grant the Pensionary benefits.*

(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."

2. The facts of this case in brief are that the applicant was enrolled in the Indian Army on 28.08.1993 and was promoted through various ranks, ultimately attaining the rank of Subedar on 01.05.2014. The applicant was posted to HQ Directorate General Border Roads, Seema Sadak Bhawan, Delhi Cantt-10, on 11.03.2011, where he served under the Executive Engineer (E&M) NFSG (Initiating Officer (IO). Subsequently, the applicant was posted to Station Workshop EME, Jorhat, on 16.02.2017. He began serving under the new IO from 09.03.2017, and thus the applicant had not completed the mandatory 90 days of physical service required under the previous IO. The applicant forwarded a blank Annual Confidential Report (ACR) form for the year 2017 to his previous IO at Directorate General Border Roads, Seema Sadak Bhawan, New Delhi, vide letter dated 02.06.2017, requesting initiation/review of the ACR. The Directorate General Border Roads subsequently forwarded the

duly initiated ACR, covering the period from 01.06.2016 to 15.02.2017 to EME Records vide letter dated 17.07.2017.

3. Observations regarding the applicant's ACR were raised by EME Records vide letter dated 28.07.2017, which was forwarded to the applicant's IO and Reviewing Officer (RO) at the Directorate General Border Roads, Seema Sadak Bhawan, New Delhi. Upon receiving no response, EME Records issued two further letters dated 21.09.2017 and 05.01.2018, reiterating the same observations as were made in the initial communication. Despite these repeated correspondences, no response was received from either the IO or the RO.

4. Thereafter, it is the case of the applicant that vide letter dated 09.05.2018, EME Records forwarded the Master Sheet for the Departmental Promotion Committee (DPC) for the rank of Sub Maj in respect of the applicant to both his previous and current units at Jorhat. In this communication, the applicant's IO and RO were requested to initiate the ACR for the year 2018 and submit it to EME Records at the earliest, in order to avoid further representations or potential legal action by the

applicant. Thereafter, EME Records, vide letter dated 23.07.2018, again requested the IO and RO to rectify the observations related to the applicant's ACR, as the applicant was under the screening/consideration by the DPC for the year 2019. The aforesaid letter highlighted that failure to resolve the ACR observations could have adversely impacted the applicant's career progression and may result in legal proceedings at a later stage, for which the concerned IO and RO would be held accountable. Following this communication by the EME Records, the applicant's ACR for the year 2017, allegedly containing an unfairly downgraded assessment, was finally forwarded to him i.e. after a delay of nearly one year (vide EME Records letter dated 23.07.2018). Along with this letter, Page Nos. 4 and 5 of the ACR were provided to the applicant for his signature, in accordance with Para 43 of Army Order 1/2002/MP.

5. The applicant's Unit, vide letter dated 15.08.2018, informed Respondent No. 4 that the applicant had not been intimated about the "Average" grading by his IO, as required

under Para 44 of Army Order 1/2002/MP. Furthermore, it was stated that when EME Records had raised observations regarding the ACR, the IO did not respond or take corrective action. Instead, the IO retained the assessment for over a year, allegedly with *mala fide* intention. The applicant further alleged that the IO deliberately forwarded the downgraded assessment to EME Records at a time when the applicant was under screening process for promotion by the upcoming DPC thereby adversely impacting his career progression and along with the afore-mentioned letter, the applicant's Unwillingness Certificate dated 14.08.2018, was attached therewith as an appendix.

6. Aggrieved by the above wrongful actions of the respondents, the applicant preferred a Non-Statutory Complaint dated 28.11.2018 seeking redressal to quash the low figurative assessment awarded by the IO and RO in the CR covering the period from 01.06.2016 to 31.05.2017. The applicant also requested that he be duly considered for promotion in the upcoming DPC for the year 2018.

7. It is contended that due to the delay in redressal of his grievance, the applicant was placed in such an awkward situation as he was given the option to apply for a two-year extension of service as per policy applicable to Junior Commissioned Officers (JCOs) retiring in August 2021, vide letter dated 14.02.2019. However, if the applicant had opted for this extension, he would have been rendered junior in seniority and placed under the command of his own juniors.

8. Consequently, on 05.04.2019, the applicant submitted an Unwillingness Certificate for the two-year extension of service under the bona fide belief that he would be promoted in the upcoming DPC-2019, being confident that the respondents would take appropriate action on his Non- Statutory Complaint and set aside the invalid ACR for the period June 2016 to May 2017. Subsequently, on 19.07.2019, the IO, under whom the applicant was serving at 'B Company Signal Regiment' since 25.02.2019, initiated the applicant's ACR for the year 2019. However, the said ACR was rendered invalid as the applicant had not completed the mandatory minimum tenure of 90 days

of physical service under the said IO, as required under the applicable regulations.

9. Thereafter, the applicant, vide application dated 02.08.2019, submitted a request to the Colonel Records for verification of the details in his Confidential Report (CR), which had been wrongly initiated by his current IO, the applicant having completed only 89 days of physical service under him. In the said application, the applicant also expressed concern that the erroneous initiation of the CR could lead to non-consideration of his name in the DPC-2019. Subsequently, vide another personal application dated 17.08.2019, the applicant requested the OC, Light Repair Workshop (LRW) to forward a letter to EME Records (CA-7) for cancellation of the 2019 CR, reiterating that it had been wrongly initiated and that its continuation could harm or have adverse effects on his prospects of being considered in DPC-2019.

10. It has been further contended that Respondent No. 4, vide a speaking order dated 19.08.2019, informed the applicant that the General Officer Commanding (GOC), 41 Sub Area, had



set aside the entire CR for the period from 01.06.2016 to 31.05.2017, on the grounds of technical invalidity. It is the case of the applicant that despite this favourable development, according to the applicant, he should have been considered for Review DPC-2018, however, he was not informed about this fact but when he approached his seniors regarding this fact, he was merely advised to appear for the upcoming DPC, however, on 16.12.2019, the applicant sent a letter to the CO, 7010 EME Battalion, seeking intervention in apprising EME Records of the wrongly initiated ACR for the period of 2019, and further requested that necessary directions be issued for remedial action and it is submitted by the applicant that EME Records, vide letter dated 08.01.2020, set aside the ACR for the year 2019 and directed 7010 EME Bn to re-initiate and resubmit the CR for the period from 01.06.2018 to 31.05.2019. Following this direction, the applicant's unit, vide letter dated 21.01.2020, forwarded a blank ACR form to the IO and apprised him of the EME Records' order for further initiation of CR of the applicant. The IO, under whom the applicant had rendered 90 days of service and 75 days of physical service under the RO was

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instructed to initiate the ACR afresh and forward it to the Colonel EME, HQ 101 Area, under intimation to the Unit.

11. Subsequently, Respondent No. 4, vide letter dated 12.02.2020, informed the Unit regarding the DPC 2020 for promotion to the rank of Sub Maj against anticipated vacancies for the calendar year 2021. However, the applicant, vide Unwillingness Certificate dated 06.03.2020, opted not to be considered for DPC-2020 for promotion to the rank of Sub Maj. He took this decision as the promotion, if granted, would have rendered him two years junior to those already promoted through DPC-2018 and DPC-2019, and this certificate was forwarded to Respondent No. 4 vide letter dated 06.03.2020. Ultimately, the applicant was unfairly retired/discharged from service on 31.08.2021, without ever being considered for Review DPC 2018, notwithstanding the earlier setting aside of the technically invalid ACR for the period in question. Aggrieved by this, the applicant submitted a representation/application dated 04.03.2022 to the Officer-in-Charge, EME Records, requesting for conduct of a Review DPC for the year 2018,

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followed by letter dated 24.04.2023 seeking progress of holding a Review DPC-2018, which was not responded to by the respondents. Aggrieved by this, the applicant has filed the present OA.

12. The respondents have filed a detailed Counter Affidavit through which it was contended that while in service, the applicant earned several promotions, culminating in his promotion to the rank of Sub on 01.05.2014; with regard to the promotion to the subsequent rank of Sub Maj, it has been submitted on behalf of the respondents that a select panel in DPC (Sub Maj) was constituted on the basis of overall performance and seniority-cum-merit depending upon the availability of vacancies. The applicant was duly considered along with his batch-mates in the DPCs held in 2018, 2019 and 2020 held for promotion to the rank of Sub Maj, however, the applicant's ACR for the year 2017 was set aside by the GOC, HQ 41 Sub Area, vide order dated 14.12.2018, but this order was received by the EME Records on 26.06.2019 i.e. after completion of DPC 2018. Therefore, the ACR for 2017 of the

applicant was not considered in both the DPCs of 2019 and 2020. It is further submitted by the counsel for the respondents that the applicant was granted all possible opportunities under the prevailing policy, having been considered in three consecutive DPCs (2018, 2019, and 2020), despite this, he did not find a place in the select panel due to his being low in merit; that even if the numerical weightage for DPC-2018 is recalculated by excluding the 2017 ACR, the applicant would not be able to make it to grade and the applicant would stand at Serial No. 168 in the merit panel, which is significantly lower than the last selected individual in DPC 2018, who stood at Serial No. 43. The learned counsel for the respondents submitted that even over 124 JCOs, who scored higher than the applicant, were also not included in the selection list for that DPC-2018.

13. It has been further submitted on behalf of the respondents that the applicant's ACR for the year 2017 was not considered for numerical weightage in DPC-2019 and DPC-2020, despite this, he could not qualify in merit for selection for

promotion to the rank of Sub Maj being in low merit. Moreover, a revised calculation of merit for DPC-2018, excluding the said ACR, would still not enable the applicant to come within the zone of selection, given his low merit. In view of the above, the learned counsel pleaded that the OA deserves to be dismissed as it lacks merit.

ANALYSIS

14. We have heard the submissions made by the learned counsel for both the parties and have also perused the records produced by the respondents.

15. The applicant was enrolled in the Indian Army on 28.08.1993 and was promoted up to the rank of Subedar on 01.05.2014. His main grievance pertains to his non-promotion to the next higher rank of Sub Maj, allegedly due to an invalid ACR for the period 01.06.2016 to 31.05.2017. The said ACR for 2016–2017 was initiated under the previous IO, though the applicant had not completed the mandatory 90 days of physical service under him. The said ACR was delayed and was

ultimately forwarded with a downgraded assessment, without any intimation to the applicant as per Para 44 of AO 1/2002/MP, which led to the ACR of the applicant being declared technically invalid by the competent authority, the GOC, 41 Sub Area vide order dated 14.12.2018.

16. It is undisputed that the said order of technical invalidation was issued on 14.12.2018 was received by EME Records only on 26.06.2019 i.e. after completion of the DPC-2018. Consequently, the ACR-2017 was not taken into consideration in the DPCs of 2019 and 2020. The applicant's contention is that, upon setting aside of the ACR, he ought to have been considered in a Review DPC for 2018, as his non-consideration was resulted from delay in forwarding of ACR-2017 and there was no fault on his part.

17. However, the respondents have stated that the applicant was duly considered in DPCs held in 2018, 2019 and 2020, in accordance with policy, and that even if the ACR-2017 was excluded from consideration, the re-calculated numerical merit would still not place him within the zone of selection. It has

been pointed out that in the DPC-2018, the last selected candidate was at Serial No. 43, whereas the applicant, even upon recalculation, would stand at Serial No. 168, and even more than 124 candidates senior to him in merit were also not empanelled.

18. It is therefore clear that, while there was some delay in the initiation and forwarding of the applicant's ACR-2017, that defect was subsequently rectified through formal invalidation by the competent authority. The applicant was thereafter considered in subsequent DPCs. The essential requirement of fair consideration was, thus, substantially met. The claim that he was not considered at all in 2018-2020 DPCs is not supported by any record.

19. Pursuant to the directions dated 01.07.2025 of the Tribunal, original DPC proceedings pertaining to years 2018, 2019 and 2020 have been produced and taken on record.

20. We have carefully perused the above record. The respondents have given calculation of merit position of the

applicant in 2018 proceedings by excluding the ACR of the applicant for the year 2017 supported by an affidavit of Brig Prashant Bajpai, OIC Records, EME Records in the O/o EME Records Secunderabad, and the same read as under :

(a) A Subedar is given a maximum of three chances/looks for consideration by the Departmental Promotion Committee. Accordingly, JC-762418X Ex Sub Master Technician (B Vehicle) Pawan Kumar Lal Das has been given three chances during Departmental Promotion Committee of 2018, 2019 and 2020 as per details given below :-

Year	No of JCOs considered in his category/ Trade	Total No. of vacancies in his category/ Trade	Cut off merit list serial No.	His merit serial No. in the board	No. of JCO who scored more marks than applicant but could not come up in merit list
2018	509	125	125	409	283
2019	761	78	78	359	280
2020	1132	65	65	175	109

21. It is also stated by the respondents that as per policy in vogue, the applicant was screened for the Departmental

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Promotion Committee -2018, 2019 and 2020 held for promotion to the rank of Subedar Major alongwith his batch mates and was not selected due to low in merit in all three looks of Departmental Promotion Committee. Moreover, although we are not on technicality of this aspect but the fact remains is that the applicant himself submitted an Unwillingness Certificate dated 06.03.2020 opting out of DPC-2020 consideration, as he did not wish to be promoted with effect from a later date which would render him junior to those promoted through earlier DPCs and having consciously exercised this option, he should not now seek retrospective consideration for promotion on the same ground.

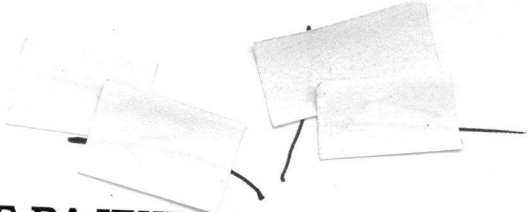
22. In view of the above, we find no procedural illegality in the action of the respondents. The applicant's claim that he was not empanelled or selected for promotion solely because of the invalid ACR is not sustainable as his overall merit, even after re-calculation of merit list after removal of the ACR of 2016-2017 was much below the selection threshold.

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CONCLUSION

23. With the aforesaid, the O.A. No. 2381 of 2022 is dismissed being devoid of merit. There shall be no order as to costs.

Pronounced in open Court on this 18th day of November, 2025.


**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**


**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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