

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

OA 2440/2023 [OA 1022/2022 (RB, Lucknow)]

Ex Hav Satish Kumar ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. K K Tyagi, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under
Section 14, the Applicant has sought following reliefs:

- (a) To pass the direction to the respondent to bring all the relevant service documents on record;*
- (b) To pass an order directing the Respondents to consider the applicant for the rank promotion to the rank of Naib Subedar;*
- (c) To direct the Respondents to grant the rank promotion to the rank of Naib Subedar with consequential benefits;*
- (d) To pass an order directing the Respondents to grant adequate compensation for dire harassment caused due to the non-grant of much deserved promotion;*
- (e) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

Brief Facts of the Case

2. The Applicant was enrolled in the Indian Army on 03.11.1998. He was posted at 178 Sainik Hospital, Gangtok in the trade of Driver (MT) on 07.10.2020, and promoted to the rank of Naik on 01.11.2017 and to the rank

of Havildar on 30.12.2019 with ante date seniority of 12.12.2019.

3. The Applicant qualified the Senior Cadre Course held at AMC Centre and College from 19.07.2021 to 26.07.2021 and was screened in for promotion to the rank of Nb Sub (Dvr, MT) as per Corps seniority on 26.10.2022. However, since the Applicant crossed the upper age limit of 44 years on 23.07.2022 and did not meet the criteria of 5x ACRs for promotion to the rank of Nb Sub, the Applicant was not considered for promotion and completed his normal service with a two year extension of tenure and retired on 30.11.2024 in the rank of Havildar.

Submissions by learned counsel for Applicant

4. It is the case of the applicant that he has given 26 years of service, and despite this, the respondents have infringed on his rights by not recommending him for promotion to the rank of Nb Sub without any justifiable and reasonable explanation, whereas on 01.11.2017 the applicant was promoted to the rank of Naik (Nk) and to the rank of Havildar (Hav) on 30.12.2019 with one NIR and one ACR.

5. The applicant claims that the respondents have been very biased and unfair by not considering the applicant for the promotion, despite his qualifications and seniority, and that there are many cases where Havildars have been promoted to Nb Sub with only four ACRs. From the same AMC fraternity, on 23/01/2016 a Havildar was promoted to Nb Sub with only one ACR and on 01/12/2016, a Nb Sub was promoted to Subedar without any ACR.

6. It is argued by the Ld. Counsel for the applicant that the respondents erred in not noticing that the applicant has adequate seniority and eligibility with an impeccable service record since the initial days of joining the Army and he has successfully completed the Havildar to Nb Sub Cadre course, and that the applicant has been given an above-average recording in all the four ACRs for his exemplary service.

7. It is submitted by the applicant that the respondents failed to consider that the applicant has served in the Army for the past 26 years with outstanding records, which imply that he is an efficient soldier with an unblemished profile having no record of punishments.

8. On the issue of the applicant being overage, Ld. Counsel for the applicant submits that the respondents were aware that the applicant was becoming overage, and no effort was made to take a favourable stance to facilitate the applicant's promotion in time. 9. Elaborating the aforesaid contention, it is submitted by the applicant that as the respondents had not initiated any efforts to effect the provision of special CR in the case of the applicant in accordance with **Para 11 of Army Order 1/2002/MP:** *"Para 11- the minimum period of earning a CR is 90 days service under the Initiating Officer (IO)"*, for which it is to be noted that as the applicant has already completed more than 7 months under the IO, a special CR can be initiated, and the applicant can be considered for promotion as he would have earned two ACRs as Hav.

9. Contending further, it is submitted by the Ld. Counsel for the applicant that the respondents failed to consider the provisions given in the policy letter on criteria for promotion for JCOs and Other Ranks dated **10.10.1997** which mandates that relaxation of age is permitted in exceptional cases. Such cases have been explained in the Policy letter

dated **14.09.1962**, titled "*Relaxation of Age/Service limits for Promotion*", relevant extracts of which are reproduced below: -

"Para 2- In order to put down unnecessary correspondence on this account at all levels and to safeguard the interests of Junior personnel, it will be ensured that such request is carefully scrutinized before submission and only exceptionally genuine cases are referred to this Headquarters for sanction. For recommendations of this nature, when initiated, will be submitted through normal staff channels to Personnel Sections at this Headquarters and will invariably contain the following information:-

(a) Special reasons for the grant of relaxation e.g. the individual for whom the relaxation is sought is well decorated and / or has achieved some singular distinction like service championship in some event and/or has been earning outstanding/ above average reports for several years.

(b) Whether or not other qualified/eligible personnel are available for promotions.

(c) If qualified / eligible persons are available, a certificate accompanied by necessary details, will be submitted to the effect that no promotion block will be caused by the grant of relaxation. In other words, proposed relaxation should not adversely affect the prospects of junior personnel.

(d) IAFD-903 (Character Roles) for the last three years in respect of the individuals recommended and the other three senior most qualified and eligible Havildars for promotion to JCO rank will also be forwarded.

Para 3- Recommendations for relaxation of age / service limits for promotion to the rank of Jamadar in respects of Havildars of clerical and Store-men technical categories will be submitted in view of the provisions of this Headquarter letter of even no dated 09.01.1962 laying down the conditions of exceptionally merited cases."

10. Learned counsel for the Applicant alternatively submits that the respondents failed to appreciate **Para 149(c)** of

the Regulations for the Army (RA) which says that a Havildar is eligible for waiver of service and age limits with the permission of the Chief of the Army Staff (COAS), and thus, the applicant is entitled for promotion to the rank of Nb Sub, in view of the Regulations reproduced herein:

"Para 149- Promotions JCOs-

(a) NCOs except those given in sub paragraph (b) below will not normally be promoted to the rank of JCO if over 40 years of age or with more than twenty two years" service.

(b) NCOs of the under-mentioned categories will not be promoted to JCO if over 44 years of age or with more than 25 years of service:-

- (1) Clerks GD, GD (SD) and Store.***
- (ii) Storekeeper (Storeman Technical).***
- (iii) Ammunition (Technicians) Examiners.***
- (iv) Personal Assistants (ASC)***
- (v) Instructors AEC.***

(c) The age and service limits given in sub-paras (a) and (b) above may be waived in very exceptional cases with the permission of the COAS.

(d) Before a NCO is promoted to Junior Commissioned Officer rank, or a probationary JCO is confirmed in his rank he must successfully complete the prescribed cadre course laid down by the COAS from time to time."

Submissions on Behalf of Respondents

11. Per contra, it is submitted by the respondents that the applicant was promoted to the rank of Naik on 01.11.2017 as per **Para 39 (c)** of AO 1/2002/MP, wherein a NCO promoted to the higher rank of Naik on or before 3rd October , will be entitled to the confidential report in the rank to which he is

promoted and as the applicant was promoted to the rank of Naik on 01.11.2017 i.e. after cut-off date of 3rd October, a Non Initiation Report (NIR) in respect of the Applicant was initiated in the rank of Naik for the year 2017.

12. It is submitted by the Ld. Counsel for the Respondents that the Applicant had earned two ACRs in the rank of Nk in 2018 & 2019 respectively, and thereafter the Applicant was promoted to the rank of Havildar on 30.12.2019 with seniority 12.12.2019. Subsequently, the Applicant had earned two ACRs in the rank of Havildar in 2020 & 2021 respectively, post which the Applicant qualified the Senior Cadre Course which is a mandatory course for promotion to the rank of Naib Subedar held at Army Medical Corps, Centre and College from 19.07.2021 to 26.07.2021. However, as per **Para 2 of Army Order 45/80** states that while the successful completion of a cadre course will qualify a NCO for promotion, it will not automatically entitle him to elevation in rank.

13. On the disciplinary actions against the applicant, it is brought out by the respondents that the applicant, on 29.04.2004, while serving with 333 Field Hospital, was

awarded 40 days imprisonment in military custody under Section 69 of the Army Act, 1950.

14. Relying upon **Para 6(a)** of IHQ MoD (Army) **letter No B/33513/AG/PS-2(c)** dated **10.10.1997** w.r.t promotion to the rank of Naib Subedar, it is submitted by the Respondents that *"only last five reports will be considered, out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik"*.

15. It is further submitted by the Respondents that with respect to waiver of ACR for promotion of PBOR, **Para 2** of IHQ MoD (Army) **letter No B/33513/AG/PS-2(c)** dated **26.03.2010** states that *"where shortfall in ACR occurs due to organizational constraint, request for inclusion of one additional CR in lower rank to make up the required mandatory number of ACRs may be projected to Officer-in-Charge Records"*.

16. Elaborating on the factual matrix, it is submitted by the respondents that the applicant had earned only four ACRs in terms of a letter dated **10.10.1997** for promotion to the rank of Naib Subedar, and there was a shortfall of one ACR.

The provision of letter dated **26.03.2010** w.r.t catering for shortfall of ACR wherein the provision exists to include one additional CR in lower rank i.e. in the rank of Naik in the case of the Applicant, could not be exercised as the Applicant had earned only two ACRs in the rank of Naik for the year 2018 and 2019, wherein NIR was applicable to the applicant for the year 2017 in terms of **Para 39 (c)** of AO 1/2002/MP. Therefore, the applicant could only be considered for promotion to the rank of Havildar to meet the mandatory requirement of earning five ACRs.

17. With respect to the applicant being overage for promotion, learned counsel for the respondents submits that as per GoI, MoD letter No **F 14 (3)/98/D(AG)** dated **04.05.1999**, NCOs except '*Clerks GD, GD (SD) and store, Storekeeper (Storeman Technical), Ammunition (Technicians) Examiners, Personal Assistant (ASC)*', will not normally be promoted to the rank of JCO if over 44 years of age or with more than twenty-six years of service, and as per service records, the DoB of the applicant is **24.07.1978** and being in 'Driver Category', the applicant is not entitled to promotion to the rank of Naib Subedar after completion of

upper age limit of 44 years i.e. after 23.07.2022. The aforesaid fact was communicated in advance by 178 Military Hospital to Army Medical Corps Record Office vide **message No 600435/COY/2022** dated **26.03.2022**.

18. It is further submitted by the Respondents that as per **Para 9(a)(ii)** of Army Order 1/2002/MP, periodicity of ACR for the rank of Havildar is from **01 Oct to 30 Sep** and accordingly the Applicant was due for initiation of his next ACR on 01.10.2022 i.e. after crossing his upper age limit for promotion of 44 years. As the applicant was not meeting the mandatory requirement of five ACRs and was also crossing the upper age limit of 44 years before earning his 5th ACR for consideration to the rank of Naib Subedar, suitable reply was conveyed by Army Medical Corps Record Office to 178 Military Hospital vide letter No 356006J/Dvr MT/Nb Sub/2022 dated 22.04.2022.

19. With respect to waiver of ACR in the year 2016, it is submitted by the respondents that during the processing of promotion regarding the category of Havildar (Chef) 2014 batch to the rank of Naib Subedar, it was discovered that fairly large number of Havildar (Chef) had earned only four

ACRs i.e. two in the rank of Naik and two in the rank of Havildar and they were promoted to the rank of Havildar at the end of the extension of service limit or after 3rd July. They had earned their fourth ACR in the year 2015 however, they still remained short of one ACR against the requirement of five ACRs.

20. It is elaborated by the respondents that as large number of Havildars in the (Chef) category were being affected due to organizational constraints and under exceptional circumstances, a special case for waiver of one ACR for the complete batch of 2014 of Havildar (Chef category) was processed by Army Medical Corps Record Office to the competent authority. Upon deliberation, IHQ MoD (Army), ADG of Personnel Services granted relaxation of one ACR for promotion to the rank of Naib Subedar for the complete batch of 2014 Havildar (Chef) category as a special case with directions that the sanction **will not be considered as precedence for an future case** vide their letter **No B/33515/AG/PS-2(c)** dated **20.01.2016**, stating to the effect - "*as a one-time measure*".

21. It is submitted that under the provision of **Para 12** of IHQ of MoD (Army) letter B/33515/AG/PS-2(c) dated 10.10.1997 and even letter dated 26.03.2010, sanction of the ADG PS was accorded for relaxation in mandatory requirement of CRs for promotion to the rank of Nb Sub in respect of the complete batch of 2014 of Chef (Hospital) Category of AMC Records as a special case:

"the individual may be screened with only four CRs wherein minimum two should be in the rank of Havildar with at least 'Above Average' grading and others not below 'High Average'. Due to exceptional circumstances leading to the case this sanction will not be considered as precedence for any future cases."

Consideration

22. We have heard the counsels for both the parties at length and have perused the documents that have been produced before us. On a careful perusal of pleadings, we find that the limited issue to be decided upon in this petition is whether the petitioner was entitled to be promoted to the rank of Naib Subedar after the expiry of the age limit and lacking the ACR as per laid down criteria.

23. We note that the contention of the applicant was that he passed the promotion cadre on 19.07.2021 and was awaiting a promotion for a vacancy arising on 01.01.2022

or 01.04.2022. A cursory look at the CR Dossier of the applicant reveals that the applicant, on his own turn, was promoted to the rank of Naik on 01.11.2017 and Havildar on 30.12.2019 with seniority 12.12.2019. He has earned the following CR before being due for promotion to the rank of Nb Sub :-

Sr.	Year	Type of CR	Rank
1.	2017	NIR	Naik
2.	2018	ACR	Naik
3.	2019	ACR	Naik
4.	2020	ACR	Havildar
5.	2021	ACR	Havildar

24. We find it pertinent to note here that post completion of the mandatory promotion cadre for the rank of Naib Subedar on 26.09.2021, the applicant had earned only four ACRs i.e two in the rank of Havildar and two in the rank of Naik, against the mandatory requirement of five ACRs in terms of Para 6(a) of IHQ of MoD (Army) letter No.B33513/AG/PS-2(c) dated 10.10.1997 for promotion to the rank of Nb Sub. Hence, he was under a shortfall of one ACR.

25. We observe that he earned only two ACRs in the rank of Havildar as of 30.09.2021, and the next ACR was due

on 01.10.2022, and before that, the applicant was going to complete 44 years of age on 23.07.2022. Thus, by the time he would have earned his third ACR in the rank of Havildar, he would have become ineligible for promotion due to the age criteria.

26. At this point, we find it essential to refer to ACR Criteria for promotion to the rank of Naib Subedar as laid down by the Para 6(a) of the IHQ MoD (Army) policy letter no. B/33513/AG/PS-2(c) dated 10.10.1997, which is reproduced as under :-

(a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Nk.

(b) At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Dfr/Hav and remaining should be not less than 'High Average'.

27. It is thus evident that the applicant's profile suffered from a shortfall of one ACR, and thus, we proceed to examine the ACRs earned in the rank of Naik, wherein we observe that the applicant was promoted to the rank of Naik on 01.11.2017 and completed only 61 days of service for earning an ACR due on 31.12.2017, he was not eligible for an ACR in the rank of Naik in 2017, as he was promoted

after the cut-off date of 03.10.2017. However, an NIR was initiated to cover the gap of 61 days.

28. With respect to the contention of the applicant that he was promoted to the rank of Havildar solely with one NIR and one ACR earned in the rank of Naik. However, we observe the contrary as the applicant has earned two ACRs and one NIR in the rank of Naik for the year 2018 and 2019.

29. It is essential to observe that as for the promotion to the rank of Havildar, only two ACRs are being considered in the rank of Naik, as Para 5 of AG's Branch letter NO B/33513/AG/PS2(c) dated 10 Oct 97, and thus, the applicant was promoted to the rank of Havildar with two ACRs only. Para 5 of the aforesaid AG's Branch letter NO B/33513/AG/PS2(c) dated 10 Oct 97 in this regard is reproduced below:-

Annual Confidential Reports (ACRs)

5. For Promotion to the Rank of Dfr/Hav

- (a) Only the last two reports (in the rank of Nk) will be counted.***
- (b) Both these reports should not be less than 'High Average'.***
- (c) The individual should have been recommended for promotion in both the reports.***

30. With respect to the the waiver of ACR in 2016, we observe that the large number of (Chef) had earned only four ACRs i.e two in the rank of Naik and two in the rank of

Havildar and remain short of one ACR against the requirement of five ACRs. IHQ of MoD (Army) ADG PS Dte granted relaxation of one ACR for promotion to the rank of Naib Subedar for the complete batch of 2014 Havildar (Chef) as a special case with directions that the sanction will not be considered as precedence for a future case vide letter No. B/33515/AG/PS-2(c) dated 20.01.2016.

31. It is evident that the sanction regarding the waiver of one ACR for Army Medical Corps personnel in the year 2016 was granted as a one-time measure and cannot be treated as precedent, and thus, we are of the opinion that the said reliance by the applicant does not help his case in any way, as said waiver for the batch of 2014 Havildar (Chef Hospital) was done by the competent authority due to exceptional circumstances.

32. Overall, we observe that the applicant could not meet the mandated requirement of five ACRs for promotion to the rank of Naib Subedar, as he had earned only four ACRs, i.e. two in the rank of Naik and two in the rank of Havildar, and has crossed the upper age limit of 44 years before earning his 5th ACR for consideration to the rank of Naib Subedar.

Hence, we find that there is no illegality, bias or prejudice in his consideration/selection process for promotion by the respondents.

33. In view of the aforesaid analysis, we are of the considered opinion that the prayer of the applicant for the grant of promotion to the rank of Naib Subedar is beyond rules/policy on the subject, and the same has rightly been rejected by the respondents as per such rules, thus, warranting no interference from us.

34. Hence, the aforesaid OA 2440/2023 is devoid of merits, and is accordingly dismissed.

35. No order as to costs.

36. Pending Misc. Application(s), if any, stand disposed of.

Pronounced in the open Court on day of 21st April 2025.

[HON'BLE MR. JUSTICE RAJENDRA MENON]
CHAIRPERSON

[HON'BLE LT GEN C.P. MOHANTY]
MEMBER (A)

Akc/