

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

OA 3253/2023 WITH MA 4034/2025

DFR Kishore Kumar Poddar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate  
For Respondents : Ms. Shital Raghuvanshi, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application seeking, inter alia, the following prayers:-

- “(a) Direct the respondents to allow the Applicant to pick up the next rank of Nb Risaldar on 01 Nov 2022 with ante date seniority or any later date, against the next existing vacancy, by giving 02 months waiver in age of 44 years, in light of denial of 02 chances in Apr 2021 and Jan 2022 due to national lockdown of COVID-19 and during said period limitation period has already been waived by Hon'ble Supreme Court; and /or*  
*(c) Direct the respondents to disclose the number of person including PBOR and Officers given waiver of age in granting promotion in light of the policy dt. 18 Nov 2005 (Annex-A5/colly) and Res 149(c); and/or*  
*(d) Appropriate direction to enable applicant to get his next due promotion of N/Sub/Risaldar against the next available vacancy with age waiver of 02 months in terms of Regs 149(c) read with Para-3 of Policy dt. 18 Nov 2005, as special case;”*

Even though various other prayers have been made, the main reliefs sought by the applicant are covered within these prayers. Therefore, the hearing is confined to the consideration of these prayers.

2. The applicant was enrolled in the Army as a combatant member on 11.02.1999 and was to be discharged from service in February 2025. He invoked the jurisdiction of this Tribunal on 23.09.2023 by filing this application. It is his case that he was enrolled in the Army on 11.02.1999 and since 2019 was waiting for promotion to the rank of Nb/Sub/Risaldar but has not been granted the aforesaid promotion on account of non-clearance of cadre course. It is an admitted position that on completion of the basic training course after his enrolment in 1999 the applicant was posted in 44 Armed Regt on 16.03.2001. He was promoted to the rank of LD on 23.08.2009 and Dfr (Hav) on 01.03.2017 as per his seniority. Thereafter he proceeded on permanent posting to 55 RR Bn on 21.07.2019 on his own request. From the material available on record, it is seen that for the purpose of promotion the applicant attended the following promotion cadre tests, attended/not attended;

| S. No | Conduction Unit | Date of promotion Test | of Attend ed/ not Attend ed | Result | Remarks                                                      | Ref Mov/ letter No                              |
|-------|-----------------|------------------------|-----------------------------|--------|--------------------------------------------------------------|-------------------------------------------------|
| (a)   | 72 Armed        | 07 to 09.02.2020       | Attend ed                   | Failed | 44 Armd Regt No 3006/4/Dfr to Nb Ris/G/2020 dated 01.01.2020 | 55 RR Bn mov order no 243/RR/A dated 01.02.2020 |
| (b)   | 3 CAV           | 01 to 04.09.2020       | Not attend ed               | Nil    | 44 Rmd Regt Letter No 3006/4/Dfr to Nb Ris/G/2020            |                                                 |

|     |            |      |                  |    |               |                     |                                                                 |                                                                |
|-----|------------|------|------------------|----|---------------|---------------------|-----------------------------------------------------------------|----------------------------------------------------------------|
|     |            |      |                  |    |               | dated<br>19.08.2020 |                                                                 |                                                                |
| (c) | 46<br>Regt | Armd | 21<br>24.06.2021 | to | Attend<br>ed  | Failed              | 44 Armd<br>Regt letter<br>No<br>3006/4/G<br>dated<br>18.06.2021 | 55 RR Bn<br>Mov order<br>No<br>243/RR/A<br>dated<br>22.05.2021 |
| (d) | 44<br>Regt | Armd | 17<br>20.01.2022 | to | Cance<br>lled | Nil                 | 44 Armd<br>Regt letter<br>No<br>3006/4/G<br>dated<br>11.01.2022 | 55 RR Bn<br>Mov order<br>243/RR/A<br>dated<br>09.01.2022       |
| (e) | 44<br>Regt | Armd | 25<br>29.04.2022 | to | Attend<br>ed  | Pass                | -                                                               | -                                                              |

These facts are admitted and Annexure (R1-7) filed by the respondents along with the counter affidavit establishes the aforesaid facts as detailed in the tabulated form. It is seen from the above that between February 2020 and June 2021, the applicant was given three opportunities to appear for the promotion test/cadre for promotion to the rank of Nb/Sub (Risaldar). He appeared on two occasions but failed to qualify in both. The third opportunity, scheduled for January 2022, was cancelled due to the resurgence of the COVID-19 pandemic. Consequently, the applicant could not appear for that test. The cancelled test was subsequently conducted on 29.04.2022, in which the applicant qualified. However, by the time the applicant passed the cadre test in April 2022, it is the case of the respondents that he had already crossed the upper age limit of 44 years for promotion on 16 March 2022, as prescribed in the policy contained in the AG's Branch, Additional Directorate General

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Personnel Services, Army Headquarters letter dated 10.10.1997. Further, there exists a provision for grant of age relaxation as per the policy letters issued by the IHQ of MoD (Army) dated 19.09.1962 and 18.11.2005 (Annexure R to M.A. 4034/2025). According to the respondents, age relaxation can be granted only if the conditions stipulated in Para 3 of the said letter are satisfied. Since the applicant does not fulfil the criteria laid down therein, he has not been granted age relaxation. The criteria prescribed in Para 3 of Annexure R dated 18.11.2005 are as follows:-

*3. This HQ letters quoted above has laid down guidelines regarding exceptional circumstances under which relaxation can be granted. According to it, following will be treated as exceptional circumstances:-*

- (a) A case based on an "outstanding achievement" by an individual which brings credit to the Army.*
- (b) A most peculiar case normally rarely to happen and cannot be used as a precedent later to seek for a similar treatment to another cases.*
- (c) A rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement of the service."*

5. Accordingly, it is the case of the respondents that the applicant's case has been duly examined and since he was not granted age relaxation, his claim for promotion cannot be accepted. Moreover, as he has already attained the age of discharge upon completion of his tenure in February 2025, no relief can now be granted to him. However, we consider it appropriate to take note of certain facts that have emerged on record during the course of the proceedings.

6. After notices were issued in the matter on 25.10.2023, it came to the notice of this Tribunal on 23.09.2024 that the applicant was due to be discharged in January 2025. As the proceedings in the matter were complete, the case was directed to be listed for final hearing on 21.11.2024 under the category of "Court's Order Cases." When the matter was heard on 21.11.2024, we found that in accordance with law, the applicant was entitled to three opportunities to appear in the promotion exercises/cadre examinations for promotion to the rank of Nb/Sub (JCO). In the first attempt, the applicant appeared in the examination held in January 2020 but could not qualify, falling short by one mark.

7. In the second opportunity given to him in August 2020, the examination was cancelled due to the COVID-19 pandemic. The examination was subsequently conducted in May 2021, in which the applicant again failed. The third opportunity was scheduled for 14.01.2022, however, the reasons for not permitting the applicant to take that examination were neither attributable to him nor explained by the respondents. It was later found that he was offered another chance to appear in the examination held from 22.01.2022 to 25.01.2022, which he successfully cleared. Despite this, he was not granted promotion on the ground that by the time he was to be promoted after clearing the examination on

25.04.2022, he had exceeded the prescribed age limit by 45 days. The applicant sought relaxation in light of the policy dated 18.01.2023 and subsequently policy applicable in the matter. We took note of paragraphs 2 and 3 of the policy dated 18.01.2023, which read as under:-

*“2. A no of applications have been received in the recent past for age relaxation for promotion to the rank of Nb Sub. While relaxation has been accorded to deserving cases, most applications have had to be rejected.*

*3. This HQ letters quoted above has laid down guidelines regarding exceptional circumstances under which relaxation can be granted. According to it, following will be treated as exceptional circumstances:-*

*(a) A case based on an “outstanding achievement” by an individual which brings credit to the Army.*

*(b) A most peculiar case normally rarely to happen and cannot be used as a precedent later to seek for a similar treatment to another cases.*

*(c) A rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement of the service.”*

The matter was taken up on 19.12.2024 but could not be heard. It was again listed on 08.01.2025, when the respondents neither offered any justification nor reported compliance with the order earlier passed on 21.11.2024. The matter was thereafter adjourned to 05.03.2025 and in the meantime, this Tribunal directed that the applicant shall not be discharged from service.

8. By virtue of the interim order passed and the consequent cancellation of his discharge, the applicant continues in service. The issue regarding the grant of age relaxation for the delay of 45 days, after the conduct of the third promotion exercise which the

applicant has cleared, is now to be decided by this Tribunal. The respondents have set out their justification in M.A. 4034/2025. In paragraph 13 of the said application and a written argument submitted, all the factual aspects have been admitted by the respondents; however, their sole contention is that the applicant does not fulfil the conditions stipulated in the policy for the grant of age relaxation and therefore, he cannot be extended such benefit.

9. From the facts stated by the respondents in M.A. 4034/2025, it is evident that the applicant attended the promotion test/cadre held from 07 to 09 February 2020 but failed on that occasion. He appeared again in the second attempt held from 21 to 24 June 2021, in which also he failed. The third examination scheduled from 17 to 20 January 2022 was cancelled due to the resurgence of the COVID-19 pandemic, as admitted by the respondents. Further, the applicant could not attend the cadre examination conducted from 01 to 04 September 2020 owing to the COVID-19 restrictions on the movement of outstation candidates. Therefore, his inability to attend that examination cannot be attributed to him.

10. It is therefore, clear that in the cadre examinations scheduled from 01 to 04 September 2020 and again from 17 to 20 January 2022, the applicant, though willing and eligible, could not attend due to COVID-19 pandemic-related restrictions beyond his

control. In the third attempt, which was initially cancelled in January 2022 and subsequently conducted from 25 to 29 April 2022, the applicant appeared and successfully passed the examination. However, he was not granted age relaxation on the ground that he was overage by 45 days.

11. The moot question before us is whether, in the circumstances detailed above, including the fact that the applicant was prevented from appearing in the cadre test on two occasions viz. September 2020 and January 2022, due to reasons beyond his control (i.e. the COVID-19 pandemic) and that he successfully cleared the adjourned examination held in April 2022, any relief can be granted to him or whether it must be denied merely because the policy on age relaxation applies only to the specific situations enumerated therein, i.e., outstanding sportsperson, some exemplary service etc.

12. Before considering this question, it is necessary to take note of certain additional facts that have emerged from the respondents' pleadings.

13. According to the respondents, they are unable to grant age relaxation to the applicant because he does not meet the conditions for age relaxation as specified in the policy. They admit that the applicant's discharge was cancelled and that he continues in service.

Further, in paragraph 13 of MA 4034/2025, the respondents acknowledge that two vacancies in the rank of Nb/Risaldar were available on 15.06.2021 and 01.01.2022. These vacancies were filled by Dfr Manish Kumar Singh and Dfr Nagashepam Bikananda Singh, both junior to the applicant. However, the applicant could not be promoted at that time because he had not cleared the promotion test as of 15.06.2021 and 01.01.2022. The respondents also submit that another vacancy arose on 11.04.2022, which was filled by Dfr Mohd Safiqul Islam, who was also junior to the applicant. By the time this promotion occurred, the applicant had not yet cleared the cadre test, which he successfully passed only between 25-29 April 2022 (i.e., after 14 days). From these facts, it is evident that the cadre examinations scheduled for 17-20 January 2022 could not be attended by the applicant as they were cancelled, and the rescheduled examination was held from 25-29 April 2022. Although the applicant passed this examination, the promotion that arose on 11.04.2022 could not be granted to him because he had not cleared the cadre test at that time. By the time he cleared the test, the vacancy had already been filled by his junior, and he was considered overage.

14. In our considered view, the respondents' refusal to grant the applicant age relaxation of 45 days amounts to an unreasonable and

arbitrary action in the peculiar facts and circumstances of this case. Had the applicant been permitted to appear in the cadre examinations scheduled from 01-04 September 2020 or 17-20 January 2022, which was subsequently cancelled due to the COVID-19 pandemic, he would have been entitled to promotion. These promotions were granted to his juniors simply because he had not cleared the cadre test. The applicant was unable to appear on two occasions solely due to the COVID-19 pandemic, which was beyond his control. Considering the totality of the facts, that applicant could not appear in the examination well within the age limit due to reasons beyond his control, the condition of being overage by 45 days can reasonably be relaxed in the applicant's case. A strict technical interpretation of the policy to deny age relaxation under these circumstances amounts to an unreasonable and unfair exercise of discretion by the respondents, a state under Article 12 of the Constitution, and a Mode Employer depriving the applicant of his legitimate claim.

15. In Paras 2 and 3 of the policy dated 18.11.2023, reproduced in detail in our order dated 21.11.2024, so, also in the subsequently policy of 2025, it is provided that age relaxation can be granted for outstanding achievements. Even where no such achievement exists, Clauses B and C of the policy allow for age relaxation in highly

exceptional cases, which are rare and cannot be treated as precedent. Discretionary powers are vested in the authorities to grant relaxation in the “rarest of rare” deserving cases. In our considered view, the applicant’s case falls within Clause B of the policy of 18.11.2023 and qualifies as a rare case. The applicant was unable to attend the cadre tests on two occasions, September 2020 and January 2022, due to the COVID-19 pandemic, beyond his control. In the rescheduled January 2022 examination held in April 2022, he successfully cleared the test. Had the examination been conducted as originally scheduled in January 2022, the applicant would have qualified as he became overage only on 14.03.2022 and was within the prescribed age limit at that time. Promotions were granted to Dfr Mohd Shafiqul Islam on 11.04.2022 and to juniors Dfr Manoj Kumar Singh and Dfr Nagashepam Bikananda Singh in June 2021 and 01.01.2022. Had the January 2022 cadre examination been conducted on time, the applicant would have been eligible for promotion even without age relaxation. This is a case where, due to circumstances beyond his control (the COVID-19 pandemic) the applicant was deprived of timely promotion. He failed to qualify in time solely because the examinations of 2021 & 2022 were delayed, not due to any fault of his own and successfully cleared the third attempt. Denying age relaxation of approximately

45 days in such a case, for a soldier who has served the nation for over 23 years, solely on a literal interpretation of policy, without considering the peculiar facts and circumstances, is neither just nor reasonable. Such an approach by the State, within the meaning of Article 12 of the Constitution, cannot be appreciated by this Tribunal.

16. Taking into account the totality of the facts and circumstances of the case, we are of the considered view that this is a fit case for granting age relaxation of 45 days to the applicant. Consequently, the applicant should be granted promotion with effect from the date it was granted to his immediate junior, Dfr Mohd Safiqul Ismal, that is, after the applicant cleared the cadre test on the third occasion.

17. Accordingly, it is directed that the applicant be granted promotion to the post of Nb/Risaldar with effect from the date the promotion is sanctioned and granted to Dfr Mohd Safiqul Islam. A supernumerary post shall be created for the applicant in case no post is available until a regular post becomes available. The applicant's seniority shall be fixed at par with his immediate junior, Mohd Safiqul Islam. All consequential benefits of promotion, including pay fixation and seniority in the rank of Nb/Sub/Risaldar shall be granted retrospectively from the said date. The order shall be implemented within three months.


18. The applicant's discharge is hereby cancelled and he shall be permitted to continue working until the conclusion of his tenure appointment in accordance with the age limit prescribed for disengagement/discharge in the promoted post of Nb/Risaldar.

19. No order as to costs.

20. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this <sup>H</sup>27 day of October 2025.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[RASIKA CHAUBE]  
MEMBER (A)

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