

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

OA 361/2024

Hav Rajesh Kumar ... Applicant  
Versus ... Respondents  
Union of India & Ors.

For Applicant : Ms. Archana Ramesh, Advocate  
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is serving as a Havildar, being aggrieved by his non-empanellment for the promotion to Nb Sub by not granting him exemption from the Promotion Cadre and hence, prays for the following reliefs:-

*(a) Issue directions to the Respondents to quash and set aside HNS - Havildar to Naib Subedar Promotion Cadre Nominal Roll for Havildar to Naib Subedar Cadre of Rajput and Gurjar Community held between April to Jun 2022 placed as Annexure A-8, Nominal Roll for Havildar to Naib Subedar Cadre of Rajput and Gurjar Community held between 28 Nov 2022 to 08 Feb 2023 placed as Annexure A-10 as also 6 Rajput Letter dated 10 Aug 2023 placed as Annexure A-12 Results in so far, the Applicant is concerned under the authority of Army Order 45/1980 placed as Annexure A-14 and simultaneously promote the Applicant to Naib Subedar to meet the ends of equity, justice and fairplay.*

*(b) Pass such other and further orders to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.*

2. It is the case of the applicant that he was enrolled on 05.05.1999 in the Army and posted to 6 Battalion of Rajput Regiment, and his performance in military duties has been excellent. However, while being posted at LoC in Poonch area of J&K during OP RAKSHAK, he accidentally stepped on an anti-personnel mine resulting into mine blast injury, leading to amputation of his limb and implant of a prosthetic leg, and by that time, he had only completed 02 years of service.

3. Throwing light on factual background, it is submitted by the applicant that CoI held subsequent to mine blast, did not agree with it being a 'Battle Casualty', aggrieved by which he approached this Tribunal vide OA No. 311/2013, wherein vide its order dated 27.03.2015, this Tribunal partially allowed the OA and directed to grant 'Battle Casualty' status to the applicant, and consequent; by held him eligible for War Injury Pension after superannuation.

4. The applicant submits that he was detailed for United Nations Mission at South Sudan, due to which he could not appear for First Promotion Cadre for promotion to the rank of Naib Subedar which was held between April 2022 to

June 2022. Subsequently, during the 2nd Promotion Cadre held in between 28 Nov 2022 to 08 Feb 2023, there were a total of 18 Havildars, in which 07 were in the category of 'Rajput' and 11 under the category of 'Gurjar', wherein the applicant was the senior most in 'Gurjar' category, but when the result was declared, he was declared as 'Fail' in the Practical and Theory at Sl. No. (q).

5. It is further submitted by the applicant that as per Para 5 of Army Order 45/80, the War Wounded NCOs who are placed in Low Medical Category, can be granted partial or total exemption from attending a cadre course, by the Commanding Officer on the recommendation of the Medical Officer, and that the AG Branch Policy Letter dated 10.10.1997 is the final Mother Policy Letter which clarifies that personnel injured during deployment in 'OP Meghdoot', 'OP Rhino', 'OP Rakhshak' etc and other similar CI operations and placed in medical category 'CEE' (Pmt/Temp) will treated at par with 'Battle Casualties', yet the applicant was not promoted in his 3rd attempt in the Promotion Cadre held between period 01 Aug 2023 to 03 Nov 2023.

6. Per Contra, not disputing the factual background laid down by the applicant, it is submitted by the Respondents that as

per Para 11 of the Army Order 12/2009/MT, war wounded non-combat officers who is placed in the low medical category, the Officer Commanding is authorized to grant partial or total exemption from attending a cadre course on the recommendation of the medical officer.

7. Elaborating further, it is submitted by the Respondents that however, the applicant was declared 'FAIL' in practical and theory subject, which is left out from physical test and that if granted exemption, it will certainly set a bad precedence/example amongst the troops and will be detrimental to overall discipline/decorum of Army and since the law is formed to help those who are really aggrieved and not those who use the law a tool to take undue favour time and again as per their will and wish.

8. Learned counsel further submits that as per Army Order 12/2009/MT, certain tests are mandatory to be passed for qualifying in the promotion cadre, and the individual could not clear the tests, and thus, being unable to pass the mandatory promotion cadre, he is not eligible for promotion as well.

9. We have heard both the parties and have perused the material placed on record including the documents relied upon by the parties. The only consideration which remains to be

decided herein is whether the applicant is entitled to be exempted from certain tests of Promotion Cadre due to his disability being a Battle Casualty and subsequently, eligible for promotion to the rank of Nb Sub?

10. Before adverting to adjudication, we find it pertinent to refer to Para 11 of the AO 12/2009/MT, which is relevant policy in vogue on this issue, and the same is reproduced as under:

*"11. NCOs in Medical Category SHAPE-I only will be detailed to attend the cadre course. If a formation or unit commander details an NCO of a lower medical category, to attend a particular cadre course, he will furnish a certificate to the Record Office concerned, that the NCO is capable of undergoing that cadre course. This certificate will be endorsed by the Unit Medical Officer, to the effect that the cadre course will not have an adverse effect on the health of the NCO. However, in case of war wounded NCOs, who are placed in the low medical category, the Officer Commanding is authorized to grant partial or total exemption from attending a cadre course, on the recommendation of the Medical Officer."*

11. Accordingly, on perusal of records, we have observed that a medical certificate has been endorsed by the Medical Officer which is reproduced below :-

*"MED FITNESS CERT"*

1. *It is cert that No 2999378P Rk HAV Name RAJESH KUMAR of 6 RAJPUT is in LMC (BC) and he is capable to under going the Hav to Nb Sub promotion cadre scheduled to be conducted at 6 RAJPUT.*

2. *It is also cert that the effect of above mentioned cadre course will nto have an adverse effect on the health of above named indl if he attend the a/m cadre.*

*Stn : C/o 56 APO*

*Sd/- xxxxx*

*OA 361/2024  
Hav Rajesh Kumar*

Dt : 24/09/22

(Suraj Kumar S)  
Lt Col AMC  
MO Surgery"

12. Even though the applicant was not granted the status of Battle Casualty on the grounds of negligence by which the applicant had entered a minefield ahead of the forward post on the line of control, he was later granted the status of 'Battle Casualty' by virtue of order of this Tribunal dated 27.03.2015 in OA No.311/2013. He was thus entitled to War Injury Pension after superannuation. The relevant parts of the order are extracted as under :-

*"23. Consequently, the OA stands partially allowed, and the impugned order dated 09.03.2007, passed by the respondents is set aside, (as also the Court of Inquiry dated 09.04.2001 is held as legally untenable), with the following directions:-*

(i) *The injury of the applicant be treated, as attributable to military service as a "battle casualty" within the purview of AO 8/S/1985.*

(ii) *The "Battle Casualty" of the applicant falls within the parameters of para 4.1 of GOI MOD letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001, and consequently he is entitled to the "War Injury Pension", as stated in para 11 and calculation under provisions of MoD letter No. 16(6)/2008(2)/D (Pension/Policy) dated 05 May 2009, when due. He is also entitled to rounding off @ 75% based on the Hon'ble Supreme Court ruling in Civil Appeal No. 418 of 2012- Union of India & Ors. Vs. Ram Avtar, decided on 10.12.2014.*

(iii) *The petitioner is not entitled to Ex-Gratia Payment by respondents 1 to 4.*

(iv) *All necessary documentary corrections and amendments be undertaken by the respondents, give effect to the preceding directions, within three months, of receipt of this order by the respondents no 1 to 4.*

(v) *No order as to costs.*

Sd/- xxxx  
(PRAKASH TATIA)  
CHAIRPERSON

Sd/-xxxx

(SANJIV LANGER)  
MEMBER(A)

New Delhi  
Dated : 27.03.2015"

13. The applicant through this OA has challenged his grounds for endorsement as Unwilling in Nominal Roll non-empanelment by Hav to Nb Sub promotion cadre held in June 2022 and non-empanelment as second chance candidate on Feb 2023 and later as a third chance candidate on November 2023. It is pertinent to observe that the applicant had rendered an Adverse Career Certificate prior to proceeding on UN Mission with 19 RAJPUT which included unwillingness to undergo any cadre or course. The certificate submitted by the applicant is reproduced as under:-

"Appx 'C'  
(Ref 6 RAJPUT letter No  
104/UN MSN/A dt Sep  
2020)

ADVERSE CAREER CERTIFICATE

1. No 2999378P Rank Hav Name Rajesh Kumar of 6 RAJPUT, selected for posting to UN MSN with 19 RAJPUT am willing to go on posting to UN Msn. I am aware that during my tenure of duty with UN Msn, I will not be permitted to attend any cadre or course. I will also not request for premature reversion for the purpose of promotion before completing my UN tenure. I hereby undertake the responsibility to bear any loss in seniority/promotion to the next rank that my result. I further undertake not to claim such losses or apply for redressal in any form

2. This adverse career certificate is applicable from the date rendered by me.

Auth : IHQ of MoD (Army) letter No 71362/Policy/SD-3A (UN)  
dt 11 Apr 2017.

Dated : 09 Sep 2020

Sd/-xxxxx  
Rajesh Kumar 201997789

OA 361/2024  
Hav Rajesh Kumar

(Signature of the individual)

COUNTERSIGNED

Unit : 6 RAJPUT

Station : 99 APO

Dated : 15 Sep 2020"

Sd/-xxxxxx

(PS Atwal)

Col

CO

14. Having not undergone first chance of the promotion cadre, the applicant was made to undergo the second and third chance wherein the applicant has made submission to the effect that he was made to illegally undergo physical tests during the conduct of the promotion cadre despite being a Battle Casualty and a Low Medical Category A3(A) permanent with the disability of Below Knee Amputation (Rt) as per his medical documents placed before us. The medical documents are reproduced as under :-

"Appendix "G"  
(Refer to para 28 of Army Order  
9/2011/DGMS)

OPINION OF LT COL GEETA NAIR, CL SPL (SURG)

DEPT OF SURGERY, BHDC-10

PART-I

PATIENT PARTICULARS

Army No : 2999378P	Rank : Hav	Name : RAJESH KUMAR
Age : 40/M	Unit : 19 RAJPUT	Fmn :
Previous Med Cat	A3(P) FOR BK AMPUTATION (RT)	

PART-II

OA 361/2024  
Hav Rajesh Kumar



### CLINICAL ASSESSMENT

1. *History*
  - (a) *Location: Field (Poonch, J&K)*
  - (b) *Onset: 06 Apr 2001 (Mine Blast Injury)*
  - (c) *Relevant history: 40 years old serving soldier a k/c/o BK amputation (Rt) following mine blast injury, presented for recategorisation with no fresh complaints*
2. *Physical examination findings:-*

*O/E-GC fair, vitals stable. No pallor, icterus, edema.*

*L/E- Amputation stump healthy, no sinus, discharge, ulceration. RoM at knee joint-full and pain free. No phantom limb sensation.*

*S/E: NAD*
3. *Investigation: Nil*
4. *Diagnosis: BELOW KNEE AMPUTATION (RT)*

### PART-III

#### TREATMENT UNDERTAKEN/ADVISED

*Underwent Transtibial Amputation Rt Lower Limb at ADS, Poonch  
Currently, ambulating well with prosthesis.*

### PART-IV

#### RECOMMENDATIONS

1. *Medical Classification recommended:*
  - (a) *Medical classification: Recommended to continue in LMC A3(P)*
  - (b) *Disability Profile: As per LMC*
2. *Medical Recommendation with employability restrictions (impacting functional status of the indl) if any with justification: As per LMC*
3. *Any other advise(with justification):-*
  - (a) *Ex BPET/PPG/ standing duties*
  - (b) *Not to be posted to HAA/ Hilly terrain*
  - (c) *Review in nearest SOPD when due for recategorisation.*

*Sd/-xxxx*

*Place: BHDC-10*  
*Date : 08 August 2021*

*(GEETA NAIR)*  
*Lt Col*  
*CI Spl (Surg)"*

15. Therefore, the short question for adjudication before us is that whether the applicant's consideration by the Hav to Nb Sub Cadre was illegally conducted in a manner that he was made to undergo the physical tests overlooking his disabilities and resultantly deliberately failed in the promotion cadre on two occasions. Therefore, we have called for the board proceedings of the subject promotion boards conducted by the competent authority wherein the applicant has not been selected for promotion to rank of Nb Sub.

16. We observe that the applicant was considered for the first time by the Board of Officers ordered by HQ 32 Inf Bde with Commanding Officer of 9 BIHAR as Presiding Officer and two Officer Members from units other than the parent battalion of the applicant, i.e., 6 RAJPUT. The applicant's name features at Serial No.16 of the nominal roll of the candidates wherein it is unambiguously endorsed by the board that the applicant was not tested in the physical tests, namely in Battle Physical Efficiency Test (BPET) & Physical Proficiency Test (PPT) and resultantly, there is no disadvantage that has been caused to him as per his averments due to his physical disabilities. The

applicant has failed in VIVA wherein his score was 41 out of 120 marks; with the passing marks being 48. He has failed in weapon handling and firing in which the applicant scored 05/20 and 14/50 marks wherein the passing marks were 08 and 20 respectively. Having observed that these two tests involve use of hands only, we do not consider the disability of the applicant which is amputation of leg below knee (Rt) should have come in the way of his ability to perform these tests.

17. We are conscious of the fact that he applicant being a Battle Casualty must be given due discretionary consideration and exemptions from tests in which he cannot participate while conducting various promotion related tests. However, in the same breath, we must observe that even when promoted, he shall be expected to carry out soldierly duties and command certain number of soldiers in peace and war time environments as a Nb Sub when promoted. Towards this end, the waiving off of the physical tests involving the feet, i.e., BPET & PPT are justified and we also hold that the tests involving the hands and the upper part of the body which do not involve the action of the feet/legs have to be undergone by the applicant even though he is a Battle Casualty. The Court has taken an appropriate and

sympathetic view of his disability and consequently, granted him status of Battle Casualty and grant of War Injury Pension. However, while considering the applicant's case for promotion, grant of an overall waiver in every activity that is physical and not involving the use of disabled body part is in our considered opinion, not desirable. Therefore, we uphold the result of the test of the applicant in weapon handling (TsOET and Firing). Besides the above, the applicant has also failed in the Theory tests wherein his score is 125 out of 500 marks wherein the passing marks are 200. Accordingly, the applicant has failed in the cadre by scoring overall 229 marks out of 500 marks against the passing marks of 320 and has been shown as having failed in Practical and Theory.

18. We now proceed to peruse the board proceedings of the promotion cadre conducted from 31.07.2023 to 13.10.2023 and promotion board proceedings concluded on 20.11.2023 under HQ 32 Infantry Brigade wherein the Presiding Officer is Commanding Officer of 13 GARH RIF and Officer Member from 13 GARH RIF and 9 BIHAR. The applicant was considered for promotion to the rank of Nb Sub for the third time under the category of Gurjars. A bare perusal of board proceedings indicate that the applicant was exempted from the physical test

of BPET, PPT and Drill being a Battle Casualty. The applicant has, however, failed in VIVA having scored 47 out of 120 and in theory having scored 126 out of 500 wherein the passing marks are 200. The total marks of the applicants are 230 out of 800, wherein the passing marks 320. It is quite interesting that, in comparison to his performance in second chance the applicant has, however, qualified in Weapon Handling and Firing in this promotion cadre; bringing us to the unambiguous conclusion that the applicant is capable of not only performing but passing in the tests of weapon handling and firing which he had submitted that he should have been exempted being a Battle Casualty. Therefore, in the third chance of the promotion board, we do not find any illegality or bias in conducting the tests qua the applicant and accordingly, we find that the applicant has failed in the tests; due to particularly having scored less marks in the written examination and tests which do not have any bearing on his Battle Casualty and thus his physical disabilities cannot be held to be attributable for his failure in the promotion tests..

19. Consequently, OA 361/2024 is dismissed as devoid of merit.

20. No order as to costs.

21. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on this 22 day of July, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Akc/-