

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

125. D

OA 391/2020 with MA 1492/2024

Hav Dhanamjayulu M Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal u/s 14, applicant challenges the punishment order, severe reprimand issued to him on 28.04.2018 and the severe reprimand of six months issued on 21.05.2019, the ACR for the period 2018-2019 and seeking promotion to the rank of Nb. Sub. w.e.f. 01.03.2019, this application has been filed by the applicant.

2. Applicant was enrolled in the Indian Army as a Sepoy (DMT) on 19.09.2000 after he passed a promotion cadre examination for promotion to the rank of Naik, he was promoted to the rank of L/Naik in the year 2004 and in April, 2009, he was promoted to the rank of Naik. It is the case of the applicant that on 28.04.2018, the applicant was

falsely charged for certain misconduct in the matter of non maintaining the MT documents properly and was punished by severe reprimand for six months. It is stated that as the applicant was promoted to the rank of Havildar in October, 2015, the applicant was eligible for promotion to the rank of Nb Sub. in March, 2019. However, somehow to stall this promotion, his Commanding Officer falsely implicated the applicant and initiated the disciplinary proceedings for misconduct on 25.01.2019 and he was punished with reprimand for six months. It is alleged that this was done intentionally by his Commanding Officer namely, Col Vikram V. Kelkar in order to facilitate the promotion and grant of the vacancy available to one Hav. Azummuddin in place of the applicant. In sum and substance, it is the case of the applicant that he was due for promotion to the rank of Nb Sub. and with malafide intention, the impugned action was taken to punish him by falsely implicating him for the charges levelled in 2018 and again in 2019 at the instance of the Commanding Officer, Col. Vikram V Kelkar, because of the aforesaid conspiracy the ACR of the applicant for the period 2018-2019 was adversely affected and therefore, he was denied the promotion. It is the case of the applicant that

the ACR of the applicant for the period 2018-2019 has been compromised at the instance of his Commanding Officer and the applicant has been assessed below his performance to curtail his promotional chances. It is contended that the applicant has an unblemished 20 years of service and just to deprive him of the promotion, he was punished with severe reprimand for one year on 28.04.2018 and reprimand of six months on 21.05.2019. This adversely affected his ACRs and therefore, contended that his Commanding Officer has manipulated the things to deprive the applicant of the promotion, aggrieved of which this application has been filed.

3. Sh. Ajit Kakkar, learned counsel for the applicant took us through the facts as narrated hereinabove and emphasized that the applicant has been illegally denied the promotion on grounds as is hereabove mentioned. It may be taken note of that except for filing two documents Annexure A-1 (colly) i.e. a representation dt 28.12.2019 written to the Commandant, HQ School of Arty at page 19 and other representation in Hindi written to the Public Information Officer, HQ Arty at page 23 in the form of an information sought under Right to

Information Act (RTI), the applicant has not brought on record any material in support of his contention.

4. Respondents have filed a detailed counter affidavit and deny the allegations made by the applicant as detailed in the application. It is the case of the respondents that the applicant was enrolled in the Army on 19.09.2000 and after completing his basic military training at Artillery Centre, Nasik Road, he was posted in 317 Field Regiment on 05.09.2001 as per details contained in para 3 A of the petition and continuous to work as of now at the time of filing of this application in 317 Field Regiment in the rank of Havildar. Respondents have indicated the seniority of Havildars in the Unit in the cadre of Havildars for the year 2019-2020 alongwith remarks as to why they were not promoted to the rank of Nb Sub., the details of which read as under:

Sr	Particulars	Date of			Remarks
		Enrolment	Naik	Havildar	
a.	14425880W Havildar Somra Munda	27.07.1998	01.06.2004	01.08.2010	Lacking Promotion Cadre
b.	15136500K Havildar Rajbir Singh	03.10.1998	01.01.2005	01.08.2010	Lacking Promotion Cadre
c.	14427003F Havildar V Selvam	24.11.1998	20.02.2007	01.09.2014	Lacking map Reading and Promotion Cadre

d.	14434693Y Havildar M Dhanam Jayulu	19.09.2000	01.04.2009	03.10.2015	Lacking Confidential Report Criteria
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5. It is the case of the respondents that the applicant could not be promoted to the rank of Nb Sub. due to lack of Confidential Report Criteria. They further contended that IHQMoD (Army) letter no. B/33513/AG/PS-2(C) dt 10.10.1997 lays down the criteria for promotion by the Unit Promotion Board and the relevant portion of the criteria for promotion to the Nb Subedar reads as under:

(a) Confidential Report

- i. *Last five years will be considered, out of which minimum three reports must be in the rank of Havildar and in case of short fall rest may be in the rank of Naik.*
- ii. *At least three out of five reports should be "Above Average" with a minimum of two in the rank of Havildar and remaining should not be less than "High Average".*
- iii. *Minimum two reports on Regimental, out of which at least one should be "Above Average". One of the Regimental report should have earned in the rank of Havildar.*
- iv. *Should be recommended for promotion in all the five reports.*

b) Discipline

- i. *Should not have more than three red ink entries during entire service and not more than one red ink entry in the last five years and no red ink entry during last one year*

6. It is the case of the respondents that the claim of the applicant for grant of promotion was considered in the Annual Unit Promotion Board Proceedings held on 31.11.2018 and 30.11.2019 vide annexure R-1 and R-2 respectively and as the applicant did not meet the ACRs criteria, he was not promoted. The respondents have indicated that the Confidential Reports of the applicant for the five years preceding the date of consideration by the Promotion Board i.e. 30.11.2018 and 30.11.2019 (ACRs of the applicant from 2014-2019) were considered which reads as under:

S.No.	Year	Grading	ACR Marks	Rank	Employability
I	2019	High Average	5	Havildar	Regimental
ii	2018	High Average	5	Havildar	Regimental
iii	2017	High Average	5	Havildar	Regimental
iv	2016	High Average	6	Havildar	Regimental
V	2015	High Average	5	Naik	Regimental
vi	2014	Above Average	8	Naik	Extra Regimental Employment

7. That apart the respondents have contended that during the period of service right from 2013 onwards, the applicant has been awarded various punishments as detailed herein under :

S.No.	Place and Date of Offence	Army Act Section	Date of Award	Punishment Awarded

i	New Delhi (Peace) 30.09.2013	63	07.04.2014	Reprimand
ii	New Delhi (Peace) 05.06.2014	63	22.07.2014	Severe Reprimand
iii	Baramullar (J & K) (CI Ops) 11.10.2016	63	12.10.2016	Reprimand
iv	Siachen Base Camp (Field/HAA) 28.04.2018	63	30.04.2018	Severe Reprimand
v	Jassai (Modified Filed) 10.05.2019	63	21.05.2019	Reprimand and 14 days' Pay fine

8. Accordingly, it is the case of the respondents that the applicant's contention that he was not promoted on account of malafide and disciplinary action initiated at the instance of the Commanding Officer is not correct. The applicant did not meet the Confidential Report criteria, as he has earned only one above average and four high average reports against the requirements of atleast three above average and remaining not less than high average reports for the last five years. Taking us through the proceedings of the Promotion Board filed as Annexure R-1 and R-2 and producing the ACRs of the applicant, the respondents contended that the applicant does not make out any case for interference and the application is liable to be dismissed.

9. We have heard the learned counsel for the parties, and perused the records, the original ACR dossiers of the applicant and the originals of the Promotion Board Proceedings held on 30.11.2018 and 30.11.2019. The facts as detailed hereinabove are

as per records, however we find from the pleadings of the applicant that his main contention is that his Commanding Officer, one Col Vikram V Kelkar punished him deliberately just before the Promotion Board i.e. on 21.05.2019 by imposing the punishment of reprimand for one year. That apart on 28.04.2018 also he was falsely implicated and punished with severe reprimand for six months. This resulted in lowering of his ACR marking and deprived him of promotion. Even though applicant has made serious allegations in the pleadings, but from the records we find that till filing of the application on 12.02.2020 before this Tribunal, the applicant simply made a representation to the Commandant, Head Quarter, School 06 Arty, in his handwritten application 28.12.2019. This Representation does not bear acknowledgement of anybody, it is not known as to how and whom it was submitted. The respondents deny submission/receipt of any such Representation. As indicated, this Representation is submitted on 28.12.2019 and it only makes a complaint with regard to act of his Commanding Officer in punishing him in May 2019. Even though the applicant makes allegations against his Commanding Officer, but there is nothing except the bald statement to show that the same is correct. Apart from this, the second application, is an application to the Public Information Officer dt. 30.01.2020

seeking certain information under the RTI Act. This also does not bear any signatures and it is not known as to what happened to this application.

10. The issue before us for consideration is as to whether the applicant was deprived of the promotion on the ground as alleged in this application. Even though the applicant has made these statements in a very vague manner without any specific details, he does not indicate as to why Col Vikram V Kelkar (his Commanding Officer) was annoyed with him. According to the pleadings, it was to give promotion to one individual namely, Hav. Azummuddin, but from the promotion proceedings present before us on both the occasions, we do not find that there is anything to show that Hav. Azummuddin was considered for promotion in any manner whatsoever. The so called intentional punishment by the Commanding Officer is not at all established by the applicant. On the contrary, the records indicate that the applicant has been consistently punished right from the year 2013 onwards for similar acts of Commission and Omission in the matter of insubordination and for not complying with the directions of the superior officers.

11. We have gone through the ACRs of the applicant and we find that for the year 2014, the applicant was graded with 8 marks in his ACR. In 2015, he was graded 5 marks in ACR, in 2016 with 6

marks in ACR, in 2017 with 5 marks in ACR, in 2018 again with 5 marks in ACR and in 2019 also with 5 marks in his ACR. He has been recommended for promotion in all the years by the Initiating Officer and the Reviewing Officer except in the ACR of the year 2017. As far as ACR of the applicant for the year 2019 is concerned, the Reporting Officer was one Maj Rajkumar UV who had graded the applicant with High average grading of 6 and the Reviewing Officer, Col Vikrant V Kelkar had graded the applicant with 5 marks which is also a High average grade. Out of the 15 entries pertaining to personal and professional qualities and skills, the Initiating Officer has graded the applicant with six marks in five entries and the Reviewing Officer with 6 marks in 2 entries and 5 in all other parameters. These entries are with regard to appearance and bearing, physical fitness, loyalty and integrity etc. and in most of the other grades there is a consistency between the Initiating officer and the Reviewing Officer in award of 5 marks. Similar is the position for ACR of the year 2018 and for this year both the Initiating Officer (Maj. Ramesh Kumar) and Reviewing Officer (Col Vikrant V Kelkar) have overall graded the applicant with 5 marks and there is consistency in the entries made by both the officers. That apart in the ACR of the applicant for the year 2014, he has been graded with 8 marks but in the year 2015 he

has been graded with 5 marks. Both the Initiating Officer and the Reviewing Officer, who have graded the applicant, are different and Col Vikram V Kelkar was not the Reviewing Officer of the applicant for these two ACRs. For the year 2016 and 2017, the applicant has been again graded with 6 and 5 marks respectively. We find that as per the grading criteria, grades 9 and above are outstanding, grades from 8-7 are Above average, grades 6-5 are High average. The applicant has been graded high average on most of the occasions except in the year 2014, when he has been graded Above average i.e. he was graded eight marks. There seems to be consistency in the grading of the applicant in all ACR from 2015 to 2019. He has received six and five grades right from 2015 upto 2019. It is only for the year 2018 and 2019 that his Reviewing Officer was Col. Vikram V Kelkar. For the year 2017 his Reviewing Officer was one Col. Bikram Singh and for the year 2016 also the Reviewing Officer was not Col Vikram V Kelkar, inspite of that for both the years i.e. 2016 and 2017, the applicant has been graded in the same manner as was done in the year 2018 and 2019. There is nothing available on records to show that the grading and observations made in the ACRs of the applicant was in any manner whatsoever influenced by any act of the Reviewing Officer (Col Vikram V Kelkar). On the contrary, the ACRs of the applicant right

from 2015 upto 2019 shows consistency and he has been consistently rated as High average in five of the ACRs i.e. 2015 to 2019. As per the policy laid down for grant of promotion to the rank of Nb Sub. from the rank of Havildar, out of the last five ACRs taken for consideration, three of the ACRs should be Above average with a minimum of 2 in the rank of Havildar for getting considered for promotion. The applicant, infact does not fulfill this criteria in as much as in his case for the years 2014 to 2019, he only has one Above average ACR which he has earned in the rank of Havildar, it is seen from the record that apart from the fact that the applicant did not meet the ACR criteria in as much as is evident from the record and in the proceedings of the Promotion Board, it is clearly held that the applicant has not been recommended on account of lacking the ACR criteria on both the occasions.

12. The promotion policy also indicates that the candidate considered for promotion should not have more than one red ink entry in the last five years and no red ink entry during the last one year. In the case of the applicant, he does not fulfil this criteria also, in as much as he has been punished twice in 2014 and in 2016, 2018 and 2019, he has been punished once in each year respectively. It is therefore, a case where the applicant was considered for grant of promotion and he did not meet the

promotion criteria on both the occasions and therefore, was not recommended for promotion. The original records present before us does not indicate any irregularity or illegality in the matter of recording the Confidential Reports of the applicant or in the matter of punishing him for the acts of Omission and Commission. Except for making vague allegations that the Commanding Officer spoilt the record of the applicant by taking disciplinary action against him just before the Promotion Board, nothing has been brought on record by the applicant by indicating specific instances which were the cause and reason for the Commanding Officer to be biased or prejudiced against the applicant. The only ground raised is that to give promotion to somebody else, the applicant has been proceeded in the manner as alleged, which has also been found to be untrue allegation of the applicant.

13. In our considered view, apart from the fact that there is nothing on record to indicate any malafide intention, the applicant has not even raised any representation/complaint either Statutory or Non Statutory to any higher authority in the matter of making such an allegation. Such an allegation seems to have been made for the first time in the application before us and even submission of the so called representation and application under RTI Act is not

established by the applicant as this application does not bear any acknowledgement of any authority or office.

14. In our considered view having bestowed our consideration on the facts and circumstances of the case and after going through the original ACRs, Selection Board Proceedings of the applicant, we do not find any error in the same in the matter of consideration of the case of the applicant. We find that the case for promotion of the applicant was considered on both the occasions alongwith four more PBORs, who were senior to him and the promotion was granted based on the provisions of the policy, particularly, the ACR criteria and there is no error in the same. The applicant is only entitled for consideration of his case for promotion as per the promotion policy, this was done and he was not recommended on account of the fact that he did not meet the required ACR criteria. We see no error in the same, warranting any interference, the application is therefore dismissed.

Pronounced in the open Court on this 28th Feb' 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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