

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

OA 484/2018

Sub Virender Singh (Retd.) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. IS Singh, 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 under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the prayers made in Para 8 of the application read as under:-

“(a) Call for the complete record leading to the impugned order dated 09.05.2017 (annexure A-1) and set aside the said order being arbitrary and illegal;

“(b) Direct the respondents to promote the Applicant w.e.f 01.01.2017 to the rank of Sub Maj with retrospective seniority and all consequential benefits;

“(c) Direct the respondents to reinstate the applicant in the rank of Sub Major and allow him to serve in the said rank until he complete his terms of engagement pertaining to the rank of Sub Major; and

(d) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case."

2. The applicant was enrolled in Corps of Signals of the Indian Army on 29.01.1987 and was allotted the Technical Trade, i.e., Tech Soldier (Operator). After successful completion of his Basic Military Training and Technical Trade Training, he was posted in the 2 Signals Training Centre, Goa and between 1987-2002 applicant was posted in Various Signals units. He also served in the Counter Insurgency and Counter Terrorism areas of Jammu and Kashmir and in various High Altitude Areas. According to the applicant, he has also maintained a high-above-average profile. He was never communicated any adverse remarks and has exemplary service career. The applicant was promoted to the rank of Naib Subedar (Junior Commissioned Officer) on 01.01.2002 and on such promotion, he was allotted the Tech Trade of Junior Engineer (JE) System. Having performed exceptionally well as a Junior Engineer (JE) System and based on his excellent service record, on 01.02.2010, the applicant was promoted to the next higher rank of Subedar.

3. The applicant served in the said promoted rank up to December, 2016. It is stated that after having worked as Subedar for 07 years, he was eligible for promotion to the rank of Subedar Major and, therefore, in the Departmental Promotion Committee meeting held on 01.11.2016 – 02.11.2016 his case was considered for promotion to the rank of Subedar Major. The result was declared on 04.12.2016 and his name appeared at Ser. No.1 in the list of empanelled approved JCOs published by the Signals Record. As the applicant was the senior most empanelled JCO in the list published on 04.12.2016, he was entitled to be promoted to the rank of Subedar Major in the first available vacancy. It is the case of the applicant that after publication of the result on 04.12.2016, two vacancies arose in the cadre of Subedar Major. The first vacancy in the trade of Junior Engineer (JE) System arose on 01.01.2017 on account of superannuation of Subedar Major S N Singh Yadav who superannuated on 31.12.2016.

4. It is the grievance of the applicant that he being the senior most JCO in the approved panel, however, for reasons which were not disclosed, the applicant was not promoted against the

said vacancy. Even though, the applicant's Commanding Officer made various requests for granting promotion to him against this vacancy which arose on 01.01.2017, nothing was done and the applicant was superannuated on 31.01.2017 without being granted the promotion. According to the applicant, all the 32 JCOs, barring two including the applicant, have been promoted to the next higher post as per the empanelled list but the applicant has not been promoted. The applicant preferred representations, sought replies under the Right to Information Act but he was not promoted. Shri I S Singh, learned counsel for the applicant, pointed out that vide Annexure A-2 dated 04.12.2016 the notification for holding of DPC on 01.11.2016 – 02.11.2016 for filling up the vacancies for the post of Subedar Major occurring during the period of 01.01.2017 to 31.12.2017 was notified and in the said notification, the applicant's name appeared at Ser No.2. As per seniority in the nominal roll of JCO approved for promotion to Subedar Major (All Category), the applicant's name appeared at Ser. No.1. Even though, the applicant's name appeared at Ser.

No.1, he was not granted promotion when the vacancy arose on 01.01.2017 and was never promoted to the said rank.

5. According to the applicant as on 01.01.2017, three more vacancies arose in the rank of Subedar Major and the persons whose names appeared at Ser. No.2, 3 and 4 of the empanelled list, were promoted as Subedar Major and his case was ignored. Accordingly, it is contented that in spite of the vacancies available, the applicant has not been promoted and deprived of the promotion. It is stated that illegality has been committed. Placing reliance on an order passed by this Tribunal in the case of Nb Sub Vinod Prasad Vs. Union of India and Ors (OA No.159/2017 decided on 12.12.2021), learned counsel for the applicant argued that when the DPC was held and the promotion exercises had commenced much before 01.11.2016, reducing the vacancy after the empanelled list was published is not permissible and this amounts to changing the rules of the game. Once the promotion exercise has commenced and in view of the law laid down by the Hon'ble Supreme Court in various cases like K. Lakshmi Vs. State of Kerala and Ors. [(2012) 4 SCC 115], Arup Das and Ors. Vs. State of Assam and Ors. [(2012) 5

SCC 559], Rakhi Ray and Ors. Vs. High Court of Delhi and Ors. [2010) 2 SCC 637], Barot Vijaykumar Balakrishna and Ors. Vs. Modh Vinaykumar Dasrathlal and Ors. [2011) 7 SCC 308], Kishor Kumar and Ors. Vs. Pradeep Shukla and Ors. [2012) 4 SCC 103] and Public Service Commission, Uttranchal Vs. Jagdish Chandra Singh Bora and Anr. [2014) 8 SCC 644], the rules of the game have been changed in the present case and, therefore, the applicant claims the benefit.

6. The respondents have filed a detailed counter affidavit and it is their contention that the applicant was enrolled on 29.01.1987 and discharged from service on 31.01.2017 after completing his tenure of appointment, i.e., 30 years and 03 days and he is in receipt of service pension. During his service, the applicant was promoted to the rank of Naik on 19.08.1998, Havaildar on 01.06.2000, Naib Subedar on 01.01.2002 and Subedar on 01.02.2010.

7. Respondents admitted the fact that the applicant's case was considered by the DPC held on 01.11.2016 – 02.11.2016 and vide Annexure A-2 he was empanelled for promotion in the select panel. However, respondents contended that in the list of

eligible candidates for promotion a note was clearly appended to the effect that the candidates empanelled are not likely to be promoted on account of non-availability of vacancy. The note **“Promotion of approved candidates will only be effected as per seniority, avl of vacs, mtg eligibiligy criteria at the time of physical promotion”**.

8. It is further the case of the respondents that due to non-availability of vacancy as on 01.01.2017, on account of reduction of establishment under the 11th Army Plan vide Integrated Headquarters of Ministry of Defence (Army) communication dated 01.10.2014 (Annexure R-2), the applicant was not promoted. It is the case of the respondents that applicant retired on completion of terms of engagement in the rank of Subedar on 31.01.2017 and was not promoted on account of reduction of vacancy under the 11th Army Plan approved by the Government of India/ Ministry of Defence which was implemented in a phased manner from the year 2015-2018. While implementing this plan various vacancies have been reduced for the year 2015 in a phased manner and in the process, the first vacancy that was to arise on 01.01.2017

has been reduced and no one has been promoted against this vacancy. It is the case of the respondents that even though the applicant was on the top of the empanelled list on the basis of the seniority cum merit criteria for promotion but the promotion was to be given effect to subject to availability of vacancy.

9. According to the respondents, even though, the first vacancy arose on 01.01.2017 after retirement of Subedar Major S N Singh Yadav on 31.12.2016, the first two vacancies that arose fell in the liquidation scheme against reduction of the establishment under the 11th Army Plan as already approved by the Ministry of Defence, Government of India. The first and second vacancies were to arise on 01.01.2017 and 01.03.2017, however, on account of reduction of the vacancy no promotion on these two posts were affected. The first promotion in the year 2017 was effected only when the vacancy arose on 01.04.2017 and this vacancy was given to the senior most candidate as per list available on the said date, i.e., 01.04.2017. As the applicant had already retired on 31.01.2017, the said vacancy could not be given to him.

10. Accordingly, it is the case of the respondents that the policy for reduction of manpower under the 11th Army Plan was implemented after its approval by the Government of India/ MoD on 01.10.2014 and this was given effect to during the period of four years from 01.01.2015 to 31.12.2018 and accordingly, as the applicant was only empanelled for promotion and no vacancy was available before his superannuation, it is the case of the respondents that the promotion to the applicant in spite of the empanelment could not be granted.

11. We have heard learned counsel for the parties and perused the records. It is an admitted position that in the Departmental Promotion exercise conducted vide DPC held on 01.11.2016 – 02.11.2016 the applicant's case was considered and the applicant was empanelled for promotion. However, in the note appended to the list, it was clearly stipulated that the promotion would be effected as per seniority and availability of vacancy at the time of actual physical promotion. It is also admitted position that the 11th Army Plan for manpower reduction of JCOs from various Signal Units was

submitted to the Government of India and Integrated Headquarters of the Ministry of Defence (Army) vide Annexure R-2 dated 01.10.2014 implemented the 11th Army Plan. Para 2 of the said policy letter which reads as under:-

“Reduction of 472 JCOs from various Sig units during 11th Army Plan in Corps of Signal has been re-exam at this dte on the recommendation of your letter under ref. The above JCOs will be reduced within four yrs (i.e 2015-2018) to minimize stagnation. In case 3rd Cadre Review is approved during the reduction period, the balance JCOs will be adjusted against 3rd Cadre Review vacs. Details of impl are given in succeeding paras”. (emphasis supplied)

12. In Para 3 the details of the reduction scheme were indicated and in Para 4 it was stipulated that the reduction of 463 vacancies in the cadre of JCOs is to be implemented from 01.01.2016 in a phased manner over the next four years as per the schedule appended to Para 4 of the communication. In table A of Para 4 in the 3rd phase, with regard to the reduction of 34 vacancies in the cadre of Subedar Majors, it was indicated that nine vacancies of Subedar Majors occurring between 01.01.2017 to 31.12.2017 are to be reduced in the phased manner based on DPCs to be held on October 2016 or thereafter. It is, therefore, clear from the record that after the DPC was held in November, 2016 in accordance with the policy

(Annexure R-2) dated 01.10.2014, reduction of manpower (vacancy) had occur and the same was as under:-

**“MANPOWER REDUCTION OF JCOs FROM VARIOUS SIGNAL
UNITS
FOR 11th ARMY PLAN**

1. Ref your letter No 3001/CA-8/T-1/2014-16 dt 06 May 2014, 2650/CA-2/T-8 dt 18 Sep 2014 and this Dte letter No B/44255/Sigs 4 (B1)/PC-130 dt 14 Aug 2014.
2. Reduction of 472 JCOs from various Sig units during 11h Army Plan in Corps of Signals has been re-exam at this dte on the recommendation of your letter under ref. The above JCOs will be reduced within four yrs (i.e 2015-2018) to minimise stagnation. In case 3d Cadre Review is approved during the reduction period, the balance JCOs will be adjusted against 3rd Cadre Review vacs, Details of imp are given in succeeding paras. 3.
3. As intimated vide your letter under ref, out of the 472 JCOs, nine JCOs have already been reduced from UB Area Sig Regt, B Comp Sig Regt and Southern Comd Sig Regt. The reduction for bal 463, JCOs will be carried out as per in IHQ of MoD (Army) letter No B/10188/MP-3 (PBOR) dt 28 Feb 2005. The details are as under”:-

Cat	Sub Maj		Sub		Nb Sub		Total	
	Auth	Effect	Auth	Effect	Auth	Effect	Auth	Effect
JE NE	87	-13	705	-53	760	-36	1552	-102
JE SYS	39	-07	304	-36	333	-21	676	-64
OSS	36	-07	319	-35	354	-16	709	-58
OP Ciph	30	-07	208	-47	268	-08	506	-62
GD	205	0	1188	-151	945	-26	2338	-177
Clk SD	33	0	305	0	304	0	642	0
SKT	08	0	70	0	70	0	148	0
MUSIC	0	0	0	0	04	0	4	0
Total	438	-34	3099	-322	3038	-107	6575	-463

13. The 11th Army Plan was implemented and Nine vacancies in phase 03 of the implementation in the rank of Subedar Major were reduced between 01.01.2017 to 31.12.2017 and it is clear

from the records that the first two vacancies that arose in January, 2017 were reduced under this scheme. That apart, from the aforesaid it is clear that based on a policy for reducing 472 post of JCOs in the rank of Subedar Major/Subedar/Naib Subedar, a decision was taken to reduce 463 posts out of which 34 posts were in the rank of Subedar Major and 07 were specifically from the cadre of Junior Engineer (JE) Systems. Accordingly, from the records it is clear that much before the DPC was held in 01.11.2016 – 02.11.2016, the implementation of 11th Army Plan was approved and notified on 01.10.2014 and in a phased manner the implementation of reduction was to be effected in the cadre of Subedar Major. The implementation was in four phases, starting from October, 2014 and continuing up to October, 2017 and 34 posts of Subedar Major were reduced during this period as is evident from Para 4 of the policy.

14. This clearly establishes that even before the DPC meeting on 01.11.2016 – 02.11.2016 for considering the case of the applicant, the vacancies were reduced in a phased manner and as the first two vacancies that arose on the 01.01.2017, were

reduced in view of the plan which was already implemented on 01.10.2014, the applicant could not be promoted due to non-availability of vacancy. Merely, because the respondents took the decision to commence reduction of vacancies i.e two vacancies that occurred between 01.01.2017 to 31.01.2017, which adversely affected the applicant, neither the policy nor its manner of implementation, can be interfered with by this Tribunal within the limited scope of judicial review. The applicant only has a right to be considered for promotion and grant of promotion is not his right. Grant of promotion depends upon various factors like availability of vacancy, criteria's fixed for promotion etc., and if the vacancies available were reduced due to implementation of a plan which had commenced two years prior to holding of the DPC, action of the respondent in doing so cannot be interfered with in a judicial review by this Tribunal until and unless statutory rules regulations or constitutional provisions are shown to be violated. None of these violations are pointed out or established in the present case. Merely because the reduction of vacancy commenced and as per the scheme as on 01.01.2017 as nine vacancies were to be

reduced in the year 2017 and if the respondents were to reduce two vacancies in the month of January, this Court, in the absence of any mala fide or violations of rules, cannot interfere in the matter. It is a circumstance which came into force on account of implementation of a scheme for reduction of the vacancy and in the process of reduction of vacancy, the applicant could not be promoted before his superannuation. The said action cannot be termed as illegal, unsustainable or not permissible in law.

15. It may be seen from the documents annexed to the implementation scheme (Annexure R-2) dated 01.10.2021 that in October, 2014 itself, the manner of implementation of the scheme was published and in Appendix B of the said scheme, with regard to the reduction of vacancy in the cadre of Junior Engineer (JE) System in the third phase, it was clearly indicated that two vacancies would be reduced between 01.01.2017 to 31.12.2017. It is clear that reduction of 463 vacancies in all the said scheme was under-taken in a phased manner which commenced in 2014 and, therefore, the contention of the applicant that the rules of the game were changed after the

notification was notified is not correct. DPC was held only for empanelment of eligible candidates for vacancies that may arise between 01.01.2017 to 31.12.2017 and if the vacancies that occurred in the year were reduced as per the plan already decided in October, 2014 and the reduction of vacancy covered from January itself, the act of the respondents cannot be termed as mala-fide or illegal in any manner whatsoever.

16. It is a case where the 11th Army Plan for reduction of vacancy was given effect to in October, 2014 and on 01.10.2014 itself the entire scheme for reduction was put in place and it has been given effect to in a phased manner, consequently before the retirement of the applicant on 31.01.2017, no vacancy had occurred for granting him promotion. As is evident from record, we find no illegality or error in the action of the respondents in denying promotion to the applicant.

17. Accordingly finding no merit in the grievance made by the applicant we find that the respondent have not violated or changed system or policy of promotion, once the promotion exercise has commenced. It is not a case where the procedure

for promotion was changed after the promotion exercise was initiated and, therefore, the second argument of the applicant is also not tenable. Accordingly, the OA is dismissed with no order as to costs.

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

Pronounced in open Court on this 4 day of September 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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