

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

OA No. 587 of 2025

Nb Sub Prakash Kumar  
Versus  
Union of India & Ors.

..... Applicant

..... Respondents

For Applicant : Mr. S.S. Pandey, Advocate for Mr. Piyush  
Thakran, Advocate

For Respondents : Ms. S S Chugh, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

The applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 seeking directions to the respondents to grant him promotion to the rank of Subedar with effect from 01.02.2025. He challenges the respondents' action of withholding the said promotion on the ground that disciplinary action was allegedly pending. The applicant contends that he was already empanelled and granted promotion, no disciplinary proceedings are pending and hence, the impugned action is unsustainable in law.

2. The applicant was enrolled in the Army Medical Corps on 26.10.2009 and promoted to Naib Subedar on 01.08.2020. Pursuant to a report involving unauthorized medicines, a Court of Inquiry (Col)

was convened by HQ Delhi Area in October 2024. The applicant was called as a member/witness and Army Rule 180 was invoked. Subsequently, on 17.12.2024, AMC Records issued a communication (No. 356007J/J/02/SUB/PHARM/NTP/25) indicating that the applicant had been promoted to Subedar with effect from 01.02.2025. The Col concluded between December 2024 and January 2025. The applicant, claiming no adverse findings or contemplated disciplinary action, requested implementation of the promotion. Multiple communications followed regarding clarifications and implementation of the promotion. On 31.01.2025, Base Hospital sought clarification from HQ Delhi Area, which replied that no DV ban was imposed and any promotion-related query must be addressed to AMC Records.

3. On 01.02.2025, HQ Delhi Area informed the Base Hospital that while the applicant was involved in the Col as a witness, the proceedings were not finalized and directions from the competent authority were awaited. Crucially, as of 10.02.2025, no disciplinary action had been initiated or was pending against the applicant. Despite repeated representations, the promotion was not implemented, prompting the applicant to file this OA on 25.02.2025.

4. Notice was issued on 03.03.2025 and time granted to the respondents for filing a reply. The matter was listed multiple times and, meanwhile, the applicant filed MA No. 2051 of 2025 relying on the

decision in *Union of India v. K.V. Jankiraman* (1991) 4 SCC 109 and *Ex Sub (Amb Asst) Ram Pratap v. Union of India* (OA No. 475/2016 decided on 08.01.2024), seeking early disposal. On 22.05.2025, the matter was heard in detail. The respondents failed to produce any material indicating the pendency of disciplinary proceedings as on 10.02.2025 or earlier.

5. Having considered the submissions and perused the documents, particularly the impugned order dated 09.02.2025 (Annexure A1), we note that the applicant's promotion with effect from 01.02.2025 was, indeed, announced on 17.12.2024. However, Para 3 of Annexure A1 mentions that implementation of the promotion was withheld as Army Rule 180 had been invoked and the applicant was an essential witness in the Col, pending further clarification. This position was reiterated in various subsequent communications. Importantly, Annexure A7 dated 10.02.2025 from HQ Delhi Area clearly states that no disciplinary action was initiated or pending against the applicant.

6. The law regarding withholding of promotion due to pending disciplinary proceedings is settled in *K.V. Jankiraman* (supra), which holds that disciplinary proceedings can be considered pending only from the date the competent authority decides to initiate such proceedings. This has been affirmed by various High Courts and this Tribunal, including in *Col M.J. Kumar v. UOI* (OA No. 44/2013) and *Ex*

*Sub Ram Pratap* (supra). Paragraphs 9 and 10 of the order in *Ex Sub Ram Pratap* (supra) are reproduced below:

9. *Hon'ble Supreme Court goes on to say that actually issuance of the charge sheet is not necessary and even a decision taken by the Competent Authority on the file to initiate Departmental Inquiry, the same is sufficient enough to debar an employee from promotion or follow the sealed cover proceeding from the said date. That apart, pendency of the Criminal case starts from the date of the charge sheet has been filed in the Court of Criminal Law or on an FIR cognizance is taken and some action is initiated. If we analyze the facts based on the aforesaid principle of law which has already been reproduced by this Bench itself in Para 25 and 26 of the judgment rendered in the case of Lt Col Devesh Jayant Joshi (supra), we find that in this case the decision to initiate Departmental Inquiry against the applicant was taken on 16th December, 2015. However, before that the applicant was already granted promotion and only the physical act of assuming the charge on the promoted post on 1st November, 2015 was to be undertaken by the applicant. Therefore, once the promotion order was issued on 24th September, 2015, merely because a decision was taken in the matter to initiate Departmental action against him on 16th December, 2015, in our considered view, the same cannot come in the way of denying promotion to the applicant on the post of Sub Maj. That apart, we find in Para 2 of the directions issued by the Commandant on 16th December, 2015 that the Col has found the applicant not responsible for the loss of the identity Card and, therefore, taking note of the peculiar facts and circumstances of this case in the matter of denying promotion to the applicant on the post of Sub Maj w.e.f., 1st November, 2015 the respondents have committed an error of law which requires to be corrected.*

10. *Having said so, we may further clarify that as far as Disciplinary action to be initiated against the applicant is concerned, we are not commenting on the same and it is for the respondents to proceed in accordance with law, as may be permissible under the Rules and Regulations.*

7. In the present case, only a Col under Rule 177 of the Army Rules, 1954 was conducted. A Col is merely an investigatory process to collect evidence and decide whether any disciplinary or court martial proceedings should follow. Invocation of Army Rule 180 does not by itself constitute the initiation of disciplinary proceedings. As per

Annexure A7, no such action had been initiated as of 10.02.2025. It is evident that neither on 17.12.2024 (the date of promotion order) nor on 01.02.2025 (effective date of promotion) was any disciplinary action pending. Thus, the Col cannot be a ground for withholding promotion.

8. Accordingly, the OA is allowed. The impugned action of the respondents in withholding the promotion is set aside. The respondents are directed to permit the applicant to assume the rank of Subedar within one month from the date of receipt of a copy of this order. The applicant shall be deemed promoted with retrospective effect from 01.02.2025, with seniority from that date. However, salary and other financial benefits shall be payable from the date the applicant actually assumes charge. If the applicant is not given charge within one month, he shall be entitled to salary from the date of pronouncement of this order. No order as to costs.

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

Pronounced in open Court on this day 30 May, 2025.

(Justice Rajendra Menon)  
Chairperson

(Lt Gen C/P Mohanty)  
Member (A)

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