

Suppl

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1340/2017

Ex Nb Sub Angad Prasad Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

Dated: 5th February, 2026

ORDER

The applicant, impugning the order dated 22nd October, 2016, (Annexure A-1) has filed this OA under Section 14 of the Armed Forces Tribunal Act, 2007. The reliefs claimed in the OA read as under:

(a) *Set aside the impugned letter No. RNE/Lib/JC-470529A dated 22nd October, 2016;*

(b) *Direct the respondents to grant service pension, retiral, and consequential benefits of the rank of Subedar by notionally promoting him with effect from 1st February, 2013;*

(c) *Direct the respondents to grant due arrears with effect from 1st February, 2013, along with interest at the rate of 12% per annum; and*

(d) *Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The facts in nutshell are that the applicant was enrolled in the Army on 30th March, 1985 and upon completion of 28 years and 02 days of service was discharged from service on 31st March, 2013 under the provisions of Rule 13 (3) I (i) (a) of the Army Rules, 1954. The applicant was promoted to the rank of Naib Subedar (Nb Sub) with effect from 1st June, 2009. As per the service conditions/terms of engagement policy issued vide Government of India, Ministry of Defence letter dated 3rd September, 1998, a Nb Sub is entitled to serve in the Army up to 26 years of service. However, the applicant's service limit was enhanced to 28 years of pensionable service with effect from 30th March, 2011 to 29th March, 2013 in terms of the aforesaid policy and he was granted service pension with effect from 1st April, 2013 as per PPO dated 21st March, 2013 along with other admissible benefits. In the month of his discharge, i.e., March 2013, the applicant submitted an application to the OIC Records seeking consideration of his name for promotion to the rank of Subedar. The matter was examined in detail and vide letter dated 31st March, 2013 the applicant was informed that since no vacancy had arisen prior to his discharge, i.e., 31st March, 2013, therefore, no promotion order could be

issued in his favour. After three years of receipt of the reply, on 13th June, 2016, the applicant served a legal notice on the respondents seeking promotion to the rank of Subedar. Upon receipt of the said legal notice, the case of the applicant was re-examined and vide letter dated 22nd October, 2016 a reply was sent to him which is impugned herein. Relevant portion of the same reads as under:

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2. The matter has been examined and it is seen that no vac was occurring to enable Records RA JRIF to issue your promotion order. As such no injustice has been done to you in this regard. Details regarding promotion carried out on the basis of est report and retirement vac in respect of Subs are as per Appx att. As regards decrease of eight Clks in est report of 30 Sep 12, it was due to receipt of clarification on non-incl of SUO MOTO PPOs (Qty 1075) @ one Clk for 125 cases from IHQ of MoD (Army). Therefore the action taken to reduce the manpower on auth of the same is inn order. If you are not satisfied with this reply you may meet undersigned and satisfy yourself from the data supported the Est Report. Even after that if you still wish to seek an interview of OIC Records you may also do that.

3. The learned counsel for the applicant contends that the action of the respondents in denying promotion to the applicant to the rank of Subedar is illegal, arbitrary and violative of the principles of equity and fairness. It is submitted that due to impugned action, the applicant has been deprived of higher pay attached to the rank of Subedar resulting in fixation of lower.

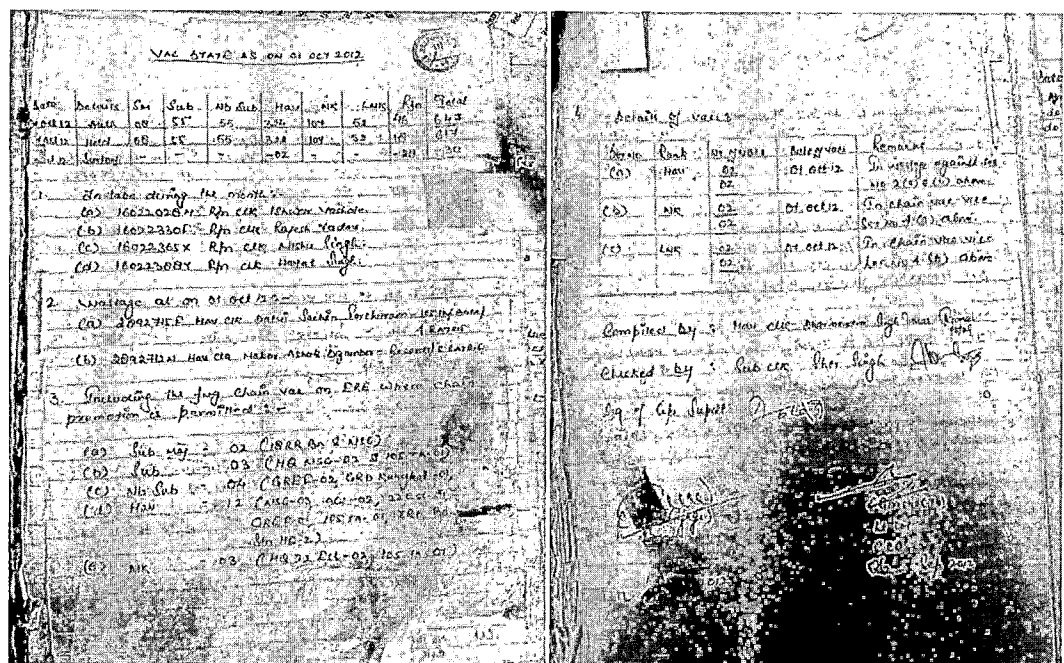
Such action of the respondents, it is argued, is not only unjust but also infringes the applicant's fundamental rights, besides being contrary to the settled principles of law governing service matters. The learned counsel further submits that the respondents had allegedly manipulated the vacancy position, which directly affected applicant's promotional prospects. It is pointed out that there was no reduction in manpower strength in the regiment and no ban on pension cases during the relevant period. Therefore, the purported reduction of one vacancy in the Clerk trade at the rank of Subedar remains unexplained. It is further argued that although the applicant was discharged from service on 31st March, 2013, fresh vacancies occurred immediately thereafter on 1st April, 2013. The respondents, it is submitted, ought to have adjusted one of such vacancies in favour of the applicant thereby avoiding his discharge. Had this been done, as contended, the applicant would have been promoted to the rank of Subedar. The learned counsel also assails the reduction of vacancies effected barely two months prior to the applicant's retirement, terming it as wholly unjustified and mala fide. Finally, it is submitted that, if at all, a reduction in vacancies was mandatory, the same ought to have

been adjusted against vacancies arising due to premature discharge, unscheduled exits on medical grounds or other contingencies, rather than being applied in a manner that adversely and disproportionately affected the applicant, as reflected in the impugned letter.

4. Learned counsel for the respondents on the other hand contends that the issue raised by the applicant was duly examined in depth and that no injustice has been caused to him at any stage. The authorisation of Clerks in the Records Office is governed by a sliding scale, as reflected in **Annexure R7**, which provides for increase or decrease in manpower depending upon the number of effective and non-effective personnel documents and pension cases anticipated to continue for a period exceeding eight weeks. The vacancies for promotion in the Clerk cadre are determined strictly in accordance with Paragraphs 3(a) and 4 of the IHQ of MoD (Army) letter dated 31st December, 1984. In view of the reduction in effective and non-effective personnel documents and pension cases during September 2012, the authorised strength of Clerks stood reduced, a position that continued up to 31st December, 2012. It is further submitted that as on 31st January, 2013, the Records Office was holding 55

Sub Clerks (SD) against an authorised strength of 54, resulting in one surplus Sub Clerk (SD). Consequently, when a vacancy arose on 1st February, 2013 due to the retirement of Sub Clerk (SD) Papil Kumar, the said vacancy was necessarily to be utilised to liquidate the surplus vacancy already existing, therefore, no vacancy was available for promotion and accordingly the applicant could not be promoted to the rank of Sub Clerk (SD) against the said vacancy. It is further emphasised that no vacancy in the rank of Sub Clerk (SD) arose thereafter up to 31st March, 2013, the date of discharge of the applicant. The applicant was accordingly discharged from service with effect from 31st March, 2013 under the provisions of Rule 13 (3) I (i) (a) of the Army Rules. The argument advanced by the applicant that the vacancy arising on 1st April, 2013 ought to have been utilised for his promotion is contrary to the applicable policy, as the applicant was not on the effective strength of the Army on that date and having assumed the status of an ex-serviceman, he could not have been considered for promotion against a vacancy that was to occur subsequent to his discharge. On the aforesaid premises, it is contended that the

5. We have heard learned counsel for the parties and have also perused the documents available on record. With regard to the existence of vacancy and entitlement to promotion, it is evident from the records summoned by us (RECORDS THE RAJPUTANA RIFLES, REGT ADM GROUP: CLKs VAC STATE REGISTER) that as on 1st October, 2012, the authorised strength of Sub Clerks (SD) was 55 and so also the posted strength. However, with the relieving of Subedar Clerk (SD) Papil Kumar on 31st January, 2013 a vacancy had occurred with effect from 1st February, 2013. The relevant pages of the records are reproduced hereinunder from page no. 111 to 113.



VAC STATE AS ON 01 APRIL 2013											
DATE	DETAILS	SM	SUB	NO. SUB	NOV	AGE	DATE	RIN	STATUS	Q	
01 APR 13	AWK	0.0	54	55	33.0	166	57	46	500		
01 APR 13	Held	0.7	53	54	31.0	166	52	29	619		
01 APR 13	SurDef	-1	51	51	-2		71	-13	-21		
State closing the month											
(a)	16019538A	Rtn CLK	Skyama Singh								
(b)	16019739A	Rtn CLK	Vijay Raj Singh								
(c)	16020009Y	Rtn CLK	Rakesh Kumar Bafekar								
(d)	16022900A	Rtn CLK	Anoop P								
(e)	16022901P	Rtn CLK	Anand R								
(f)	16022911Y	Rtn CLK	Saurabh Singh								
(g)	16022950X	Rtn CLK	Rajkumar								
(h)	16023079H	Rtn CLK	Nirmal Kumar Yadav								
(i)	16023085L	Rtn CLK	Gopal Kumar								
(j)	16023006Y	Rtn CLK	Abhinava Prasad								
(k)	16023009Y	Rtn CLK	Mahesh Kumar								
(l)	16023086K	Rtn CLK	Kumal Nishibata								
(m)	16023089M	Rtn CLK	Sunil Kumar Yadav								
VAC STATE AS ON 01 APR 2013											
DATE	DETAILS	SM	SUB	NO. SUB	NOV	AGE	DATE	RIN	STATUS	Q	
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(a)	16023085L	Rtn CLK	Gopal Kumar								
(b)	16023006Y	Rtn CLK	Abhinava Prasad								
(c)	16023009Y	Rtn CLK	Mahesh Kumar								
(d)	16023086K	Rtn CLK	Kumal Nishibata								
(e)	16023089M	Rtn CLK	Sunil Kumar Yadav								

It is not in dispute that the authorisation of 55 posts continued uninterrupted till 1st April, 2013 when it was reduced to 54, hence from 1st February, 2013 to 31st March, 2013 this vacancy should have been used and the applicant promoted. There is no material placed on Records to show that the said vacancy was either abolished or that the authorised strength was further reduced during the period between 1st February, 2013 and 31st March, 2013, when the applicant was still in service.

6. The respondents' justification that the vacancy was utilised to liquidate a surplus position is not borne out by the factual matrix emerging from the vacancy position reflected as on 1st October, 2012 and thereafter till 1st April, 2013. Once the

authorisation and posted strength stood equalised at 55, the vacancy arising on 31st January, 2013 could not have been treated as non-existent merely by stating internal adjustment, particularly when no simultaneous reduction of authorised strength has been demonstrated for the relevant period in the Records placed before us. It is also not disputed that the applicant was the senior-most eligible individual, had already been cleared for promotion and was otherwise fit for further progression. In such circumstances, keeping the vacancy unfilled during the subsistence of his service and allowing the applicant to retire without being considered for promotion cannot be sustained. The contention that the vacancy arising on 1st April, 2013 could not be utilised as the applicant was no longer in service cannot be accepted in view of the fact that the vacancy had already arisen on 31st January, 2013, well before the applicant's discharge. The failure to act during this gap cannot be used to defeat a legitimate promotional claim of an individual. Accordingly, we are of the considered view that the applicant ought to have been promoted to the rank of Subedar Clerk during his service tenure and denial of the same was arbitrary and unjustified.

7. Regarding the validity of the Impugned Letter, we note that the impugned letter dated 22nd October, 2016 proceeds on the premise that no vacancy existed prior to 31st March, 2013 which is contrary to the vacancy position showing continuity of authorised strength and the occurrence of a vacancy on 31st March, 2013. Since the initial assumption underlying the impugned communication is factually unsustainable, the said letter cannot be taken note of and is liable to be set aside.

8. Having regard to the totality of facts and circumstances, we are of the view that the ends of justice would be met by granting the applicant notional promotion to the rank of Subedar/Sub Clerk (SD) with effect from 1st February, 2013, i.e. the date immediately following the occurrence of the vacancy. However, considering that the applicant did not actually discharge duties in the higher rank, the benefit shall be restricted to notional fixation of pay and re-fixation of pensionary and retiral benefits, without entitlement to arrears of pay for the period prior to retirement. The revised pensionary benefits shall, however, carry all consequential financial benefits from the date of retirement.

9. Resultantly, the OA is allowed. The impugned letter dated 22nd October, 2016 is set aside. The applicant shall be notionally promoted to the rank of Subedar/Sub Clerk (SD) with effect from 1st February, 2013. The respondents shall re-fix the applicant's pay, pension and retiral benefits accordingly and release the consequential benefits within a period of three months from the date of receipt of a copy of this order. There shall, however, be no order as to costs.

10. Pending application(s), if any, also stands closed.

Pronounced in open Court on this 5th day of February, 2026.

[JUSTICE NANDITA DUBEY]
/ MEMBER (J)

[RASIKA CHAUBE]
MEMBER (A)

/vks/

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SUPPLEMENTARY LIST

1.

OA 1340/2017

Ex Nb Sub Angad Prasad Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. V.S Kadian, Advocate

For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

05.02.2026

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)