

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

98.

OA 1521/2020

Hav SK Mishra Applicant
Versus Respondents
Union of India & Ors.

For Applicant : Mr. IS Yadav, Advocate
For Respondents : Mr. Neeraj, Sr CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

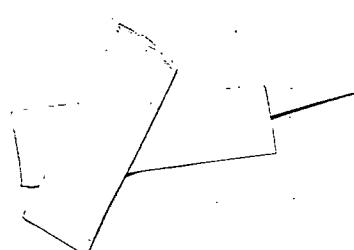
O R D E R
02.02.2026

Invoking the jurisdiction of this Tribunal under Section 14
applicant has filed this Application in the relief claimed in para
8 read as under:-

“i) To quash the letter dated 29 Jul 2020 and 30
Sep 2020 and direct the respondent to grant the
wavier in upper age limit and promote the applicant;
and

ii) To called the original Noting sheet under
which the competent authority has rejected the case
for perusal of the Hon'ble Court. and;

iii) To grant the stay on operation of Respondent
letter No.2886/131/CA-3/T-4/12-2020 dated 04
Nov 2019 till the case is decided.”



2. Applicant was enrolled in the Army (Corps of Signals) on 27.12.1994. His date of birth is 02.08.1975. On completion of training, he was posted in a unit and while in service he was promoted to the rank of Havildar and thereafter screened for further promotion from the post of Havildar to that of Nab. Sub., however, he was found ineligible. It is the case of the applicant that as he was not promoted to the post of Nb. Sub. he attained the age of superannuation and after completing the age of Superannuation he was discharged from service on 31.12.2020 under Army Rule 13(3) item (iii)(i). He had rendered 25 years 11 months and 24 days of service and is in receipt of service pension authorized by the PCDA(P) Prayagraj, Allahabad. According to the records the date of birth of the applicant is 02.08.1975 and he was enrolled at the age of 19 years 04 months and 27 days. While in service he was promoted to the rank of Substantive Naik with effect from 01.03.2008 and as Havildar w.e.f. 01.06.2014 till his superannuation.

3. Even though the applicant was considered for promotion to the rank of Nb. Sub. along with his batch mates in the promotion Boards held on 30.04.2019 and 01.05.2019 for

vacancies arising between the period 01.07.2019 to 31.12.2019 and thereafter again in the promotion Board held on 22.11.2019 for vacancies arising between 01.01.2020 to 30.06.2020 but he was not found eligible for promotion to the post of Nb. Sub as he had already attained the upper age limit of 44 years and in the earlier promotion exercise the applicant could not be promoted due to non availability of vacancy as per his seniority.

4. Be that as it may be, as the applicant was not granted promotion in accordance with the Rules, he claimed relaxation of age for grant of promotion and on the ground that he is an outstanding sports person, has participated in various national and State level Sports tournaments in the events of Boxing i.e. the 21st All India Boxing Championship and the 4th international championship held in 1997 and based on various achievements in the sports field as indicated in the Application.

5. Applicant claims relaxation in the age limit for promotion from the post of Havildar to Nb. Sub. in accordance with the relaxation of age in length of service as stipulated in the policy issued by the Army Head Quarter, Adjutant General Branch on

8/14 September, 1962 wherein relaxation in age is granted to individuals who have achieved distinction in sports events and championship.

6. Learned counsel for the applicant invites our attention to the policy contained in the communication dated 18.11.2005 issued by the Army HQ and referred to Para 6 thereof which reads as under:-

“6. Exceptional circumstances as specified in the above letter of 09 Jan 62 do not leave any scope for discretion on case to case basis. Excellence in sports such as representing the Services in any sports activities and high risk adventure activities etc. could also be considered as exceptional circumstances depending on the merit of case. Individuals getting gallantry awards like PVC, MVC, AC etc. may also qualify as exceptional circumstances for grant of relaxation.”

to say that under this category the applicant is entitled to age relaxation as he is an exceptional and outstanding sportsperson.

7. It is the case of the applicant that he participated in the XXIX Junior National Boxing Championship held in Goa from 6-10th November, 1996 representing the Service Sports Control Board(SSCB), hence entitled to relaxation. He submitted representations. His case was processed but as it has been turned down by the competent authority and relaxation was not granted, he has invoked the jurisdiction of this Tribunal.

8. Learned counsel for the applicant submitted that the applicant participated in the All India Boxing Championship and various other sports events and as he has participated in the sports events, he is entitled to relaxation. Primarily in this case, he is claiming relaxation in age on account of his participation in the XXIX Junior National Boxing Championship held in Panaji, Goa in 1996-1997, representing the Services Team.

9. The respondents have filed a detailed counter affidavit and admitted various factual events. However, in the matter of grant of relaxation for promotion to the rank of Nb. Sub. to the applicant, it is the case of the respondents that the applicant was not entitled to age relaxation, despite the fact that he represented the Services team in a National Event held at Goa. According to the respondents, as per the policy governing promotion and incentives to outstanding Army sportspersons, as contained in various policy/instructions, particularly Policy (Annexure R-19) dated 01.01.2015, a second out-of-turn promotion can be granted only in terms of paragraph 4 of the said policy, which reads as under:-

“4. Second Out of Turn Promotion. The following categories of sportsmen will be promoted to the next

higher rank irrespective of their length of service, date of conclusion of the qualifying sports event:~

- (a) *Winner of a medal in any of the following tournaments:~*
 - (i) *Commonwealth Games*
 - (ii) *Asian Games*
 - (iii) *World Championships/Cups and Asian Championships which are fully recognized by the concerned International Federations wherein not less than 18 countries participate in individual events and 08 countries participate in team games. In Hockey a mandatory participation of 06 countries in a championships will be reqd.*
 - (iv) *Military Word Games.*
- (b) *On attaining upto VIth posn in indl events incl relays and VIIIth posn in team events in Olympics.*
- (c) *On selection as the Best Services Sportsman.”*

10. According to the respondents, the applicant did not participate in any of the events as are indicated in the policy. On the contrary, he is claiming age relaxation based on the policy dated 18.11.2005 and Clause 6 thereof. Applicant also produces before us a Certificate of participation issued to the applicant during the XXIX Junior National Boxing Championship held at Goa from 6-10th November, 1996 which reads as under:~

"This is to certify that S.K. Mishra of S SC B participated in the XXIX Junior National Boxing Championship 1995-1996 held at Panaji, Goa, from 6th to 10th Nov, 1996, as a PARTICIPANT."

11. We have heard the learned counsel for the parties and perused the records. Admittedly, the applicant after his appointment earned promotions and was eligible to be considered for promotion to the rank of Nb. Sub. As is evident from the record, he was considered for promotion to the said post for the vacancies that accrued between the period from 01.07.2019 to 31.12.2019 and the Selection Board of the same year held on 30.04.2019 and 01.05.2019. The applicant having seniority of 01.01.2014 in the Rank of Havildar was considered. However, after screening, he could not be granted promotion as his seniors in the batch were considered for promotion and all the available vacancies were filled up by his seniors who were considered eligible. He was again considered on 22.11.2019 for the vacancies that accrued between 01.01.2020 to 30.06.2020 but he was found not eligible for promotion to the rank of Nb. Sub as he had already attained the upper age of 44 years as on 01.08.2019, the cut off date for consideration for promotion in accordance to the para 149 (b)

of the Defence Service Regulations 1987 and Govt. of India, Ministry of Defence letter dated 04.05.1999 and para 2(a) of Appendix A to Army Order 11/2002. In the meanwhile, as he has completed the colour service of 24 years and had got 2 years extension period also, he was discharged on 31.12.2020.

12. According to the respondents, the applicant is claiming age relaxation for out of turn promotion only because of his participation as a member of the Services Team in the XXIX Junior National Boxing Championship. The certificate issued to the applicant as reproduced hereinabove indicates that he only participated as a Member of the aforesaid team in the tournament but no certificate has been issued to him for having won any Gold Medal, Silver Medal and Bronze Medal in the said championship in any team or individual event. He is only seem to have been a participant representing the Services Team. However, as indicated hereinabove in Annexure 19 policy dated 01.01.2015 for grant of out of turn promotion incentive for being an outstanding Army Sportsperson and for the second out of turn promotion, under para 4 of the aforesaid policy, the incumbent has to be a winner of a medal in any of the

tournament contained in sub Clause 4(a) i.e. Commonwealth Games, Asian Games, World Championships or Asian Championships, Military Word Games etc. as indicated in the said clause. Admittedly, the XXIX Junior National Boxing Championship held in Goa from 6-10th November, 1996 did not fall in the category stipulated for second out-of-turn promotion as contained in para 4 of the Policy dated 01.01.2015 and, therefore, based on the same, the applicant was not entitled to any out-of-turn promotion.

13. In the Statement of Case for Relaxation in Upper Age Limit submitted by the parties and available on record the achievement of the applicant based on which his case has been considered, have been reproduced and we find that he has represented in the following sports event:-

S No.	Event	Yr	Remarks
(i)	Represented 1 STC in All India Boxing Championship	Dec 1995	Not Vetted by ASCB- Not participated from Services/ SSB approval
(ii)	Winner XIX Madhya Pradesh State Amateur Boxing Championship	Feb 1996	-do-
(iii)	Participated in XIX Jr National Boxing Championship	Nov 1996	Vetting by ASCB (Flag D)
(iv)	3 rd Posn in YMCA XX All	1996	Not Vetted by

	India Boxing Championship		ASCB- Not participated from Services/ approval
(v)	1 st Posn 20 th MP Boxing Championship	Apr 1997	-do-
(vi)	1 st Posn YMCA XXI All India Boxing Championship	1997	Vetted by ASCB (Flag D)
(vii)	Represented Madhya Pradesh in 4 th National Games	Jun 1997	-do-
(viii)	Completed Cert Course in Sports Coaching at National Boxing Academy, Rohtak	May Jun 2018	Sponsored by SSCB (Encl 1 L)
(ix)	Sports First Aid and CPR Course	Jun 2018	-

14. None of these events fall in the category stipulated in para 4 of the Policy as detailed hereinabove Annexure R-19 dated 01.01.2015. However, it was the specific case of the applicant that he is seeking relaxation based on the policy contained in para 6 of the relaxation in age provided in communication dated 18.11.2005 filed by the applicant at page 17 of the paper book. We find from the aforesaid provision that under this clause, age relaxation can be granted in exceptional circumstances as specified in the letter dated 09.01.1962 which is contained in paragraphs 3 and 4 of the aforesaid communication. The applicant claims age relaxation specifically on the basis of Clause 6 which speaks about excellence in sports such as representing the Services in any sports activity and high

risk adventure activities etc. could also be considered as exceptional circumstances depending on the merit of the case. Individuals getting gallantry award PVC, MVC, AC etc. also entitles an individual for grant of relaxation.

15. On a perusal of record, we find that the applicant has not produced any document or material to show his excellence in sports which pertains to activities, exceptional in nature, with high risk adventure activities etc. The applicant is only shown to have participated in a National Junior Boxing Championship and there is nothing on record to show that in any of the events participated by the applicant, not even in the event detailed in the certificate issued for 6th to 10th November, 1996 quoted hereinabove, there is nothing available on record to indicate that the applicant has won any medal in a national event representing the services team.

16. We can take judicial notice of the fact and on a perusal of the policy available on record, it is clear that out-of-turn promotion is only granted for participating in national event, may be individual or team event and winning a medal, such as Gold, Silver or Bronze or showing some outstanding

performance for which some exceptional award is granted. Nothing of the sort has been brought on record and even for claiming the benefit of para 6 of the Policy dated 18.11.2005, the applicant has not produced any material to show him to be falling in the other exceptional circumstances.

17. That apart, the discretion available to the competent authority under para 6 of the policy dated 18.11.2005 gives discretionary powers to the competent authority to analyse a case with exceptional excellence or circumstances in a sports activity. The processing of the claim of the applicant through various authorities as is evident from the record indicates that his case has been processed and finding there to be no exceptional circumstances to grant him out-of-turn promotion, his case has not been recommended by the competent authority for grant of the said benefit.

18. In view of the above, we find no reason to interfere into the matter. Relaxation of age limit for promotion from the post of Havildar to Nb. Sub. is the discretion of the competent authority and the existence of a right to the applicant based on the circumstances as laid down in the policy is a mandatory

requirement and its fulfillment by the applicant has to be established. Admittedly, the applicant does not fulfill the criteria laid down for relaxation in the mother policy dated 01.01.2015 (Annexure R-19) and in the policy relied upon by the applicant i.e. para 6 of policy dated 18.11.2005. Accordingly, finding no error in the order passed by the respondents in denying age relaxation to the applicant, we are not inclined to interfere into the matter.

19. The OA is dismissed accordingly. There is not order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBEI]
MEMBER (A)

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