

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

OA 1688/2018 with MA 5562/2025

Sub Clk (SD) Jagat Singh Mehta Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. Sukhbir Singh, Advocate for
Mr. V. S. Kadian, Advocate
For Respondents : Mr. V. S. Mahndiyan, Advocate

CORAM

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

ORDER

By means of the present Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant challenges Annexure A-1 letter dated 14th May, 2018, whereby his non-statutory complaint was rejected. The impugned order records that the competent authority, concurring with the recommendations of the General Officer Commanding, 15 Corps, held that the reduction in vacancies of Subedar Major (Clerks) was carried out as per policy applicable to all Infantry Regiments and since no vacancies were available, DPC-2016 was not conducted. It was further concluded that no injustice had been caused to the applicant and that his complaint was devoid of merit. In the present OA, the applicant seeks (i) promotion to the rank of Subedar Major in terms of

DPC-2016 with consequential benefits, including reinstatement; and (ii) grant of benefits arising out of the third cadre review of JCOs/ORs.

2. Briefly stated, the applicant was enrolled in the Indian Army (Kumaon Regiment) on 30th January, 1988 and was promoted to the rank of Subedar on 1st April, 2014. His next promotional avenue was to the rank of Subedar Major (Clerk). As per the applicable policy, the tenure of service for the rank of Subedar is 28 years with a permissible extension of 2 years, whereas for the rank of Subedar Major it is 32 years with a further extension of 2 years. Since the applicant had completed 30 years of service (including extension), he retired on 31st January, 2018 and was not eligible for retention beyond the stipulated tenure. In the meantime, vide IHQ of MoD (Army) letter dated 23rd September, 2016, the authorised strength of Subedar Major (Clerks) in the Kumaon Regiment was reduced from 9 to 7. Consequently, due to reduction in vacancies, DPC-2016 was not conducted. Although the Record Office sought restoration of vacancies vide letter dated 28th September, 2016, the same was declined by IHQ of MoD (Army) on 20th October, 2016 on policy grounds. Subsequently, DPC-2017 for promotion to the rank of Subedar Major (Clerks) was conducted

on 6th November, 2017 in accordance with the prescribed policy. According to the applicant, he was placed at the top of the approved select list. However, he was not promoted for reasons best known to the respondents. Aggrieved thereby, the applicant submitted a representation dated 9th November, 2017 followed by a non-statutory complaint dated 21st November, 2017. He also approached this Tribunal by filing O.A. No. 105 of 2018, which was disposed of on 16th January, 2018 with a direction to the respondents to consider his non-statutory complaint within two months. In compliance thereof, the respondents rejected the complaint vide letter dated 14th May, 2018, which is under challenge in the present OA.

3. The learned counsel for the applicant contends that the action of the respondents in denying promotion to the applicant is arbitrary, unjust and contrary to the applicable policy. It is submitted that the applicant, having an unblemished and distinguished service record, was placed at the top of the merit list in DFC-2017, thereby establishing his clear entitlement for promotion to the rank of Subedar Major. It is argued that the non-conduct of DFC-2016 due to sudden withdrawal of vacancies has seriously prejudiced the applicant. Had the vacancies not been withdrawn arbitrarily,

the applicant would have been considered and promoted in time, prior to his retirement. The withdrawal of vacancies, without any justifiable basis affecting accrued rights, is liable to be set aside. The learned counsel further submits that the respondents cannot take advantage of their own inaction and deny promotion on the ground that the applicant had retired before the occurrence of vacancies. It is contended that the delay in holding DPC and improper vacancy management cannot operate to the detriment of the applicant. It is also urged that the applicant had a legitimate expectation of promotion, particularly when he was empanelled and placed at the top of the select list. Denial of promotion in such circumstances is arbitrary and violative of Articles 14 and 16 of the Constitution of India. The learned counsel further contends that the rejection of the non-statutory complaint is non-speaking and mechanical, as it fails to consider the specific grievances raised by the applicant. The impugned order, therefore, deserves to be quashed. Accordingly, it is prayed that the applicant be granted notional promotion to the rank of Subedar Major with all consequential benefits, including pensionary benefits.

4. Per contra, the learned counsel for the respondents submits that the applicant has no vested right to promotion

and that promotion in the Army is strictly subject to availability of vacancies and fulfillment of eligibility conditions as per policy. It is contended that the reduction in authorised strength of Subedar Major (Clerks) from 9 to 7 was a policy decision taken by the competent authority and uniformly applied across Infantry Regiments. Consequently, no vacancies were available for DPC-2016 and, therefore, no illegality can be attributed to the respondents. The learned counsel further submits that as per the applicable policy, only those personnel who are in service on the date of occurrence of vacancies are eligible for promotion. In the present case, the vacancies arose on 1st February, 2018 and 1st April, 2018, whereas the applicant retired on 31st January, 2018. Therefore, he was rightly not promoted. It is also argued that although the applicant was placed in the select list of DPC-2017, empanelment does not confer any indefeasible right to promotion, particularly when the individual is not in service at the time of vacancy. The learned counsel submits that the applicant had already completed the maximum permissible tenure (including extension), and no further extension was permissible under the policy. Hence, his retirement on 31st January, 2018 was in accordance with the rules. It is further contended that the non-statutory

complaint was duly considered at all levels, including the competent authority, and was rejected after proper application of mind. The impugned order does not suffer from any illegality or arbitrariness. Accordingly, it is prayed that the OA, being devoid of merit, is liable to be dismissed.

5. Having heard the learned counsel for the parties and perused the documents made available to us; the core issue for determination is whether the applicant was wrongly denied promotion to the rank of Subedar Major (Clerk) on account of alleged improper reduction of vacancies and misapplication of the prescribed rank structure.

6. On 25th August, 2025, for the purpose of disposal of the case, this Tribunal, upon considering the averments made in the counter affidavit filed by the respondents, particularly those contained in paragraph 2 thereof, noted that, vide Annexure R-1 dated 23rd September, 2016, the authorised strength of Subedar Major (Clerk) in the Kumaon Regiment had been reduced from 9 to 7. Accordingly, the respondents were directed to file an additional affidavit, along with all relevant records, clarifying the following aspects:

- (i) The circumstances, policy and reasons on the basis of which the vacancies were reduced from 09 to 07 along with justification for such reduction;
- (ii) The date on which the DPC was constituted, the vacancy position for which the DPC was convened and whether the

reduction in vacancies took place prior to the constitution of the DFC or before the DFC proceedings and recommendations were made. In either case the reasons for the reduction should be specifically explained and supported by relevant records.

In compliance with the aforesaid directions, the respondents have filed an additional affidavit.

7. From the material on record, it is evident that the rank structure of the Clerk trade is governed by a fixed ratio prescribed by the IHQ of MoD (Army), which is required to be maintained on a sliding scale depending upon the overall strength. The documents placed on record establish that the authorized strength of Subedar Major (Clerk) in the Regiment was six, as per the applicable ratio. However, due to certain administrative actions in the years 2000 and 2008, three additional vacancies were treated as over and above the authorized strength, resulting in the Regiment maintaining nine personnel in the rank of Subedar Major (Clerk), which was contrary to the prescribed structure. Subsequently, the competent authority clarified in the year 2016 that the correct authorised strength, as per the sliding scale, was seven and directed the Regiment to adhere strictly to the laid down ratio and reduce the excess holding to avoid audit objections.

8. It is also borne out from the record that, at the time of convening of DPC-2016, the Regiment was already holding two surplus personnel in the rank of Subedar Major (Clerk). Consequently, no promotion was proposed against the vacancies projected for the year 2017 and the said vacancies were effectively reduced to nil. The applicant's case was considered in DPC-2017 against vacancies arising in 2018. Although the applicant was placed in the merit list, he retired on 31st January, 2018, prior to the occurrence of the first vacancy on 1st February, 2018. Thus, on the date when the vacancy actually arose, the applicant was no longer in service. It is a settled service principle that promotion cannot be granted unless a vacancy exists and the individual is in service on the date of occurrence of such vacancy. Mere inclusion in a select panel or merit list does not confer an indefeasible right to promotion.

9. Therefore, in our considered view, the reduction of vacancies from nine to seven was not arbitrary but was a corrective administrative measure undertaken to align the strength with the prescribed rank ratio and to rectify earlier excess holding. The decision not to effect promotions during DPC-2016 was justified in view of the existence of surplus personnel and the binding directions issued by the competent

authority. The applicant, though empanelled, ceased to be in service prior to the occurrence of vacancy and, therefore, did not acquire any enforceable right to promotion.

10. The action of the respondents is, therefore, found to be in consonance with the governing policy, rank structure, and administrative instructions and does not suffer from illegality, arbitrariness or procedural impropriety. Accordingly, the claim of the applicant for grant of promotion to the rank of Subedar Major (Clerk) cannot be sustained.

11. In view of the foregoing, the instant OA is found to be devoid of merit and is, accordingly, dismissed. There shall be no order as to costs.

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

Pronounced in open Court on this 13th day of April, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

Priya/Alex