

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

OA 247/2017

Sub Inderjeet Yadav Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Ms. Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER

In this OA filed under Section 14 of the Armed Forces Tribunal Act 2007, the applicant – Sub Inderjeet Yadav has sought the following reliefs:

“(i) To quash and set aside the First Result of DPC held from 09.12.2015 to 12.12.2015, Army Ordnance Corps Records letter dated 16.01.2016, the Result of Second DPC held in October 2016 as also Army Ordnance Corps Record letter dated 01.02.2017 on the ground that the methodology adopted of combining different trades of the Clerks – Staff Duties with Clerks Inventory Management being contrary to the Army HQ letter dated 10.10.1997 and 05.01.2009; and

(ii) To issue a direction to hold a DPC de novo expeditiously to the rank of Subedar Major by separating the Clerks – Inventory Management as a separate trade in accordance with the Army HQ policy letter dated 05.01.2009 and if favourably considered, the applicant be immediately promoted to the rank of Subedar Major with ante date seniority, service and

revised pay and allowances as per the first DPC held on 09.12.2015 to 12.12.2015.”

2. The brief facts of the case are that the applicant was enrolled in the Army Ordnance Corps on 24th March, 1987 and during the course of service, was promoted through the ranks of Lance Naik, Naik, Havildar, Naib Subedar and Subedar, as per his seniority and eligibility. The applicant came up for consideration before the Departmental Promotion Committee (DPC) for promotion to the rank of Subedar Major in the years 2015 and 2016. In the first DPC (2015), the applicant was not selected for promotion allegedly on account of low merit and overall performance. However, subsequently in the second DPC (2016) he was placed in the select panel in DPC 2016 but could not be promoted due to non-availability of vacancies prior to his superannuation on 31st March, 2017. Aggrieved by the denial of promotion, the applicant filed O.A. No. 1647/2016 before this Tribunal (Principal Bench) challenging the results of the DPCs held between 09–12 December 2015 and October 2016; the methodology adopted by the respondents in combining Clerk Staff Duties and Clerk Inventory Management; and the denial of promotion despite his

eligibility and seniority. The applicant also sought directions for conduct of a fresh DPC (de novo) for promotion to Subedar Major; grant of promotion with ante-date seniority, along with consequential benefits including pay and allowances; and award of compensation for the alleged injustice. This Tribunal, vide order dated 9th January, 2017, disposed of the said OA. with directions to the respondents to consider the representation submitted by the applicant and to pass a reasoned order within 30 days. In compliance with the said directions, the respondents examined the applicant's representation and issued a speaking order dated 1st February, 2017. Aggrieved by the First Result of the DPC held from 09th December, 2015 to 12th December, 2015, communicated vide Army Ordnance Corps Records letter dated 16th January, 2016 as well as the Result of the Second DPC held in October 2016 and the consequential Army Ordnance Corps Records letter dated 01st February, 2017, the applicant has filed the present OA. The challenge is primarily on the ground that the methodology adopted by the respondents in combining different trades, namely Clerks – Staff Duties and Clerks – Inventory Management is contrary to the policy laid down in

Army HQs letters dated 10th October, 1997 and 5th January, 2009. The applicant further seeks a direction for holding a de novo DPC for promotion to the rank of Subedar Major by treating Clerks – Inventory Management as a separate trade in terms of the policy letter dated 5th January, 2009 along with consequential reliefs including ante date seniority, service benefits, and revised pay and allowances.

3. Ms. Archana Ramesh, the learned counsel for the applicant, at the outset, submits that the action of the respondents in clubbing the trades of Clerk Staff Duties (SD) and Clerk Inventory Management (IM) for the purpose of promotion through the DPCs held in December 2015 and October 2016 is illegal, arbitrary and contrary to the governing policy. It is contended that as per Army HQ Policy Letter dated 5th January, 2009, the two trades are distinct and separately identified categories, with Clerk Staff Duties and Clerk Inventory Management forming independent streams. Therefore, the respondents could not have merged these trades for the purpose of a common DPC. It is further submitted that the impugned action violates the settled principle of equality inasmuch as unequals have been treated

as equals. Clerk Staff Duties personnel undergo a mandatory NCOs' Clerks Course, which carries graded weightage, thereby giving them an inherent advantage in the promotion process. On the other hand, Clerk Inventory Management personnel are not subjected to any such mandatory course. By evaluating both categories together, the respondents have placed the applicant at a disadvantage resulting in an unequal and unfair competition. The learned counsel further contends that the criteria for promotion itself operates differently for the two trades. While SD Clerks benefit from additional marks on account of course grading, IM Clerks do not have any corresponding mechanism. Consequently, conducting a combined DPC results in unequal standards being applied to different categories, thereby vitiating the entire selection process. Reliance is also placed on the Army HQ Policy Letter dated 10th October, 1997, which is the mother policy governing promotions. It is submitted that the said policy does not contemplate or permit the merging of distinct trades or the application of different parameters within a combined selection process. The methodology adopted by the respondents is thus contrary to the binding policy framework and is liable to be set aside. The learned

counsel submits that the DPCs conducted in 2015 and 2016 adopted a methodology unknown to the rules by combining distinct trades into a single zone of consideration. Such action is procedurally flawed, contrary to policy and arbitrary, rendering the entire selection process unsustainable in law.

4. It is also submitted that the applicant has been denied a fair and equal opportunity for consideration. Being from the IM trade, he was compelled to compete with SD Clerks who enjoyed additional scoring advantages. The applicant has not refused any course and the absence of such training cannot be attributed to him but rather to the administrative actions of the respondents. The learned counsel further submits that the applicant had earlier preferred a statutory petition dated 31st August, 2016 challenging the impugned methodology. However, the same has not been decided till date and, therefore, the applicant has exhausted all available departmental remedies and is constrained to approach this Hon'ble Tribunal. In view of the above submissions, it is prayed that this Tribunal may be pleased to quash and set aside the results of the DPCs held in December 2015 and October 2016 along with the consequential letters and further direct the respondents to conduct a fresh de novo

DPC separately for each trade in accordance with the applicable policy and to consider the applicant for promotion to the rank of Subedar Major on a fair and lawful basis.

5. In rebuttal, the respondents have filed a detailed counter affidavit, wherein they stated that in compliance with the directions of this Tribunal, the Army Ordnance Corps duly considered and disposed of the applicant's representation dated 31st August, 2016 by passing a reasoned speaking order dated 1st February, 2017. Despite the same, the applicant has preferred the present OA seeking substantially identical reliefs as claimed in OA No. 1647 of 2016, in addition to challenging the aforesaid speaking order. It is submitted that the trades of Clerks and SKT (Store Keeper Technical) are direct recruitment trades common across all Arms and Services. Within the Army Ordnance Corps (AOC), the Clerk category was subdivided into specific sub-trades, namely Clerk (General Duty), Clerk (Staff Duty) and Clerk (Provision) to meet functional requirements. However, a common seniority roster has consistently been maintained since 1st July, 1961 in accordance with IHQ, MoD letter dated 6th Febraury, 1960. Consequently, all DPCs have been conducted on the basis of this common seniority

roster since inception. It is further submitted that the IHQ, MoD (Army) letter dated 5th January, 2009 pertains to rationalization of trades, involving regrouping, merger and re-designation of certain trades. The said policy only addresses adjustment and fixation of seniority of personnel in newly created or re-designated trades. Importantly, the long-standing policy of maintaining a common seniority roster as laid down in the 1960 letter has neither been superseded nor altered and continues to hold the field. In the present case, the applicant's trade was re-designated as Clerk (Inventory Management) consequent to the merger of Clerk Store (Control) and Clerk Provision. Following the Government of India's decision on rationalization, the policy letter dated 5th January, 2009 provided that Clerk Postal, Clerk (General Duty), and Clerk GD (SD) were re-designated as Clerk (Staff Duty), while a new trade, Clerk (Inventory Management) was introduced through merger of existing store-related trades. Prior to such rationalization, the applicant belonged to the trade of Clerk Store (Control) and had earned all promotions from Naik to Subedar strictly in accordance with the common seniority roster, without raising any grievance at any stage. It is also submitted that for

promotion to the rank of Naib Subedar in the Clerk (Staff Duty) category, passing the Non-Commissioned Officer Clerk Course (NCC) is mandatory and only those securing prescribed gradings are considered by the DPC. Failure to qualify in the said course results in permanent debarment from promotion. However, no such mandatory course requirement exists for Clerk (Inventory Management), where no prescribed course is essential for promotion to JCO ranks.

6. As per policy guidelines, Heads of Arms/Services nominate personnel for courses and weightage is accorded in DPCs based on courses successfully completed during service. Numerous courses have been prescribed and due weightage is granted as per existing policy instructions. It is contended that while there is no mandatory course for Clerk (Inventory Management), several optional courses exist, the successful completion of which provides weightage during DPC consideration. The applicant failed to avail himself of such opportunities. It was his responsibility to remain informed and take necessary steps for career progression. His failure to undertake such courses placed him at a disadvantage during the DPC. It is further submitted that merely attending the NCC course does not confer any undue advantage. Only

those candidates who secure requisite grading are granted weightage. This is evident from the DPC results of 2015 and 2016, where several candidates did not receive weightage despite attending the course due to lower grading. As per Para 8(d) of the relevant policy letter dated 10th October, 1997, mere eligibility or consideration by the DPC does not entitle a candidate to promotion. Promotions to the rank of Subedar Major are governed by the principle of seniority-cum-merit and are contingent upon availability of vacancies. In the present case, although the applicant was considered in the DPC of 2016 for promotion to Subedar Major, he could not be promoted due to non-availability of vacancies prior to his superannuation. It is also submitted that the applicant has received all promotions in due course from Sepoy to Subedar under the same common seniority roster. He never raised any objection to the said system when it operated to his benefit. Having acquiesced in the system throughout his service, he is estopped from challenging the same at this stage, particularly without questioning his earlier promotions. Before concluding, it is stated that that the applicant did not take any initiative to enhance his merit by undergoing optional courses which

could have improved his prospects in the DPC. Career progression requires proactive effort on the part of the individual and the applicant's failure in this regard cannot be attributed to the respondents.

7. Mr. K.S. Bhati, learned Senior Central Government Standing Counsel appearing for the respondents, contended that the challenge raised by the applicant is wholly misconceived, both on facts and in law. He submitted that the applicant was duly considered by the DPC held in the year 2015; however, he could not be selected on account of his comparatively lower merit, which was assessed on the basis of his overall service profile, including performance, course gradings and other relevant parameters as per the applicable policy. It is thus submitted that the non-selection of the applicant in the DPC of 2015 was neither arbitrary nor illegal but strictly in accordance with the prescribed criteria governing promotions. Learned Sr. CGSC further submitted that in the subsequent DPC held in the year 2016, the applicant was duly considered and, in fact, placed in the select panel. However, he could not ultimately be promoted to the rank of Subedar Major solely due to the non-availability of vacancies prior to the date of his

superannuation. It is contended that promotion is not a matter of right and is always subject to availability of vacancies, apart from merit and seniority. Therefore, the applicant cannot claim promotion as a vested right merely on the basis of empanelment. It was further argued that the results of the DPC proceedings, the Army Ordnance Corps letter dated 16th January, 2016 and the AOC Records letter dated 01st February, 2017 are fully justified, legal and in strict conformity with the extant rules, policies and directives issued by the competent authorities from time to time. There is no procedural irregularity, illegality or arbitrariness in the conduct of the DPC or in the issuance of the impugned communications.

8. The learned Sr. CGSC emphasized that the applicant has, throughout his service career, received all promotions from Sepoy to Subedar in due course, strictly on the basis of a common seniority roster comprising Clerk (General Duty), Clerk Store (Control) and Clerk (Provision), as per the policy governing common seniority of Combatant Clerks promulgated by IHQ, MoD (Army) vide letter dated 06th February, 1960. At no point during his service did the applicant raise any objection or grievance with regard to

the said system of common seniority, as the same operated beneficially in his favour. It was contended that the present grievance raised by the applicant regarding the merger of trades and its alleged impact has been raised belatedly and is clearly an afterthought. Having accepted the benefit of the common seniority roster throughout his career and having secured successive promotions thereunder, the applicant is estopped from challenging the very same system at this stage, particularly when he has not chosen to impugn his earlier promotions obtained under the said regime. Such a selective challenge is impermissible in law and is liable to be rejected on the ground of acquiescence and estoppel. At this stage, learned Sr. CGSC invited attention to Para 3 of the speaking order dated 01st February, 2017, wherein it has been categorically stated that no statutory complaint, as envisaged under Section 26 of the Army Act, had been submitted by the applicant through the proper channel or received by the Army Ordnance Corps Records. It was pointed out that what was received was merely a personal application, which was annexed as Annexure A-4 to OA No. 1647 of 2016. The respondents, nevertheless, considered the said representation and disposed of the same by passing a reasoned speaking

order. Therefore, the allegation of non-consideration of the applicant's grievance is factually incorrect and untenable. Learned Sr. CGSC further submitted with reference to Paras 8 and 9 of the speaking order that the policy letter dated 5th January, 2009 issued by IHQ, MoD (Army) pertains only to rationalization of trades, including regrouping, merger and re-designation. The said policy does not, in any manner, supersede or override the earlier policy dated 6th February, 1960 governing the common seniority of Combatant Clerks, which continues to hold the field. Consequently, the DFCs have rightly been conducted on the basis of the common seniority roster and no fault can be found with the methodology adopted by the respondents. It was thus submitted that the applicant has failed to demonstrate any violation of statutory provisions, policy guidelines or principles of natural justice. The entire process has been carried out in a fair, transparent and lawful manner. The OA, being devoid of merit and substance, deserves to be dismissed with costs.

9. Upon a careful and comprehensive consideration of the pleadings, documents on record and the submissions advanced by the learned counsel for the parties, it is evident

that the core grievance of the applicant pertains to the methodology adopted by the respondents in conducting the DPCs for the years 2015 and 2016. The challenge primarily relates to the maintenance of a common seniority roster across trades, the grant of weightage based on courses and gradings and the alleged disadvantage suffered by the applicant belonging to the Clerk (Inventory Management) category vis-à-vis Clerk (Staff Duties).

10. The contention of the applicant that the respondents adopted a discriminatory approach by treating unequals as equals does not find support from the material on record. The evidence clearly establishes that the grant of weightage in the DPC process was not automatic or attached to any particular trade, but was dependent upon objective criteria such as successful completion of prescribed courses which in case of clerk (IM) are optional course and attainment of requisite gradings. The data placed before this Tribunal shows that in DPC 2015, out of 127 candidates from Clerk (Staff Duties), only 75 were granted weightage while 52 were denied the same due to not meeting the required grading standards. Similarly, in DPC 2016, only 71 out of 112 candidates received weightage. In the case of Clerk (Inventory

Management), although a larger number of personnel were considered, only 28 candidates in 2015 and 40 candidates in 2016 were granted weightage. This clearly demonstrates that the process was merit-based and uniformly applied across all candidates, thereby negating the allegation of any inherent or structural advantage in favour of any particular trade.

11. The argument advanced by the applicant that Clerk (Staff Duties) personnel enjoyed an undue advantage on account of the mandatory Non-Commissioned Officer Clerks Course is also found to be without merit. The material on record indicates that merely undergoing the said course does not confer any automatic benefit and weightage is awarded only upon securing the prescribed grading. Further, failure to qualify in the said course results in permanent debarment from promotion to the rank of Naib Subedar, thereby indicating that the requirement operates as a stringent eligibility condition rather than a preferential advantage. On the other hand, personnel belonging to the Clerk (Inventory Management) category are not subjected to such mandatory requirements and have opportunities to enhance their merit through optional courses which carry due weightage in the DPC process. It is also evident that the applicant did not

undertake or qualify in such courses which could have improved his merit position. It is well settled that promotion is not solely based on eligibility but also on comparative merit and the responsibility to enhance such merit lies upon the individual. Therefore, the applicant cannot attribute his non-selection to any alleged deficiency in the system.

12. The challenge to the maintenance of a common seniority roster and the alleged improper amalgamation of trades is equally untenable. The respondents have clearly demonstrated that the concept of common seniority among Clerk categories has been in existence since 1960 and has consistently governed promotions within the Army Ordnance Corps. The policy letter dated 5th January, 2009 relied upon by the applicant pertains only to rationalization, regrouping and re-designation of trades and does not supersede or alter the long-standing policy of common seniority. The applicant, having been promoted from Sepoy to Subedar under the same system without raising any objection at any stage, cannot now be permitted to challenge the very framework when it no longer operates in his favour.

13. It is also a settled principle that promotion is not a matter of right but is subject to fulfilment of prescribed

criteria and availability of vacancies. The record clearly indicates that the applicant was duly considered in both the DPCs. He was not selected in the DPC of 2015 due to comparatively lower merit and although he was placed in the select panel in the DPC of 2016, he could not be promoted to the rank of Subedar Major due to non-availability of vacancies prior to his superannuation on 31st March, 2017. Mere empanelment does not confer any vested right to promotion. The non-promotion of the applicant is thus attributable to administrative constraints and merit considerations and not to any illegality or arbitrariness in the process.

14. The plea of the applicant that the respondents acted in violation of policy letters dated 10th October, 1997 and 5th January, 2009 is also found to be misconceived. The material on record shows that the DPCs were conducted strictly in accordance with the governing policy framework, including the maintenance of common seniority, assessment of merit based on service profile and course gradings and application of uniform criteria across all candidates. No provision has been brought to the notice of this Tribunal which mandates the holding of separate DPCs for Clerk (Staff

Duties) and Clerk (Inventory Management). In the absence of any such requirement, the methodology adopted by the respondents cannot be said to be contrary to policy. The challenge raised by the applicant is based on an erroneous interpretation of the policy letters and is not supported by any substantive evidence of illegality.

15. It is further observed that the respondents have duly complied with the earlier directions of this Tribunal by considering the applicant's representation and passing a reasoned speaking order dated 01st February, 2017. The said order reflects due application of mind and addresses the grievances raised by the applicant. The contention that the applicant's representation was not considered is, therefore, factually incorrect. The decision-making process adopted by the respondents cannot be faulted on the ground of violation of principles of natural justice or procedural impropriety.

16. In view of the above discussion, we are of the considered opinion that the methodology adopted in the DPCs of 2015 and 2016 was fair, transparent and in accordance with the applicable policies. No undue advantage or discrimination has been established. The applicant's non-selection in 2015 was on account of lower merit and his

non-promotion in 2016 was due to non-availability of vacancies. The contentions raised by the applicant are based on assumptions and misinterpretation of policy provisions rather than any demonstrable illegality.

17. Accordingly, it is held that no illegality, arbitrariness or procedural infirmity has been established in the conduct of the DFCs or in the impugned orders. The reliefs sought by the applicant are devoid of merit and are liable to be rejected. The Original Application is, therefore, dismissed.

18. There shall be no order as to costs.

Pronounced in Open Court on this ^H 13 day of April, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

Priya/Alex