

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

OA (Amended) No. 561 of 2018

In the matter of :

Nb Sub (Clk) B N Dehury (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Indra Sen Singh, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA (amended) and the reliefs claimed in Para 8 read as under :

“(a) Set-aside the Impugned order dated 21.04.2018 be arbitrary and a Non-Speaking order;

(b) Call for the original record relevant to the instant case and after perusal thereof direct the Respondents to promote the Applicant to the rank of Subedar w.e.f. 01.09.2012 when

his immediate junior was promoted, by treating the Respondent's letter dated 24.10.2017 (Annexure A-1) as the final rejection order;

- (c) Direct the Respondents to forthwith re-instate the Applicant in the service with effect from 30.09.2014 (AN) in the rank of Subedar and waive-off the requirement of Junior Leader Proficiency Test (JLPT) which the Applicant was illegally deprived of;*
- (d) Direct the Respondents to grant all consequential reliefs including seniority, back-wages and extension of service on the basis of his existing record of service, i.e. two years of extension of service in the rank of Subedar upto 32 years of service;*
- (e) Direct the Respondents to consider the Applicant for promotion the rank of Subedar Major on the basis of cut-off record with which his immediate junior was promoted to the rank of Subedar Major and to promote the Applicant to the said rank with effect from 01.08.2015 when his immediate junior was promoted;*
- (f) Direct the Respondents to grant all other consequential benefits/reliefs including seniority, back-wages and extension of service on the basis of his existing record of service, i.e. two years of extension of service in the*

rank of Subedar upto 30 years of service i.e 01.10.2016 Further promotion to the rank of Subedar Major with the service criteria, i.e 04 years of tenure in the rank, 54 years of age or 34 years of service whichever is earlier, for which he was entitled to be considered and which were denied to him because of the prolonged/pending disciplinary case which has now been dropped be accorded/granted; and

- (g) Direct the Respondents to consider the Applicant for said promotion on the basis of available record upto the cut-off period and waive-off the requirement of Junior Leadership Proficiency Test (JLPT) or any other criteria which the Applicant was illegally denied;*
- (h) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."*

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 21.09.1986 and was promoted to the rank of Nb Sub on 01.07.2008. The applicant retired from service on 30.09.2014 in the same rank. The applicant is aggrieved by the respondents' action of illegally retiring him from service in the

rank of Nb Sub, without considering him for promotion to the next higher rank of Sub, despite his having been exonerated of all charges on which the disciplinary proceedings were initiated.

3. The case as stated by the applicant is that that the two out of his three children are suffering from 'Sickle Cell Anaemia and Beta Thalassemia' which requires monthly blood transfusions; which got aggravated during his posting at the Records, Madras Regimental Centre, Wellington, and due to the medical conditions of his children, the applicant was posted to Delhi on 16.09.2006, on compassionate medical grounds for the purpose of their treatment, and was allotted government accommodation soon thereafter. The applicant explored permanent treatment options for his children, including bone-marrow transplantation, as frequent transfusions were not a viable solution.

4. In March 2009, certain service personnel made complaints alleging that the applicant had not returned loans taken for his children's treatment. Thereafter, a Show Cause Notice was issued to the applicant on 02.05.2009 by the

Madras Regimental Centre, Wellington, to which the applicant submitted his reply on 03.05.2009. Thereafter, a Court of Inquiry (CoI) was convened by 3 Engr Regiment vide order dated 10.05.2010, which was commenced on 15.06.2010; that out of 27 summoned, only 10 persons attended the proceedings and some of them even denied giving any loans to the applicant or making investments through the applicant. A tentative Charge-sheet was issued to the applicant on 19.10.2010 against 10 personnels, out of whom 5 people attended the CoI proceedings. A Summary of Evidence (SoE) was recorded on 02.01.2011, which was closed/concluded on 15.03.2011. It is stated that as the SoE was set aside by HQ Western Command, the pre-trial documents were returned on 25.11.2011; that all criminal cases lodged against the applicant and his wife were subsequently dismissed by the District Court at Patiala House, Dwarka and Gurgaon giving them a clean chit and both of them were exonerated. Thereafter, a fresh SoE was ordered to be convened and a fresh tentative charge-sheet was issued for recording of SoE on 05.12.2011, which was replied to by the applicant on

08.12.2011. The SoE was recorded in December 2011 and forwarded to HQ Delhi Area in May 2012.

5. On 17.06.2012, the applicant submitted a letter to the Commanding Officer for being detailed to attend the Junior Leadership Proficiency Test (JLPT). However, during the period from 17.06.2012 to 07.05.2013, the applicant was denied the opportunity to appear in the JLPT test due to the pendency of the disciplinary case. It is the case of the applicant that he was considered along with his batch-mates for promotion to the rank of Sub (Clerk) on 31.08.2012, however, the applicant was denied and superseded for the said promotion due to lack of JLPT test and that he was involved in a disciplinary case. It has been further stated that the as the applicant's parent unit, 25 MADRAS, was about to leave for a UN Mission in Congo, the applicant also applied for consideration of his name for deployment, however, he was denied that also; that despite being exonerated of all charges on 19.07.2014, the applicant was made to retire on 30.09.2014 in the rank of Nb Sub without considering him for promotion to the next higher rank of Sub, even though he

fulfilled all eligibility criteria. It is the case of the applicant that in case he was considered for promotion to the post of Sub, he would have earned the promotion to the post of Sub and would have worked on the said post till he attained the age of superannuation as fixed for that rank.

6. Aggrieved thereby, the applicant filed an OA being O.A. No. 684/2014 before the Tribunal for reinstatement in service and promotion to the rank of Nb Sub, which was disposed of vide Tribunal's order dated 25.01.2017 directing the applicant to submit a detailed representation before the competent authority and the competent authority to dispose of the same within two months if such a representation is received, and to pass a speaking order. The applicant submitted his representation on 10.03.2017, but despite multiple letters/reminders, no proper action was taken and subsequently, the applicant's representation was rejected by Respondent No. 4 vide order dated 21.04.2018 (impugned herein) through a cryptic and non-speaking order. Hence, the applicant has filed the present OA.

7. The learned counsel for the applicant submitted that the actions of the respondents are illegal, arbitrary, and violative of the principles of natural justice in retiring the applicant in the rank of Nb Sub without considering him for promotion to the rank of Sub; that the respondents committed grave injustice as the applicant was superseded for promotion in 2012 on account of a pending disciplinary case without applying the 'Sealed Cover Procedure' as laid down in the case of the Hon'ble Supreme Court in Union of India etc. etc. Vs. K.V. Jankiraman etc. etc. [AIR 1991 SC 2010]. The learned counsel further submitted that despite having an excellent service record and having been fully exonerated of the charges, the applicant was superseded by juniors for promotion to the rank of Sub and further to Sub Maj. The learned counsel also added that the denial of the opportunity to appear for the JLPT and deployment on the UN Mission were arbitrary and prejudicial; that the rejection of the applicant's representation by Respondent No. 4 was without jurisdiction and without due application of mind, rendering it illegal and *void ab initio*. The learned counsel further submitted that the respondents'

actions are discriminatory and without any material evidence, amounting to misuse of power and unconstitutional.

8. Therefore, the learned counsel for the applicant submitted that the applicant is entitled to the consideration for promotion to the rank of Sub with retrospective seniority and consequential promotion to Sub Maj, with all consequential benefits, at par of the service of his juniors. The learned counsel submitted that the applicant's juniors have been promoted even to the rank of Sub Maj and in the event of the applicant being promoted to the said rank, he would serve upto 34 years or 54 years of age, whichever is earlier. The learned counsel further submitted that the applicant had a clean service record after being acquitted in disciplinary case, meets all criteria for promotion since arbitrarily and unjustifiably, he was denied opportunity to appear in JLPT test, and the delay and arbitrariness in the proceedings against him have deprived him of his rightful consideration for promotions and career progression. Accordingly, the learned counsel for the applicant prays for grant of reliefs as sought for in this OA.

9. In support of his submissions, the learned counsel for the applicant relied upon the following judgments of the Hon'ble Supreme Court :

- (i) Municipal Committee Katra and Others Vs. Ashwani Kumar [2024 SCC OnLine SC 840]
- (ii) Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited [(2014) 11 Supreme Court Cases 85]
- (iii) Col Mahesh Kumar Singh Vs. Union of India, through the Secretary, Ministry of Defence, New Delhi and Others [2017 SCC OnLine AFT 4702]

10. *Per contra*, the respondents, while admitting the factual matrix of the case, submitted that the applicant was posted to the Integrated Headquarters of Ministry of Defence (Army) (PMO FINSAS) on 16.09.2006 to facilitate the treatment of his children suffering from 'Sickle Cell Anaemia and Beta Thalassemia' at the Army Hospital (R&R); that on 05.01.2009, the applicant applied for premature discharge on compassionate grounds, which was sanctioned with effect from 31.08.2009 and at the time of reporting at the Centre, he requested that his date of discharge be advanced to 01.05.2009, however, during this period, complaints were received against the applicant and his spouse from several

individuals, including Mrs. Elizabeth Jagadeesan and other serving and ex-servicemen, alleging involvement in lending and borrowing money and financial misconduct and consequently, his premature discharge was cancelled, and he was ordered to proceed on pension after completion of his terms of engagement, pending settlement of all outstanding dues. The respondents further submitted that a Court of Inquiry and subsequent Summary of Evidence were conducted to investigate allegations of financial irregularities; these proceedings revealed that most witnesses either withdrew their complaints or had nothing against the applicant. The disciplinary documents were reviewed at multiple levels, including Headquarters Delhi Area and Headquarters Western Command (JAG Branch); that in view of the justifying humanitarian factors and the non-military nature of the allegations, the competent authority, through GOC-in-C, HQ Western Command, permitted the applicant to retire on his due date 30.09.2014 and the matter was considered closed.

11. The learned counsel for the respondents contended that the applicant sought for promotion to the rank of Sub, but was found ineligible due to lacking the mandatory Junior Leadership Proficiency Test (JLPT); that the O.A. No.684/2014 filed by the applicant was disposed of with directions to submit a detailed representation to the competent authority; that after due consideration, the competent authority rejected his appeal through a speaking order dated 21.04.2018, however, despite this, the applicant filed another O.A. No. 561/2018 for reinstatement and promotion to the rank of Sub w.e.f. 01.09.2012 seeking consequential reliefs including seniority, back-wages, and extension of service. The learned counsel for the respondents further submits that the present OA is devoid of merit and does not conform to the laid-down policy regarding eligibility for promotion. The applicant's allegations regarding denial of opportunity to appear for JLPT and non-posting for UN mission were also negated, as there are no records substantiating such claims and all the actions taken by the respondents were in accordance with policy and administrative procedures. Accordingly, the learned counsel for the respondents argued that the applicant retired on his

due date in accordance with rules; that he was not promoted due to lack of mandatory requirements under the policy, and all allegations of misconduct are baseless. The learned counsel, therefore, prayed for dismissal of the OA.

ANALYSIS

12. We have heard the submissions of the learned counsel for the parties and have also perused the record.

13. The factual matrix of this case *qua* service details of the applicant is not disputed. It is also not in dispute the Summary of Evidence (SoE) recorded between January and March 2011 was later set aside by HQ Western Command and a fresh SoE was ordered in December 2011 and also that the GOC-in-C Western Command vide order dated 19.07.2014 closed the disciplinary case against the applicant as the allegations were not supported by any evidence and also on humanitarian grounds and hence the applicant was admittedly acquitted/exonerated of all the charges.

14. It is not disputed also that while the disciplinary proceedings were pending against the applicant, he was denied permission to appear for the Junior Leadership

Proficiency Test (JLPT), which is a mandatory requirement for promotion to the next higher rank i.e. Sub, as per the policy in vogue. The applicant's representation dated 17.06.2012 requesting to nominate him for JLPT was rejected, and between June 2012 and May 2013, he was consistently denied the opportunity to take JLPT test on the ground of a disciplinary case pending against him. The applicant was also deprived of an opportunity of nomination of his name for deployment with his parent unit to a UN Mission (Congo) which would have helped in his career progression. Subsequently, the applicant was exonerated of the charges vide order dated 19.07.2014 in the disciplinary case, however, he was not granted consideration for promotion nor was he granted an opportunity to undertake the JLPT test. The applicant then retired from service on 30.09.2014 in the rank of Nb Sub without being considered for promotion.

15. It is undisputed that undergoing the JLPT test is mandatory requirement to be considered for promotion to the rank of Sub by the applicant. However, when the applicant applied for being detailed for the JLPT test, he was not granted

nomination for undergoing the said JLPT test by the respondents on the ground that the disciplinary proceedings were pending against him finding the applicant ineligible for promotion due to the absence of required JLPT qualification, being a mandatory condition as per the extant policy. While the applicant's juniors were promoted to the rank of Sub, however, the applicant's name was not considered for promotion as he was not detailed for appearing in the JLPT test on the ground of pendency of a disciplinary case in which he was eventually acquitted of charges and the said case stood closed.

16. We also observe that while undergoing the JLPT test by the applicant for promotion to the rank of Sub is indeed a mandatory requirement as per the policy, however, we do not find anything on record which would suggest that the pendency of a disciplinary proceeding against an individual would be an impediment for taking part in the JLPT test. In this regard, it is important to note that when the matter was listed on 05.08.2025, a direction was issued to the respondents to produce the policy wherein the provisions for

preventing a person from attending a cadre course on account of DV ban or pending disciplinary case is prescribed and the provision, if any, for waiver of the cadre course in a case the employee is exonerated in the disciplinary case. The case was again listed on 03.09.2025, when the respondents sought time to indicate as to whether for the purpose of appearing in the Junior Leader Proficiency Test (JLPT) for promotion to the rank of Sub involvement in a criminal case is a prohibition and if a person is involved in the criminal case and the case is at investigation/trial stage, can he be prevented from appearing in the said exam. However, on behalf of the applicant, an Army Order i.e. AO JLPT/17/2003 was produced wherein no provision was found regarding the issue in question. Thereafter, at the time of final hearing of the matter on 12.11.2025, the respondents informed us that there is no such policy for the purpose of appearing in the JLPT. During the course of hearing, submission was made by the learned counsel that prayer clause 8(c) is not pressed and the applicant would be claiming notional promotion for the rank of Subedar and with regard to prayer clause 8(d), in case denial of promotion is found illegal and improper, then after

granting him notional promotion, with all consequential benefits were sought to be granted.

17. In the present case, we find that the applicant was superseded in promotion due to the pendency of the disciplinary proceedings, which eventually stood closed in the absence of any evidence towards charges levelled against him as evident from the record. In our view, if the applicant was detailed to attend the JLPT test in time, then he would have been at least considered for promotion to the rank of Sub and there would have been a chance for him to get promotion and denial of the same resulted in loss of his seniority, pay and allowances etc.

18. We have gone through the judgment of the Hon'ble Supreme Court in *K.V. Jankiraman's case*, relied upon by the applicant, wherein it has been held that pendency of disciplinary proceedings cannot deprive an individual of the right to be considered for promotion, and in such cases, the sealed cover procedure is mandatory. It is also observed that when an employee is completely exonerated and he was not

blameworthy in the least, he should not be deprived of any benefit of salary, promotion etc.

19. It is an admitted fact that the applicant's batch-mates were considered for promotion in August 2012 and the applicant was not given consideration due to the pendency of a disciplinary case. There is no evidence of sealed cover procedure adopted in this case. This lapse on the part of the respondents makes non-consideration of the applicant for promotion unlawful. Further, the applicant's not having undergone JLPT test was entirely for the reason of the pendency of disciplinary proceedings. The respondents have not shown any ground for denying him to appear for JLPT other than the aforesaid reason. The respondents also committed an error in ignoring the fact that the disciplinary case against the applicant was closed due to lack of evidence and the applicant was exonerated of the charges. If the respondents' action was based on certain allegations which eventually were found unsubstantiated and it is they who prohibited the applicant from fulfilling eligibility condition on that ground, they cannot penalise the applicant for not

fulfilling the said condition and the same amounts to arbitrary exercise of power. Even in the impugned order dated 21.04.2018, the respondents, while rejecting the representation of the applicant, failed to consider the fact that the applicant had already been exonerated/acquitted of the charges levelled against him in the disciplinary case and that case was closed.

20. In view of the above, since the applicant has already been exonerated/acquitted of all the charges in the disciplinary case due to lack of any evidence, he has acquired the right to have his case reconsidered for promotion from the date it originally became due, which was denied by the respondents by not allowing him to appear in the JLPT course which he is a mandatory requirement to be considered for promotion to the rank of Sub, and due to which he has suffered irreparable loss. Having considered the facts and circumstances of the present case, we are of the considered view that it would be in the fitness of things if the applicant is given due consideration for promotion to the rank of Subedar with effect from the date when the batchmates of the applicant

were considered and granted promotion superseding the applicant i.e. 01.09.2012, deeming that the applicant has fulfilled the eligibility requirement relating to completion of the JLPT test, since the denial of the opportunity to the applicant to satisfy the said condition was attributable to the respondents and was unjustifiable, with all consequential benefits.

CONCLUSION

21. In view of the above, the O.A. No. 561 of 2018 is allowed to the extent that the respondents are directed to consider the applicant, after granting him exemption from the condition of completion of JLPT course, on the date he was due for consideration for promotion along with his batchmates and after considering the same in accordance with all the rules and regulations applicable, the applicant be granted notional promotion to the rank of Sub, if found fit in all respects, with all consequential benefits. The respondents are further directed to complete the aforesaid exercise within a period of three months from the date of receipt of a copy of this order.

22. There is no order as to costs.

Pronounced in open Court on this 6th day of
January, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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