

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH  
JABALPUR**

**CORAM :**

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN GOPAL R, MEMBER (A)**

**OA 123/2018**

**No 15383814A, Hav (OCC) Gajendra Chauhan,  
S/o Shri Brahmpal Singh Chauhan,  
50 Independent Para Brigade Signal Company,  
C/o 56 APO.**

**.....Applicant**

**Versus**

- 1. Union of India,**  
Through the Secretary,  
MoD, GoI, New Delhi.
- 2. COAS,**  
IHQ of MoD (Army),  
DHQ PO, New Delhi.
- 3. The OIC**  
Signal Records, Jabalpur (M.P.).

**.....Respondents**

**For Applicant** : Mr. KC Ghildiyal, Sr. Advocate, Mr HC Singh  
and Mr Pradeep Dwivedi, Advocates.

**For Respondents** : Mrs Kanak Gaharwar, CGSC.

## **ORDER**

### **Brief Arguments by Counsel for the Applicant**

1. The applicant was enrolled in the Army on 25.04.1994 and in the due course of time was promoted to the rank of Naik in 2005. The applicant could not undergo the 'N' Cadre, a pre requisite for promotion to the rank of Havildar, as he had been prematurely posted from the Unit which he was serving i.e., 551 Sub Group to 31 RR Battalion. On reversion from 31 RR Battalion, the applicant qualified in the 'N' Cadre on 27.09.2008. This premature posting to 31 RR Battalion had resulted in the delay in passing the 'N' Cadre. As a result, the applicant was not promoted along with his batchmates/juniors who had cleared the 'N' Cadre in time. The applicant was promoted to the rank of Havildar w.e.f. 28.04.2009 with seniority assigned from 01.01.2009. The applicant was entitled for promotion to the rank of Havildar w.e.f. the date when he qualified in 'N' Cadre i.e., 27.09.2008 instead of 01.01.2009.

2. Due to the seniority being wrongly assigned, it resulted in delay for attending 'S' Cadre Course which is essential for promotion to the rank of JCO. The applicant qualified the 'S' Cadre Serial No. 902 which was run from 14.03.2016 to 07.05.2016 whereas the batchmates/juniors had been promoted as Naib Subedar w.e.f. 01.03.2016.

3. If the correct seniority in the rank of Havildar from 27.09.2008 had been assigned, the applicant would have been entitled for promotion to the rank of Naib Subedar w.e.f. 01.03.2016 or at least w.e.f. 07.05.2016 when he qualified in the 'S' Cadre Course. The same had been denied by the respondents. In the meanwhile, the applicant had attained the age of 44 years on 21.12.2016 which is

the upper age limit for grant of promotion to the rank of Naib Subedar. As the applicant had crossed the upper age limit for grant of promotion, the respondents will deny promotion to the rank of Naib Subedar, on age grounds leading to a situation where the applicant will have to retire as a Havildar on 30.04.2020 on completion of 26 years.

4. The applicant had approached OIC Signal Records on 08.12.2017, 10.01.2018 and 28.02.2018 to rectify the wrong seniority which had been assigned, but did not elicit any favourable response. Feeling aggrieved by wrong assignment of seniority which is leading to non-promotion, the OA had been filed with a prayer for fixing his seniority as a Havildar w.e.f. 27.09.2008 and to consider and promote him to the rank of Naib Subedar w.e.f. 01.03.2016 or at least w.e.f. 07.05.2016 with all consequential benefits such as arrears of salary, seniority, continuity and future promotions.

#### **Brief Arguments by Counsel for the Respondents**

5. The applicant, born on 21.12.1972, was enrolled in the Army on 25.04.1994 and had been considered for promotion to the rank of Naik w.e.f. 01.01.2005, but could not be promoted as he was serving with IMTRAT Signal Company, Bhutan as a Signalman w.e.f. 01.07.2004 to 14.08.2006. Promotion while posted with IMTRAT is not permitted as per DG SD (SD-3) letter No. 83079/SD-3 (UN & TT) dated 12.04.1999 (Annexure R/3). On reversion from IMTRAT, the applicant had been promoted to the rank of Naik w.e.f. 01.06.2007 with ante date seniority w.e.f. 01.01.2005 i.e., date of seniority along with his batchmates.

6. The applicant had passed the 'N' Cadre for promotion to the rank of Havildar on 27.09.2008. The applicant did not have the minimum two ACRs in the rank of Naik at that point of time. The only ACR in the rank of Naik was for

e period 01.06.2007 to 31.12.2007 and the second one was due for the period 01.01.2008 to 31.12.2008. The moment he earned the second ACR on 01.01.2009, he was promoted to the rank of Havildar on 28.04.2009 with ante date seniority w.e.f. 01.01.2009 i.e., the date he met the stipulated QR of having two ACRs in the rank of Naik.

7. On 07.05.2016, the applicant had passed the 'S' cadre for promotion to the rank of JCO, for vacancies arising from 01.07.2016 to 31.12.2016. Before he could be promoted on occurrence of vacancy as per his seniority, the applicant had attained the upper age limit of 44 years, for promotion, on 20.12.2016. Hence, he could not be promoted and he was discharged on 30.04.2020.

8. In view of the above, the OA lacks substance and is recommended to be rejected being devoid of merit.

### **Consideration**

9. Heard both the parties and perused documents placed on record.

10. **Promotion to Rank of Naik.** We find that the applicant as a signalman had been posted with IMTRAT Signal Company, Bhutan, during the period. 01.07.2004 to 14.08.2006. Though considered for promotion to the rank of Naik w.e.f. 01.01.2005, while serving in foreign countries, promotion during the tenure was not permitted as per DG SD (SD-3) letter No. 83079/SD-3 (UN & TT) dated 12.04.1999 (Annexure R/3). On reversion from IMTRAT Signal Company, the applicant had been promoted to the rank of Naik w.e.f. 01.06.2007 with ante date seniority correctly assigned w.e.f.01.01.2005, i.e., date of seniority along with his batchmates.

11. **Promotion to Rank of Havildar.** For being promoted to the rank of Havildar, there was a requirement of minimum of two ACRs as per AGs Branch



ADG PS letter No. B/33513/AG/PS-2 (c) dated 10.10.1997 read in conjunction with Note No. B/33515/AG/PS-2 (c) dated 02.04.2014, in addition to qualifying in 'N' promotion cadre. Though the applicant had qualified in the 'N' promotion cadre on 27.09.2008, the criteria with regard to the number of ACRs required before promotion was not met. We find that the due date of initiation of ACR of Naik is 1<sup>st</sup> January every year as per Para 9 (a) (ii) (ab) of AO 01/2002/MP. As on 27.09.2008, when the applicant had cleared the 'N' promotion cadre, he had only one ACR for the period 01.06.2007 to 31.12.2007 and the next ACR was due only in January 2009. The applicant had been posted from 551 Sub Group to 31 RR Battalion on 27.10.2008. The moment, the applicant had earned the second ACR and having met the QR for promotion, same had been done w.e.f. 28.04.2009 with ante dated seniority w.e.f. 01.01.2009. The applicant has staked a claim that he should have been assigned seniority w.e.f. 27.09.2008 i.e., the day he cleared the 'N' Cadre which is unsustainable since at that point of time, the ACR Criteria, in terms of minimum 2 ACRs in the rank of Naik had not been met. There is also an averment by the applicant regarding his premature posting from 551 Sub Group to 31 RR Battalion w.e.f. 27.10.2008 i.e., immediately after clearing of the 'N' promotion cadre which might have affected him adversely. We do not find the same to have cast any adverse consequence on the applicant as he had been correctly promoted when necessary QR had been met.

12. **Claim for Promotion as Naib Subedar.**

(a) The applicant has argued that he was entitled for promotion to the rank of Naib Subedar w.e.f. 01.03.2016 (date when his batchmates were promoted as Naib Subedar) or at least w.e.f. 07.05.2016 when he qualified in the 'S' Cadre Course, if seniority as a Havildar would have been assigned from 27.09.2008. We find that this line of argument advanced is untenable, as on 01.03.2016, the applicant was neither qualified in the

promotion cadre, nor he could have been assigned seniority as a Havildar with effect from 27.09.2008 when he had not met the ACR criteria for promotion as a Havildar.

(b) The applicant had averred that as per **Para 6 (a)** of AG's Branch ADG PS letter No. B/33513/AG/PS-2 (c) dated 10.10.1997, he has met the criteria for promotion as a Naib Subedar. On perusal of Para 6 of AG's Branch ADG PS letter dated 10.10.1997 (Supra), we find that the same lays down only the ACR criteria for promotion. From the records, we observe that on passing the promotion cadre for a JCO on 07.05.2016, the applicant had been screened for promotion to the rank of JCO, for vacancies arising from 01.07.2016 to 31.12.2016. Before the applicant could be promoted on occurrence of vacancy as per his seniority, the applicant had attained the upper age limit of 44 years, for promotion on 20.12.2016, as laid down in Para 2 (a) of GoI, MoD letter No. F.14(3)/98/D(AG) dated 18.09.1998 and amendment dated 04.05.1999

13. Hence there is no substance in the claim that despite meeting the criteria for promotion for Naib Subedar, the applicant had not been promoted nor we find any illegality or arbitrariness on the part of the organization.

14. In view of the above, the OA is dismissed. No order as to Costs.

Pronounced in open Court on ----- 25<sup>th</sup> 11/2023.

(LT GEN GOPAL R)  
MEMBER (A)

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON