

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 77 of 2017**

Tuesday, this the 23<sup>rd</sup> day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Netra Pal Singh Yadav Ex. Lieutenant Commander (SDW), No. 89138-K S/o Shri Lajjaram Yadav, presently residing at House No-207, Flat No-203, Palm Residency Sector -16A, Nerul (west) Navi Mumbai-400706.

..... Applicant

Ld. Counsel for the: **Shri Yogendra Pratap Singh**, Advocate.  
Applicant

Versus

1. Union of India, (through Secretary of Ministry of Defence), 104, South Block, New Delhi-110011.
2. The Chief of the Naval Staff Integrated Headquarters of Ministry of Defence, (Navy), South Block, New Delhi-110011.
3. The Commander-in-Chief, Headquarters, Andaman & Nicobar Command, Port Blair-744102.
4. The Commanding Officer, INS Jarawa, C/o Navy Office, Port Blair-744102.

.....Respondents

Ld. Counsel for the  
Respondents.

: **Shri A.J. Mishra**, Advocate  
Central Govt. Counsel

**ORDER (Oral)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *Direct the Respondents to promote the applicant to the rank of Lieutenant (SD) w.e.f. 01/04/2003.*
- (b) *Promote the applicant to the rank of Lt. Commander (SD) w.e.f. 01.04.2007*
- (c) *Promote the applicant to the rank of Commander (SD) w.e.f. 01/04/2014.*
- (d) *Consider the application of the applicant for Re-employment as Commander/Lt Commander in accordance with applicable laws/orders in force.*
- (e) *Direct the respondents to issue appropriate directions and/or orders, and/or take appropriate steps to calculate the arrears and pay them within 03 months.*
- (f) *Direct the respondents to provide the cost to the applicant.*
- (g) *That such other and further reliefs, as nature and circumstances of this application may require for dispensing justice.*

2. Brief facts of the case are that the applicant joined the Naval service on 08.01.1982 as Sailor for 15 years. During the course of his service he was commissioned as Sub Lt (SDW) w.e.f. 01.04.2001. As per the prevalent policy he was promoted to the rank of Lt on completion of 03 years service i.e. on 01.04.2004. Later, this policy was abolished and new policy was introduced vide which the period required for promotion from Sub Lt to Lt was

reduced by one year by the respondents in respect of both General List and Special Duty List officers. Accordingly, NI 01/96 was amended vide Corrigenda No 5 of NI 01/96 to make the criteria for promotion from Sub Lt (SD) to Lt (SD) as 2 years as against 3 years. In the year 2000 the eligibility for promotion to the rank of Lt, which was two years, was not found acceptable amongst the three services and it was decided to revert back to three year period vide Govt of India, Min of Def letter dated 2000. Accordingly, all officers promoted subsequent to that date were promoted to the rank of Lt on completion of 3 years service as commissioned officers. Promotions to the rank of Lt made earlier in two year scheme were also reverted in three years scheme. Applicant has filed this O.A. for grant of promotion to the rank of Lt vide Corrigenda No 5 to NI 01/96 i.e. after two years from the date of first commission. In this regard the applicant submitted two redressal of grievances (ROGs) in the year 2015 which were disposed of vide letter dated 28.05.2015 intimating him that his representation is not maintainable. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the Indian Navy on 01.04.2001 as Sub Lt (SD). This meant that he decided to go for this scheme of promotion/commission on the basis of promotion prospects existing then. He further submitted that as per promotion criteria prevalent

at that time, the applicant was to be promoted to the rank of Lt w.e.f. 01.04.2003 i.e. 02 years from the date of promotion to Sub Lt. His contention is that the respondents erroneously promoted to him w.e.f. 01.04.2004 i.e. 03 years from the date of promotion to Sub Lt which is blatantly in contravention of the then criteria in vogue.

4. Learned counsel for the applicant further submitted that as the promotion to the rank of Lt Cdr and Cdr are based on the date of promotion to the rank of substantive rank of Lt, the applicant was promoted to the rank of Lt Cdr late by one year and due to which he could not be promoted to the rank of Cdr as he superannuated before the date of promotion. His other contention is that promotion policy and criteria cannot be changed casually as a routine matter, more so to the disadvantage to the persons affected by such changes. The promotion of the applicant was governed by NI 1/96 which was having criteria for promotion to Lt on completion of 02 years from the date of promotion to the rank of Sub Lt and, therefore, he should have been promoted to the rank of Lt w.e.f. 01.04.2003.

5. Further submission of learned counsel for the applicant is that NI 1/96 came into existence w.e.f. 01.03.1996 and governed the promotion criteria till 16.12.2004 i.e. till report of AVSC, therefore, as the applicant was promoted to the rank of Sub Lt on 01.04.2001 and was due for promotion to Lt well before the

implementation of AVSC, his promotion to the rank of Lt was squarely covered by the said NI. He submitted that as per the promotion criteria of the said NI the applicant should have been promoted to the rank of Lt w.e.f. 01.04.2003. His further contention is that once the applicant was correctly promoted to the rank of Lt on 01.04.2003, he would have been promoted to the rank of Lt Cdr on 01.04.2007 (AVSC) and Cdr on 01.04.2014 (AVSC) before superannuation from service on 28.02.2015. He pleaded for grant of Lt rank w.e.f. 01.04.2003.

6. On the other hand, learned counsel for the respondents submitted that the applicant was commissioned in the rank of Sub Lt on 01.04.2001 from Naval ranks. Accordingly, he was promoted to the rank of Lt w.e.f. 01.04.2004 after completion of 03 years service as per NI 01/96. It was further submitted that the officer streams in Indian Navy consists of two categories i.e. General List Officer category and Special Duty List category. Both these categories have two different modes of entry with differences in qualifications required for entry and are governed by different conditions of service including assignment of duties and promotion prospects. The General List Category officers are inducted directly as officer cadets but SD List Officers are promoted from the Sailors rank, who after successfully completing the qualifying exams are granted commission.

7. Learned counsel for the respondents further submitted that the period required for promotion from Sub Lt to Lt was reduced by one year in respect of both General List and SD List officers as per Corrigenda No 5 of NI 01/96 to make criteria for promotion from Sub Lt (SD) to Lt (SD) as 2 years as against 3 years. It was further submitted that in the year 2000 when the eligibility for promotion to the rank of Lt (which was two years) was not found acceptable amongst the three services it was decided to revert back to 03 years period vide policy letter dated 14.01.2000 and all officers promoted subsequent to that date were promoted to the rank of Lt on completion of three years service as commissioned officers and promotion to the rank of Lt made earlier in two years scheme was also reverted in 03 years scheme. The learned counsel pleaded for dismissal of O.A. on the ground that applicant's promotion was made to the rank of Lt w.e.f. 01.04.2004 strictly as per policy in vogue.

8. Heard Shri Yogendra Pratap Singh, learned counsel for the applicant and Shri AJ Mishra, learned counsel for the respondents and perused the record.

9. Officer streams in Indian Navy consist of two categories i.e. General List Officer Category and Special Duty List Category. Both these categories have two different modes of entry with differences in qualifications required for entry and are governed by different conditions of service including assignment of duties and

promotion prospects. General List Category Officers are inducted directly as cadets and then commissioned as officers and Special duty List Officers are promoted from the Sailors rank, who after successfully completing the qualifying examinations are granted commission. Prior to acceptance of recommendations of V<sup>th</sup> CPC, the eligibility for promotion from the rank of Sub Lt to Lt was three years for both the category of officers as per NI 01.96.

10. Applicant was enrolled in the Indian Navy on 08.01.1982 as Sailor and he got commission w.e.f. 01.04.2001 as Sub Lt (SD). He was promoted to the rank of Lt w.e.f. 01.04.2004 after completion of 03 years service as per NI 01/96. The aforesaid NI was subsequently amended vide corrigenda No 5 to NI 01/96 according to which 03 years tenure was reduced to 02 years and subsequently it was replaced by policy letter dated 14.01.2000 which again reverted 02 years period to 03 years as the 02 years tenure was not found acceptable amongst the three services. For convenience sake, extracts of Corrigenda No 5 to NI 01/96 and policy letter dated 14.01.2000 are reproduced as under:-

Extract of Corrigenda No 5 to NI 01/96

“2 (a). Delete words ‘three years’ and substitute with ‘two years in line 2 and delete word ‘Acting Sub Lieutenant’ in line 3 of para 22 (a) (i).

(b) Delete words ‘11 years’ in line 2 of para 22 (a) (ii) and substitute with ‘10 years’.”

Extract of policy letter dated 14.01.2000

x x x x x x x x x x x x x x x x x x

<u>Arms/Service/Corps</u>	<u>Rank</u>	<u>Years</u>
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Navy (SD List Officers)	Lt	3
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x x x x x x x x x x x x x x x x

*The respective rules/regulations in this regard will be amended by the service HQs in consultation with their administrative wing in Ministry of Defence.*

*This issues with the concurrence of Defence (Finance/AG) vide their U.O. No. 239 PA dated 12.01.2000."*

11. We have observed that the applicant is relying on the Corrigenda No 5 to NI 01/96 which was subsequently replaced by policy letter dated 14.01.2000. At the time when the applicant was promoted to the rank of Lt, policy letter dated 14.01.2000 was in force and he was dealt with in accordance with the said policy. Consequent upon re-structuring of officers cadre in the Armed Forces as a result of implementation of AVSC, policy letter dated 11.03.2005 was issued laying down the revised criteria for promotion inter alia to the rank of Lt and the said policy is still in force.

12. Applicant had submitted various representations to the authorities concerned including redressal of grievance dated 25.02.2015 which was turned down vide letter dated 28.05.2015.

The extract of aforesaid letter is reproduced as under:-

*"1. Refer to your letter No ANC/51214/Pers (N)/89138K dated 25 Feb 15.*

*2. Vide his representations dated 28 Jan 15 and 29 Jan 15 forwarded vide your above quoted letter, Lt Cdr NPS Yadav (89138K) (Retd), has requested that he may be promoted to the rank of Cdr as per policy applicable to officers of the Army and Air Force. Further, the officer has requested that MoD letter No 3(3)/98/DO (P)/D(N-II) dated 17 Mar 99 regarding the age of compulsory retirement of Cdr (SD) as 54 years and for Lt Cdr (SD) as 52 years be amended.*

*3. It is submitted that the above requests of the officer cannot be acceded to. The policy of promotion and retirements as laid down for Navy has been applied on the ret'd offr also and as such no injustice has been meted out to him. In the circumstances, the representation is not maintainable in this regard."*



13. With regard to change of policy as contended by learned counsel for the applicant we may refer to the Hon'ble Apex Court judgment in the case of **Col AS Sangwan vs Union of India & Ors**, 1980 (Supp) SCC 559 in which it has been held that in the absence of any statutory rules, policy decision can be changed by the Govt at any time and a new policy can be made, provided it is not arbitrary. The operative portion of the aforesaid judgment is reproduced as under:-

*"4. The policy statement of 1964 was, as we have earlier stated, not issued under any rules or regulations or statute. The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of defence, Court should be cautious although Courts are not powerless.....A policy once formulated is not good forever; it is perfectly within the competence of the Union of India to change it, the compulsions of circumstances and the imperatives of national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India."*

14. The applicant was promoted to the rank of Lt on 01.04.2004 in accordance with NI 01/96 and policy letter dated 14.01.2000 which was in force at that time, therefore, in our view no injustice seems to be meted out to the applicant. Applicant's other prayer is for grant of re-employment. In this regard the respondents may consider his case in accordance with existing policy.

15. In view of the fact that no injustice was done to the applicant, this O.A. is liable to be dismissed. It is accordingly, **dismissed**.

16. No order as to costs.

17. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 23 August, 2022

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