

ARMED FORCES TRIBUNAL, KOLKATA BENCH

O.A.No. 83/2022

THE 17TH DAY OF APRIL, 2024
No. 15419994-F Hav (Clk SD) Manab Mondal
..... Applicant

-Vs-
Union of India & Ors. Respondents

Advocates present:

For the applicant,
Mr. Gunjan Kumar Singh, Advocate
Mr. Kanchan Das, Advocate

For the respondents,
Mr. Ajay Chaubey, Advocate

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (JUDICIAL)
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE)

ORDER (Oral)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (JUDICIAL)

Heard.

(2) In this application following reliefs have been sought to be granted:

- (a) To direct the respondents to quash or set aside the impugned punishment of severe reprimand imposed on the applicant, and promote him to the next rank of Naib Subedar with retrospective effect i.e. 01.06.2021 with all consequential benefits;
- (b) To direct the respondent No.1 to 3 to exemplarily penalise the respondent No.6 and 7 for ill-treating the applicant which tantamounts to committing the offence under Section 47 of the Army Act, 1950; and

(c) To pass any other or further orders as deemed fit and proper in the given facts and circumstances of the case.

(3) The main grievance of the applicant as has been brought to the notice of this Court in a nutshell is that he has been denied the promotion to the post of Naib Subedar consequent upon the penalty of reprimand imposed on him in the proceedings conducted summarily against him on the charge that he has disobeyed orders of his superior officers in an illegal and arbitrary manner. Also that the statutory complaint he filed on 28.02.2022 has also not been considered and decided by the competent authority, hence this OA.

(4) This matter when came up for hearing before this Bench on the previous date it was brought to our notice that the statutory complaint filed by the applicant stands rejected by the competent authority long back on 11.04.2023.

(5) Learned counsel for the applicant had sought time to have instructions on the previous date. The order passed reads as follows:

“During the course of hearing learned Sr.PC has apprised us that the statutory complaint filed by the applicant on 03.06.2021 stands considered and rejected on 11.04.2023 during the pendency of this application. The said order, however, has not yet been placed on record either by the applicant or the respondent-Union of India. In order to decide the point in issue involved in this application effectively and judiciously, the order rejecting the statutory complaint is required to be assailed in accordance with law.

Learned counsel representing the applicant prays for and is granted 2 weeks’ time to have instructions in this regard.

List for continuation on 17.04.2024.

It is made clear that this matter will be disposed of finally on the next date.”

(6) The applicant has now filed an application registered as MA No.39/2024 with a prayer to allow him to challenge the order dated 11.04.2023 by way of incorporating amendment in the OA and also the prayer clause.

(7) We fail to understand as to why the said order received long back has not been challenged as yet by the applicant. The application now filed for seeking amendment in the OA is available at pages 159 and 160 of the paper book.

(8) We are not inclined to allow the amendment in the OA since the amendment as is now being sought if allowed is likely to change the nature of the pleadings entirely and also the relief sought.

(9) We feel that liberty can be granted to the applicant to challenge the order dated 11.04.2023 by way of filing OA afresh raising therein all the questions of law and facts as raised in this OA.

(10) As regards the claim of the applicant for promotion to the rank of Naib Subedar, a direction can be issued to the respondents to promote him as such from the due date with all consequential benefits in case he ultimately is held entitled thereto. Therefore, no prejudice is likely to be caused to the applicant on this score also.

(11) Confronted with the legal and factual aspects of the matter as discussed above, learned counsel representing the applicant seeks permission to withdraw the OA at this stage with liberty to file afresh challenging therein the order dated 11.04.2023 and also raising all the questions of law and facts as raised in this OA.

(12) The leave and liberty as has been sought by the applicant is granted. The OA as such is dismissed as withdrawn with liberty reserved to the applicant to file the same afresh.

(13) This original application is accordingly disposed of. M.A.No. 39/2024 and any other miscellaneous application(s) if any pending will also stand disposed of accordingly.

LT GEN SHASHANK SHEKHAR MISHRA
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY
HON'BLE MEMBER(J)

vr/na