

FORM NO. 21
(SEE RULE 102(1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

OA No.34/2016.

THURSDAY, THE 12TH DAY OF SEPTEMBER, 2024.

Sepoy Ashok Kumar Tarafdar(Rtd).

... Applicant.

-Vs-

Union of India and others.

... Respondents.

Advocates:

For the applicant,

Mr K Ramesh,
Ms Archana Ramesh,
Mr SK Choudhury.

For the respondents,

Mr Ajay Chaubey, Sr Panel Counsel.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

(2) In this application filed under Section 14 of the Armed Forces Tribunal Act, 2007, direction has been sought to be issued to respondents

to promote the applicant to the rank of Naik with effect from 28.01.1992 to 01.10.1999 with all consequential benefits including payment of revised pension in the same rank for life.

Any other or further order as deemed fit and proper in the given facts and circumstances of the case has also been sought to be passed in favour of the applicant.

(3) Admittedly, the applicant was promoted to the rank of Naik with effect from 28.01.1992 (Annexure A1). This document reveals that he was promoted to the rank of Naik on 28.01.1992, however the promotion order published by the Signal Records on 08.10.1992. Also, that he could not be physically promoted during the period from 28.04.1993 to 27.10.1999 being in low medical category. According to the respondents, the promotion of the applicant to the rank of Naik could not be given effect as he was placed in LMC EEE, hence an embargo on promotion as provided in AHQ policy letter dated 10.10.1997 (Annexure A2).

(4) Aggrieved by such conduct of respondents the applicant submitted a statutory complaint (Annexure A3) to respondent No.2 but ill luck would have it, he received no reply, prompting him to file this application on the grounds inter alia that on 28.01.1992 when promoted he was in SHAPE-I category. He met with an accident while in service on 08.10.1992 and it is on this very day intimation qua promotion with effect from 28.01.1992 was given to him without any justification for 9 months' delay. The said

letter, according to the applicant, neither reached the Unit where he was posted nor did any one inform him of this. It is the Signal Records who is at fault, hence the applicant cannot be penalised therefor. It appears that Signal Records was waiting for the applicant to have met a road accident receiving injury and later on to be placed in low medical category from 28.04.1993 to 27.10.1999.

4(a) Applicant submits that had the order of promotion from 28.01.1992 been timely conveyed to him he would have worn the stripes of Naik and his pay and allowances been also increased. Being not in low medical category at that time he might not have been debarred from continuing his status as Naik and the disability he incurred upon in the month of April 1993 could not have debarred him from promotion from a date much, much earlier than 28.04.1993.

(5) The respondents when put to notice have admitted the entire case of the applicant as set out in the Original Application. Applicant having met with an accident on 08.10.1992 and remained hospitalised till 27.04.1993 is the sole ground for denying him promotion. As he was in LMC EEE(P) from 28.04.1993 to 27.10.1993, promotion to the rank of Naik could not be given due effect; rather, cancelled vide Signal Records letter dated 15.06.1993 in terms of Para 4 of AHQ letter dated 10.10.1997(Annexure A4/RII). The application as such has been sought to be dismissed.

(6) On the completion of records we have heard learned counsel on both sides and also gone through the records.

(7) Before coming to the merits of the case it is deemed appropriate to point out that this application has been filed beyond the period of limitation. However, an application, registered as MA No.54/2016, was filed for condonation of delay. This Bench vide order dated 01.02.2018 had allowed the application and ordered to condone the delay subject to the condition that in case the OA allowed arrears would be restricted to 3 years preceding the date of its institution. Therefore, the delay stands condoned.

(8) Order dated 08.10.1992(Annexure RIII) reveals that the applicant was promoted to the rank of Naik from back date i.e. 28.01.1992. But ill luck would have it, he met with an accident on 08.10.1992 itself and remained hospitalised till 28.04.1993. However, the applicant is not at all at fault, because from 28.01.1992, the day from which promoted to the rank of Naik, till 08.10.1992, the day when met with an accident, he was not in low medical category. Had his promotion orders been issued earlier the same would have been given due effect and he enjoyed all monetary benefits attached with higher rank. It is the delay of 9 months on the part of respondents that deprived him of such legitimate benefits. Therefore, he cannot be held responsible therefor and to put in a disadvantageous

position. The denial of the benefit of promotion by way of cancellation of the same later on vide letter dated 15.06.1993 is not only illegal but factually also unsustainable and it is for this reason the same has not been placed on record. Otherwise also no such decision could have been taken in the peculiar facts and circumstances of the case i.e. on the day of his promotion he was in SHAPE-I. The promotion therefore should have been given due effect at once and not delayed unreasonably for about 9 months. The plea raised by the respondents in their defence as such is neither legally nor factually sustainable. Therefore, the impugned order dated 15.06.1993 referred to in para 9 of the reply deserves to be quashed and set aside.

(9) For all the reasons herein above this application succeeds and the same is accordingly allowed. Consequently, the impugned order dated 15.06.1993 is quashed and set aside. There shall be a direction to the respondents to treat the applicant as having been promoted on and with effect from 28.01.1992 for all intents and purposes and with consequential benefits up to date i.e. 01.10.1999, the day when he was discharged from service. Thereafter he would also be entitled to revised pension in the rank of Naik for life. Due and admissible arrears restricted to 3 years preceding the date of institution of this application i.e. 09.03.2016 shall be calculated and released to the applicant within 3 months from the date of receipt of certified copy of this order by learned Sr Panel Counsel/OIC Legal Cell

failing which together with interest @ 8% per annum from the date of this order till realisation of the entire amount.

(10) The application is accordingly disposed of. Miscellaneous application(s) if any pending will also stand disposed of accordingly. No order so as to costs.

LT GEN SHASHANK SHEKHAR MISHRA

HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY

HON'BLE MEMBER(J)

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