



Sr. No

2025:JKLHC-JMU:2560-DB

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 3296/2023

Pritam Singh Jamwal
Subedar AA (Retd.) (No. JC-690297H)
S/o Late Sh. Dharam Singh Jamwal
Trikuta Nagar Jammu, J&K

.....Applicant(s)/Petitioner(s)

Through :- Mr. Nitin Bhasin, Advocate

v/s

1. Union of India and others
Through Secretary to Govt.,
Ministry of Defence,
New Delhi.

.....Respondent(s)

2. The Director General of Medical Services (Army)
DGMS-3D (Legal)
Adjutant General Branch,
Integrated HQ of MOD (Army)
L-Block New-Delhi-1.

3. The Officer Incharge
Army Medical Corps Record Office, Lucknow
Pin 900450 C/o 56 APO.

Through :- Mr. Vishal Sharma, DSGI with
Mr. Sumant Sudan, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER (ORAL)
21.08.2025

1. The petitioner, a retired Subedar from Indian Army, has invoked an extraordinary jurisdiction vested in this Court under Article 225 of the Constitution of India, to throw challenge to order and judgment dated 28.11.2023, passed by Armed Forces Tribunal, Regional Bench, Srinagar at Jammu ("**the Tribunal**"), in T.A. No. 51/2016, titled "Pritam Singh Jamwal v. Union of India and others", whereby the application filed by the



petitioner for seeking his promotion to the rank of Subedar Major has been dismissed.

2. The impugned judgment is challenged by the petitioner on multiple grounds. However, before we advert to the grounds of challenge urged by learned counsel appearing for the petitioner, we deem it appropriate to give brief resume of the background facts.
3. The petitioner was enrolled in the Army Medical Corps on 18.06.1969, and was discharged on completion of his term w.e.f. 01.07.1995 in the rank of Naib Subedar. A few days before his discharge, the petitioner along with other eligible Naib Subedars was considered for promotion to the rank of Subedar in June, 1995, but was superseded on the ground that he did not fulfill the criteria of ACRs as per the promotion policy then in force.
4. The supersession was challenged by the petitioner before this Court in SWP No. 146/1996, which was disposed of by Single Bench of this Court vide judgment dated 29.02.2000, by holding that consideration of case of the petitioner under the old policy was illegal and that the petitioner was entitled to be considered in the light of changed policy of promotion. Feeling aggrieved by the said judgment of Single Bench, the Union of India preferred an appeal under Clause 12 of Letters Patent before the Division Bench of this Court. However, during the pendency of the Letters Patent Appeal, the judgment of the Single Bench was implemented and the petitioner was promoted to the rank of Subedar (AND ASST) w.e.f. 01.07.1995, with all consequential benefits. He was, thus, deemed to have retired as Subedar on 01.07.1997.
5. It is a specific case setup by the petitioner in the T.A. filed before the Tribunal that after the implementation of the judgment of Single Bench and



dismissal of LPA as having been rendered infructuous, it came to his notice that a Junior Subedar namely Devi Datt stood promoted to the rank of Subedar Major on 16.05.1997. Immediately, claims the petitioner, a representation was made to the respondents for seeking promotion to the rank of Subedar Major. The claim put forth by the petitioner for such promotion was rejected by the respondents on the ground that the petitioner having not physically worked between 01.07.1995 up to 01.07.1997, did not fulfilled the laid down criteria for promotion to the rank of Subedar Major. Feeling dissatisfied by the rejection of his case, the petitioner filed T.A. No. 51/2016, before the Tribunal, which upon contest by the respondents, has been dismissed by the Tribunal vide its order and judgment impugned in this petition.

6. The impugned judgment is assailed by the petitioner primarily on the ground that the Tribunal has not appreciated that service tenure of the petitioner was truncated by two years by an action which was later held by learned Single Judge to be illegal.
7. Mr. Nitin Bhasin, learned counsel appearing for the petitioner, would therefore argue that had the petitioner been given his due promotion in June 1995 itself, he would have continued in actual and physical service of the Army till 01.07.1997, and if that would have been the position, the petitioner would have surely fulfilled the criteria and promoted to the rank of Subedar Major along with his Junior Subedar Devi Datt.
8. *Per contra*, the stand of the respondents is the same as is reflected in the written statement filed before the Armed Forces Tribunal and taken note of hereinabove.



9. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned passed by the Tribunal is legally erroneous and, therefore, cannot be sustained. After the judgment of the learned Single Judge dated 29.02.2000, passed in SWP No. 146/1996 was implemented and the petitioner was held entitled to promotion to the rank of Subedar w.e.f. 01.07.1995 with all consequential benefits, subject only to the final outcome of LPA, which at the relevant point of time was pending in this Court, there was no reason or justification not to consider the case of the petitioner for promotion if such right had accrued to him between 01.07.1995, up till 01.07.1997. It is not disputed by the respondents that on 16.05.1997, a Junior to the petitioner, namely Subedar Devi Datt, came to be promoted to the rank of Subedar Major. The respondents have sought to deny the right of consideration for promotion to the rank of Subedar Major to the petitioner only on the ground that from the date of his discharge as Naib Subedar i.e. 01.07.1995 to 01.07.1997, the date on which he was later retired notionally after giving him promotion to the rank of Subedar, the petitioner had not physically performed his duties in the field area and that he also did not fulfill other criteria laid down for promotion to the rank of Subedar Major. We find the stand taken by the respondents malicious and absolutely faulty. Undisputedly, the petitioner could not perform his duties between 01.07.1995 to 01.07.1997 because he was kept out of service by the respondents by superseding him in the process of promotion to the rank of Subedar illegally. This has been so held by the learned Single Judge in his judgment dated 29.02.2000. Interestingly, the respondents though challenged the judgment of the Single Bench before the Division Bench,



yet later decided to implement the judgment of Single Bench and getting their appeal dismissed as infructuous. In such situation, the non-performance of duties by the petitioner in the rank of Subedar from 01.07.1995 to 01.07.1997 cannot be attributed to the petitioner. We find substance in the argument of Mr. Nitin Bhasin, that had petitioner been treated fairly in the year 1995 itself and given promotion to the rank of Subedar along with his junior, he would have been in active service of the respondents during the period from 01.07.1995 to 01.07.1997 and fulfilled the requisite criteria for promotion to the rank of Subedar Major. Before we conclude, we deem it appropriate to set out the criteria indicated by the respondents in the reply/affidavit, which a Subedar is required to fulfill for promotion to the rank of Subedar Major. The criteria reads thus: -

- i. Promotion to the rank of Subedar Major is based on overall performance (OAP) system.
- ii. Five ACRs in the rank of Junior Commissioned Officer are mandatory.
- iii. Requirement of other factors like courses, service in field area in the last five years, honours and awards are also taken into account.

10. When we examine the case of the petitioner in light of the aforementioned criteria, we find that it is open to the respondents to make an overall assessment of the petitioner on the basis of OAP system for considering his candidature for promotion to the rank of Subedar Major. It is equally within the powers of the competent authority considering promotion to insist for five ACRs in the rank of Junior Commissioned Officer, which as per the criteria are mandatory. However, in the case of the petitioner, his ACRs for the two years i.e. 1995-96 and 1996-97 are required to be treated on par and identical to the average of the ACRs of last three years. The ACRs of the petitioner as



Naib Subedar for three years could be a guiding factor for considering his case for promotion. Similarly, five years of service in the field area in the case of the petitioner would be three years prior to his promotion as Subedar and two years when he was prevented from rendering his service as Subedar by inaction, which has been declared by this Court as illegal and accepted by the respondents.

11. For the foregoing reasons, we are inclined to accept this petition and set aside impugned order passed by the Tribunal. Ordered accordingly. Consequently, the T.A. is allowed with a direction to the respondents to consider the case of the petitioner for promotion to the rank of Subedar Major on the analogy of his junior, namely Subedar Devi Datt, and as per the laid down criteria. While considering the case of the petitioner, the observations made above and the manner in which the criteria would be applied to the petitioner, shall be adhered to. Let the matter be considered by the competent authority and appropriate orders be passed within three weeks from today.
12. If upon consideration the petitioner is found entitled to promotion, the same shall be with all consequential benefits, however, restricting the arrears to only three years prior to the filing of T.A. No. 51/2016.
13. **Disposed of.**

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
21.08.2025
Vishal Khajuria

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No.</i>