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W.P.No.29739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.29739 of 2023
and
W.M.P.No.29348 of 2023

M.Sadasivam

.... Petitioner

VS

- 1.Union of India
rep.by the Secretary,
Ministry of Defence,
Room No.227 B Wing,
Sena Bhawan,
New Delhi 110 011.
- 2.The Chief of the Army Staff,
Army Head Quarters,
Integrated Head Quarters of MoD (Army),
DHQ Post South Block,
New Delhi 110 001.
- 3.The Principal Controller of Defence Accounts,
Draupadi Ghat, Allahabad 211014.
- 4.The Commander,
617(I), Air Defence Brigade,
C/o.56 APO



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5.The Commanding Officer,
129 AIR Defence Regiment
PIN 926129 C/o 56 APO

6.The Senior Records Officer,
AAD Records,
Golabanda 761002,
Gangjam District,
Orissa State 761 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the order dated 25.11.2022 passed in O.A.No.81 of 2020 on the file of the learned Armed Force Tribunal and Letter AAD/651/CPGRAMS/105/ESM CELL dated 06.03.2020 issued by the 5th respondent and quash the same as illegal and consequently direct the respondents issue part II order for the period from 07.07.2016 to 21.02.2018 and also grant Honorary Commission/Rank to the petitioner.

For Petitioner : Mr.P.Amritraj

For Respondents : Mr.A.Kumarasamy, Senior Panel Counsel
for R1 to R6

ORDER

(Order of the Court was made by J.NISHA BANU, J.)

This Writ Petition has been filed challenging the order dated 25.11.2022, passed in O.A.No.81 of 2020, on the file of the learned Armed



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Force Tribunal, whereby, the Tribunal confirmed the order of rejection passed by fifth respondent dated 06.03.2020. The petitioner also seeks for a direction to the respondents to issue part II order for the period from 07.07.2016 to 21.02.2018 and also grant Honorary Commission/Rank to the petitioner.

2. The case of the petitioner is that he was enrolled in the Army on 08.04.1989 and discharged from service on 30.04.2019 after rendering 30 years and 23 days of service. The petitioner was commissioned to the rank of JCO on 20.04.2012 on merit. The petitioner contends that his name ought to have been considered for promotion to the rank of Sub Maj during 2016. Since his name has not been considered, he preferred representation dated 13.07.2018 to the competent authority, requesting to publish his name in Part-II order. He also filed appeal dated 05.07.2019 against denial of promotion to the rank of Subedar Major.

3. The 5th respondent passed the order dated 06.03.2020 in the appeal and representation of the petitioner stating that the petitioner was considered in the year 2017 and 2018 by the departmental promotion committee. However, he was not merited in the first and second look.



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4. Aggrieved by the order of the 5th respondent, the petitioner filed O.A.No.81 of 2020 before the Armed Forces Tribunal. The learned Judge, Tribunal after analysing the facts of the case and the submissions placed before him, dismissed the OA, against which the petitioner has filed the present Writ Petition.

5. The learned counsel for the petitioner contends that the petitioner sent representation on 13.07.2018 requesting to publish Part II orders of CI Ops (J&K) from 23.12.2016 to 21.02.2018. Even though the petitioner's name was in DPC list of Unit 129 AD Regiment Kashmir during October 2017 and October 2018, he lost promotional opportunity to the rank of Subedar Major, since 17 months and 7 days service was not reflected and not taken for merit. This denial of opportunity was purely due to non publication of Part II orders. The learned counsel further contends that the petitioner's name was left out intentionally in the active list for promotion to be considered for grant of Sub Maj rank during 2016 itself as well as Honorary Commission by DPC. Therefore, the learned counsel prayed for a direction to the respondents to issue Part II order for the period from 07.07.2016 to 21.02.2018.



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6. The learned Senior Panel Counsel for the respondents would submit that the promotion to the rank of Sub Maj is controlled centrally in Corps Promotion Roster and not on the basis of Unit Promotion Roster. Further this promotion is not only based on seniority but also based on overall performance. The entire batch of Subedars of the subject year was considered while drawing a panel through Department Promotion Committee (DC). The petitioner was promoted to Subedar rank w.e.f. 01.03.2014 and all Subedars of Army Air Defence Corps promoted in 2014 were considered by DPC in 2017 for promotion to Sub Maj. The petitioner was considered in DPC 2017 at first look and DPC 2018 at second look, but he did not come in the merit of both DPCs.

7. The learned Senior Panel Counsel for the respondents further submitted that for grant of Honorary Commission on active list in the last year of their colour service would be given two chances. The petitioner was found eligible for consideration of grant of Honorary Commission on Independence Day 2018 at his first chance and Republic Day 2019 at last chance before his retirement. Master Sheet with service particulars was prepared and sent to



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petitioner's unit two years in advance for checking correctness and counter signature of Commanding Officer. The grant of Hony Commission is a merit based selection carried out based on overall service profile of JCOs. Eligible profiles are forwarded through respective Command Hqrs on Recommendation Roll. The Recommendation Rolls sent on two occasions in respect of the petitioner was forwarded. But the petitioner's name was not promulgated in the Gazette notification for awardees on both the occasions. Hence, it is evident that the petitioner did not meet the required merit criteria. After retirement of the petitioner, his name was submitted to the concerned authority for consideration of Honorary Rank vide letter dated 26.04.2019 and accordingly, he was awarded Hony Sub Maj on retirement. The learned Panel counsel therefore would submit that the order of the Tribunal is based on entire service records of the petitioner and the well reasoned order needs no interference of this court.

8. We have considered the submissions made on either side and perused the materials available on record.



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9. It is seen from the records that the petitioner was enrolled in the Indian Army on 08.04.1989. He was promoted to the rank of Naib Subedar on 16.04.2012 and to the rank of Subedar on 01.03.2014 as per his seniority in the Unit. As per the policy decision, all Sub Majors and Subedars are considered for grant of Hony Commission on Active List in the last year of their coloured service in two chances viz., Independence day and Republic Day. But he was not found merited in both the chances.

10. The learned Judge, Tribunal has rightly considered the case of the petitioner and found that the petitioner's name was included for consideration at two looks in DPC 2017 and 2018 for promotion to the Rank of Sub Major, but since he did not make the cut off in the merit list, he was not given the rank of Sub Maj. The learned Judge, Tribunal, further held that the petitioner has suffered no injustice in the two Looks of DPC consideration and found that no infirmity in the selection process and had dismissed the petitioner's O.A.No.81 of 2020, vide impugned order dated 25.11.2022. We do not find any error in the observations made by the learned Judge, Tribunal.



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11. In view of the foregoing reasonings, finding no infirmity in the well reasoned order of the learned Judge, Armed Forces Tribunal, dated 25.11.2022, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) (N.M., J.)
16.10.2023

sk

Index : Yes / No

Internet : Yes / No

Neutral citation : Yes / No

To

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