

2025:PHHC:000151-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-28768-2024
Reserved on: 25.11.2024
Pronounced on: 07.01.2025

Vipan LalPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Navdeep Singh, Advocate with
Ms. Roopam Atwal, Advocate and
Ms. Srishti Sharma, Advocate
for the petitioner.

Ms. Bhavana Datta, Senior Panel Counsel
for respondent Nos. 1 to 4 – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 04.04.2024 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned.

Factual Background

2. The petitioner was enrolled in the Indian Army on 07.10.1998 and attained the rank of *Havildar*. He qualified the promotion course for promotion to Naib Subedar '*Junior Commissioned Officer*'. Despite qualifying the said course, the petitioner was not promoted to the rank of Naib Subedar, whereas, his

2025:PHHC:000151-DB



juniors were promoted, for the reason that the petitioner did not fulfil the laid down criteria. As per the policy, minimum two of the last five Annual Confidential Reports of the soldier concerned, were required to become earned in a “Regimental Appointment”, whereas, the petitioner had only one such report.

3. Feeling aggrieved from the afore, the petitioner filed Original Application before the learned Armed Forces Tribunal concerned, rather praying for grant of promotion to the post of Naib Subedar. The said O.A. became dismissed vide order dated 04.04.2024. The operative part of the order is extracted hereinafter.

“8. In the facts of this case, the principle of estoppel will apply to the applicant rather than the respondents.

9. For the foregoing reasons, the present Original Application has no merit and is dismissed.”

4. Aggrieved from the afore dis-affirmative order, the petitioner has filed thereagainst the instant writ petition.

Submissions of the learned counsel for the petitioner and inferences of this Court.

5. The learned counsel for the petitioner submits that as per paragraph No. 4 of the master policy dated 10.10.1997, contents whereof become extracted hereinafter, in order to safeguard the promotional prospects of army personnel, they were required to be not detailed on Extra Regimental Appointment, and only such personnel were to be sent to ERE, whose promotional prospects theretos rather become not affected. Moreover, even if such personnel become sent on ERE, yet they were to be reverted to 'Regimental Duty', whereby they

2025:PHHC:000151-DB



4. *In order to safeguard the promotion prospects of such Personnel on ERR, the following measures will be adopted :-*
- a) *JCO/NCOs who are expected to get promotion to higher ranks during the period of their terms on ERE should not be derailed on ERE.*
 - b) *Only junior JCOs/NCOs whose tenure on ERE will not interfere with their promotional prospects should be posted on ERE.*
 - c) *Only those JCOs/NCOs who have already earned Regimental/Instructional report(s) in the rank held as per the criteria should be posted on ERE and be reverted to Regimental/Instructional duty well in time to remain eligible for promotion.*
 - d) *The tenure of Clerks (GD) on ERE with Army HQ may be allowed upto 4 years provided the promotional prospects of the JCOs/NCOs concerned do not suffer adversely owing to their not having earned the requisite Regimental/Instructional report (s) in the rank held.*
6. Further, it has been averred that the mere excuse, that the petitioner was sent on ERE, on his own request owing to his wife's illness, could not absolve the respondents from adhering to their own policy, as there is nothing on record to show, that the petitioner was informed about the fact, that he would not be promoted in case he opted for a ERE appointment, thus for taking care of his wife's illness. Consequently, since an imperative duty became cast upon the respondents, to, in terms of the policy (supra), thus ensure that the present petitioner, becomes posted on regimental duty, especially for thereby his promotional prospects remaining un-affected. Therefore, it is submitted that the beneficent effect of the supra policy is to be bestowed upon the petitioner, as unless the same is bestowed, thereupon, his promotional avenues would become impermissibly baulked.

2025:PHHC:000151-DB



7. However, if the said is not done and the supra excuse advanced by the respondents becomes condoned, rather to deny promotion to the petitioner, reiteratedly thereby the promotional avenues of the present petitioner but would become jeopardized.

8. The further reason for stating so arises from the factum, that when the policy envisages, that in case the armed forces personnel, is posted on ERE, but if thereby his promotional prospects are affected, thereupon, he is required to revert to regimental duty, irrespective of the petitioner making a request for his becoming sent on ERE, for thereby his taking care of his wife's illness. Moreover thereby but obviously the said request was required to be declined, thus with an advisory/enlightenment becoming made upon the petitioner, that thereby his promotional aspects would become adversely affected.

9. Since the present petitioner rather has remained un-awakened about the serious consequences entailing upon his promotional prospects, upon his yet pressing his request. Resultantly, the lack of bringings of apposite awakenings to the petitioner, thus appears to not only derogate from the master policy (supra), but also appears to thereby create, an untenable ground to seriously jeopardize the promotional aspects of the present petitioner.

Further submissions of the learned counsel for the petitioner and inferences of this Court.

10. Further, in support of his arguments, the counsel for the petitioner places reliance upon a judgment rendered by the High Court

2025:PHHC:000151-DB



of Delhi in case titled as ***Ashok Kumar Vs. Union of India and Others***, reported in ***2009 SCC Online Del 3407***. The relevant paragraphs whereof as occur in the said verdict are extracted hereinafter.

31. Needless to state, while answering both the questions, the Central Government had to apply its mind keeping in view the fact that transfer/posting is the prerogative of the employer and that the petitioners were posted at prestigious institutions on account of they being more meritorious and some of them having higher qualifications as also the fact that it is duty of the employer to so deploy its staff that none is rendered ineligible if there is a requirement of serving in a particular capacity for being eligible to be considered for promotion.....

32. Needless to state, as held in the decision reported as 1993 Supp (3) SCC 575 Syed Khalid Rizvi Vs. UOI, the intentment of a residuary rule empowering the employer or the Central Government to exempt the applicability of a rule is intended to remove hardships i.e. whenever a situation is shown to exist which is causing undue hardship to a officer or a group of officers, the power of relaxation must be exercised to relieve undue hardship caused due to unforeseen or unmerited circumstances....”

11. The supra submissions addressed before this Court are well maneuvered towards doing complete justice and as such, they are accepted. Consequently, when in terms of the above expostulation of law, the respondent, though become enjoined to, even if they had *prima facie* deviated from the master policy supra, wherebys, the promotional aspects of the present petitioner became seriously jeopardized, thus

2025:PHHC:000151-DB



relax the conditions (supra) which however, they have not done. Resultantly a grave prejudice becomes encumbered upon the promotional avenues of the petitioner, whereupon the said is required to be undone.

Final Order of this Court.

12. Consequently, the petition is allowed and the respondents are directed to condone the wants on the part of the petitioner to earn a regimental appointment, for non earning whereofs, the responsibility thus for reason (supra) lies upon the respondents and also are directed to accordingly grant him promotion from the date of his being eligible for the same.
13. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

07.01.2025
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No