

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.**

OA- 03/2018.

PRESENT

HON'BLE DR(MRS) JUSTICE INDIRA SHAH, MEMBER(J)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(A)

No.4364928H
Hav Laxmi Mohan Sinha
S/O.Late Govinda Babu Sinha
Hq 24 Mountain Brigade Camp
C/O.99 APO
Pin-908024.

.... **Applicant.**

**By legal practitioners for
Applicant.**

Mrs Rita Devi

Mr. A.R.Tahbildar

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.
2. Officer-in-charge
Records, The Assam Regiment
Pin-9000332 C/O.99APO
3. The Commanding Officer
4th Assam Regiment, C/O.99 APO

... **Respondents..**

**By Legal Practitioner for the
Respondents**

Mr. N.Baruah, CGSC

Date of Hearing : 11.09.2018

Date of Order : **11.09.2018**

ORDER.

((Dr)Mrs.I.Shah,J)

Heard Mr. A.R.Tahbildar, learned counsel appearing for the applicant. Also heard Mr. N.Baruah, learned CGSC assisted by Cap Akash Vashishta,OIC,AFT Legal Cell appearing for the respondents.

[2] The applicant who was serving as Naik in the Assam Regimental Centre, Shillong was tried summarily on 29.10.2010 under section 41(2) of the Army Act, 1950 and was awarded the punishment of Severe Reprimand with 7 days pay fine. Subsequently, the applicant was promoted to the rank of Havildar vide order dated 14.4.2014. According to the applicant his promotion was due from 2012 in 4 Assam Regiment. While he was serving in the promoted post of Havildar, his promotion was cancelled by order dated 13.5.2014. The applicant being aggrieved approached the Hon'ble Gauhati High Court by filing WP(C) No. 4493/2015 assailing the order dated 29.10.2010 whereby penalty of Severe Reprimand and 7 days pay fine was imposed as well as the order dated 13.05.2014 by which his promotion was cancelled. The Hon'ble Gauhati High Court vide order dated 21.04.2016 quashed the impugned orders dated 29.10.2010 as well as 13.05.2014 as not tenable in law.

[3] The respondents filed the appeal before the Division Bench of Hon'ble Gauhati High Court wherein the order of Single Bench dated 21.4.2016 was upheld. Pursuant to the order of the Hon'ble Gauhati High Court, the 2nd Arunachal Scouts vide Part II order dated 02.07.2017

promoted the applicant to the rank of Havildar with effect from 27.01.2014.

[4] This OA has been filed by the applicant stating that the applicant is eligible to be promoted with effect from 2012 prior to his junior was promoted and accordingly to fix his seniority from 2012 in the rank of Havildar.

[5] The order passed by the Hon'ble Gauhati High Court is very much clear which held that the Conviction of the applicant in the instant case by Summary trial is not tenable in law and, therefore, the promotion of the applicant and fixation of his seniority in the rank of Havildar should be from 2012, prior to the promotion of his junior in accordance with the rules.

[6] Respondents are accordingly directed to fix the seniority of the applicant w.e.f. 2012 prior to the promotion of the person junior to the applicant in the rank of Havildar in accordance with the policy in force and pay arrear and other consequential benefits to the applicant.

[7] With the above observations and directions, the OA stands disposed of.

MEMBER(A)

MEMBER(J)

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