

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**  
**(Through Video-Conferencing)**

**O.A. No. 1844 of 2019**

**In the matter of :**

**Lt Cdr Pawan Kumar (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Santhosh Krishnan, Advocate**

**For Respondents : Shri Harish V. Shankar, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has called in question the tenability of intimations (Annexure-A/1) issued to the applicant on 29.05.2019 rejecting his first representation dated 24.04.2019 and order dated 06.08.2019 Annexure-A/2, whereby Respondent No. 4 has rejected the repeat representation submitted by the applicant on 11.06.2019.

2. The applicant was a Lieutenant Commander (Lt Cdr) in the Indian Navy recruited in 2007 as a Short Service Commission Officer in the Logistics Cadre and it is said that he

was released from service in the evening of 06.08.2019. *Inter alia* contending that before his release on 06.08.2019, the applicant had completed 11 years of service as a 'Lt Cdr' and, therefore, in view of the policy issued by the respondents dated 11.03.2005 (Annexure-A/4) with regard to 'Restructuring of Officers Cadre in Navy, the applicant is entitled to be promoted to the substantive rank of Commander (Cdr) and this, having not been done, he has invoked the jurisdiction of this Tribunal.

3. Facts in brief indicate that in pursuance to the advertisement issued in the year 2007, the applicant was inducted as a Short Service Commission (SSC) Officer in the Indian Navy Logistics Branch with effect from 06.08.2007. It is said that on account of his outstanding training and in recognition of his outstanding performance during the training, the applicant, the only member of his batch i.e. July, 2007-Logistics, was awarded 12 months in seniority. Vide Policy letter dated 11.03.2005, the Ministry of Defence and subsequently by letter dated 14.03.2005, the Integrated Headquarters Navy introduced and formulated the procedures in the matter of Restructuring of Officers Cadre in Navy and the implementation of the same in accordance to the Ajay Vikram Singh Committee's recommendations were laid down at Annexure-A/4 and Annexure-A/5 dated 11.03.2005 and

14.03.2005 respectively. Since as per the policy in vogue, after completing the training and as the applicant had been granted full 12 months seniority on account of his meritorious performance during the training, the applicant gained promotion to the rank of Sub-Lieutenant on 06.08.2008 i.e. one calendar year from the date of his appointment and additional one year seniority having been granted on account of his meritorious performance in the training. In this regard, reliance is placed on the communication made to the applicant on 14.05.2009, Annexure-A/7, wherein the applicant is shown to have been promoted to the rank of 'Lt' in Logistic Cadre with effect from 06.08.2008. After completing 4 years on the substantive post of Lt. an officer is entitled to promotion to the next rank of Lt Cdr. The applicant is said to be the first person in his batch who was promoted as Lt Cdr with effect from 06.08.2012 vide order issued on 10.07.2012 Annexure-A/9. Name of the applicant appears at Serial No. 39 and his date of promotion as 'Lt Cdr' is shown as 06.08.2012.

4. The applicant's original term of Short Service Commission was scheduled to expire in the year 2017. However, vide order dated 06.09.2016, Annexure-A/10, the applicant was granted extension of 2 years of service with effect from 06.08.2017 upto 05.08.2019. However, the applicant was



not granted further extension of 2 years to complete 14 years of Short Service Commission. Even though he has furnished his willingness but vide order at Annexure-A/11 dated 12.08.2018, the applicant was approved for release from the SSC service and in the said order, the Competent Authority directed that the applicant be released on 06.08.2019. The applicant's name appears at Serial No. **iv** of list of officers to be released and from Para 2 onwards, various procedural formalities to be completed before their release were indicated. According to the applicant, his date of release from service was 06.08.2019 and in fact he was released on 06.08.2019 in the post-meridian session i.e. in the evening. Referring to the scheme for upgradation or restructuring of officers cadre in the Navy and the stipulations contained in the instructions issued for implementation of the restructuring scheme i.e. Annexure-A/4 dated 11.03.2005 and Annexure-A/5 dated 14.03.2005, it is the case of the applicant that a Lt Cdr who has substantially held the post for 11 years, on completing the period of 11 years as a substantive Lt Cdr, is deemed to have been promoted to the next higher post of Commander (Cdr). According to the applicant, as he was inducted and substantially appointed as a Lt Cdr of 06.08.2012, he completed 11 years substantive posting on the promoted post of Lt Cdr on 05.08.2019 and as he was released

on 06.08.2019, he is deemed to have been promoted as a 'Cdr' on 06.08.2019 i.e. on the very day when he was released from service in the evening of 06.08.2019. Even though the applicant's promotion to the rank of 'Cdr' would be only for one day, this appointment of the applicant holds great significance to the applicant firstly as it is a right which had accrued to him for being promoted as Cdr on substantially completing 11 years as a substantive Lt, and secondly, the promotion confers certain honour and prestige to the applicant and that apart, the higher rank would benefit him in his placement, designation and salary in any civil department or organisation where he would be joining after his release on 06.08.2019. When the respondents did not give promotion to the applicant on the rank of Cdr which had accrued to him as a matter of right, by virtue of the policy and scheme formulated by the respondents, applicant submitted a representation/letter dated 22.04.2019 seeking promotion to the rank of Cdr with reference to Govt. of India letter dated 11.03.2005 and the Integrated HQ, MoD (Navy) dated 14.03.2005. Even though the chain of command and the superior officers of the applicant including the Vice Chief of Naval Staff recommended for grant of promotion to the applicant, however, by the impugned order dated 29.05.2019, the respondents rejected the request of the applicant on the



grounds that the applicant would be out of service on the date the promotion is due to him and in similar situation, Logistic officers from the 2006 batch who were commissioned as SSC officers in the Navy on 07.08.2006 were released from service on 06.08.2018 without putting them in the rank of Cdr which fell due on 07.08.2018. It is the case of the applicant that while rejecting his representation, the respondents have treated the same as if the applicant was seeking an extension of his tenure and grant of promotion. However, it was the case of the applicant that as he was released only on 06.08.2019 and he was in service upto 06.08.2019, he was entitled for automatic promotion to the rank of Cdr once he has completed 11 years of service as a Substantive Lt on 05.08.2019. He, therefore, pointing out the error, again represented on 11.06.2019 and by the second impugned order dated 06.08.2019, his second representation was again rejected. It is the case of the applicant that he was on active service on 06.08.2019 was released from services only in the evening of 06.08.2019 and after his release, the applicant has joined the Central Warehousing Corporation with effect from 04.09.2019 as a Deputy General Manager (General). His salary and emoluments in this Government Undertaking is determined by way of reference to his last pay drawn from the Navy i.e. on the basis

of the rank as Lt Cdr but in case the applicant was released after grant of permission as Cdr, this would substantially make great difference in the basic pay, designation and other benefits to be granted to the applicant while serving in the Civil department.

5. *Inter alia*, contending that the respondents have arbitrarily and in illegal manner rejected claim of the applicant, learned counsel for the applicant, Shri Santhosh Krishnan, took us through various documents available on record, particularly the policy for 'Restructuring of Officers' Cadre in the Navy' Annexure/A-4 dated 11.03.2005, the stipulation for grant of substantive promotion contained in Para 2 of the said policy, which reads as under :

**"2. Substantive Promotion. To reduce the age profile and supersession levels in the Navy, as also to improve vertical mobility, promotion to substantive ranks will be made based on eligibility criteria indicated below :-**

<b><u>Rank</u></b>	<b><u>Eligibility Criteria</u></b>
<b>(a) Sub Lieutenant</b>	<b>On commissioning</b>
<b>(b) Lieutenant</b>	<b>02 Years as SLt</b>
<b>(c) Lieutenant Commander</b>	<b>04 Years from date of promotion to Substantive Lt</b>
<b>(d) Commander</b>	<b>11 Years from date of promotion to Substantive Lt</b>
<b>(e) Captain (Time Scale)</b>	<b>26 Years of reckonable commissioned service."</b>

6. The criteria laid down for promotion in the implementation instructions issued by the Integrated



Headquarters of Ministry of Defence (Navy) vide Annexure-A/5 dated 14.03.2005, the fact of the applicant's fulfilling all the criteria laid down therein, which have been clearly approved and reiterated by the line of command in Annexure- A/13 dated 24.04.2019, while forwarding the applicant's representation. Referring to the file-noting Annexure-A/13 available at Page 51 and summary of the applicant's case tabulated in Para 6 and Paras, 7, 8 and 9 of the Note-sheet, which read as under :

**"6. The summary of the case is tabulated below for better appreciation:-**

<b>Sl No.</b>	<b>Criteria for Promotion to the Rank of Cdr</b>	<b>Officer's Particulars</b>
<b>(a)</b>	<b>Completed 11 years of service since promotion to the rank of substantive Lt</b>	<b>Promoted Substantive Lt w.e.f. AM 06 Aug 08. Would complete 11 years on 05 Aug 19</b>
<b>(b)</b>	<b>Qualified PME</b>	<b>Qualified PME in 2014</b>
<b>(c)</b>	<b>Sea Service in the rank of Lt Cdr</b>	<b>Not mandatory law Para 13 of IHQ MoD (N) letter at Flag A since SSC Log Officers not considered for PC</b>
<b>(d)</b>	<b>Appropriate Med Cat</b>	<b>Med Cat S1A1</b>
<b>(e)</b>	<b>Vigilance/Disciplinary clearance</b>	<b>No vigilance/disciplinary case pending against the Officer</b>

**7. In view of the above it is recommended that the Officer's case may be considered favourably for promotion to the rank of Commander.**

**8. The Officer has since applied for lateral absorption in several Govt of India Departments (Min of Fin, Cabinet Secretariat, NTRO, Min of Statistics and Programme Implementation, Central Warehousing Corporation) and the release of the Officer from the Navy in the rank of Commander would have consequential benefits in terms of designation and pay throughout Government service.**



9. ***Accordingly, the case is submitted for kind consideration and approval."***

It was argued by the learned counsel for the applicant that the applicant was entitled to be promoted as Cdr and released in the said capacity on 06.08.2019. *Inter alia* contending that the respondents have acted in a manner which is contrary to the policies laid down for upgradation or restructuring/promotion and further contending that the applicant has been denied the legitimate benefit which had accrued to him by virtue of the policy dated 11.03.2005 and the recommendations of the Ajay Vikram Singh Committee accepted and implemented by the respondents, it was submitted that the applicant would have served as a 'Cdr' for one day i.e. on 06.08.2019 and there was no legal impediment in recognising and granting this promotion to the applicant. Shri Santhosh Krishnan, emphasised that when the applicant, by virtue of the policy is deemed to have been promoted to the rank of 'Cdr' after completing 11 years of service as Substantive Lt on 05.08.2019, the service rendered by him on 06.08.2019 would be deemed to be treated as service as a Cdr and, therefore, in denying this benefit to the applicant, the respondents have committed grave error. He, therefore, seeks for grant of benefits as prayed for.

7. The respondents have filed a detailed counter affidavit and Shri Harish V. Shankar, learned counsel for the respondents, rebutted the aforesaid contention of the applicant, primarily on two grounds. The first ground was a preliminary objection with regard to the maintainability of this application on the ground that the applicant, without exhausting statutory remedies available to the applicant under Regulations 235 to 241 of the Regulations for the Navy Part III, has invoked the jurisdiction of this Tribunal directly and, therefore, the application is not maintainable. The second ground canvassed before us is that in terms of the conditions of service of the SSC officer, the tenure of service is fixed. When the initial tenure of the applicant was over and he was granted 2 years extension vide Annexure A-10 upto 05.08.2019, as the applicant was holding a tenure appointment for a fixed period, the appointment of the applicant, by the very nature of its terms and conditions would commence and conclude on the set dates. It is the case of the respondents that the tenure of the applicant came to an automatic end on 05.08.2019 and as the applicant relinquished the post on 05.08.2019, he had not completed 11 years tenure as a Substantive Lt to earn promotion to the substantive rank of Cdr. It is said in the counter affidavit that the applicant's term came to an end on 05.08.2019, the initial

term of 10 years for service by the applicant came to an end on 05.08.2017 which was subsequently extended upto 05.08.2019. The applicant applied for further extension which was not granted due to the cadre being overborne. Accordingly, the term of the applicant as an SSC officer was 12 years which expired on 05.08.2019. The applicant was promoted to the rank of 'Lt' on 06.08.2008 and to the rank of Cdr with effect from 06.08.2012 and as his services came to an end on 05.08.2019, the applicant could not have been considered for being promoted to the rank of Cdr on 06.08.2019 as his tenure was only upto 05.08.2019. Accordingly, the respondents submitted that the applicant's contention is wholly misconceived, cannot be accepted and, therefore, the application is liable to be rejected.

8. We have heard the learned counsel for the parties at length. The only issue involved in the matter is as to whether the applicant is deemed to have been in service on 06.08.2019 and whether his contention that he has completed 11 years of service as a Lt Cdr and, therefore, is entitled to be promoted to the rank of 'Cdr' with effect from 06.08.2019 before his release on 06.08.2019 (evening), can be accepted or not.



9. Consequent to the acceptance of the recommendations made by Ajay Vikram Singh Committee Report Part-I, the Hon'ble President of India approved sanction for revision of various terms and conditions of service pertaining to Naval officers, except Medical and Dental officers and in Para 2, as reproduced in the preceding paragraph, it was indicated that to reduce the age profile and supersession levels in the Navy and also to improve vertical mobility, promotion to substantive ranks were to be made based on eligibility criteria indicated in the said para. It was indicated that a Substantive Lt, who has held the said post for a period of 11 years would be eligible and granted promotion to the rank of a Cdr on completing 11 years of service as a substantive Lt. However, the promotion accruing from Para 2 is subject to the officers fulfilling other criteria which were to be notified by the IHQ, MoD (Navy) through the policy letter. It is also clear from the policy and the implementation instructions issued vide Annexure-A/5 dated 14.03.2005 that the promotion under the scheme based on the recommendations made in Ajay Vikram Singh Committee Report Part-I is pursuant to the restructuring of officers cadre in the Navy with effect from 16.12.2004. The promotion is time-bound and is to non-select ranks and in Para 10 of the implementation instructions Policy dated 14.03.2005, it has

been clearly stipulated that all Lt Cdrs who have completed service of 11 years from the date of promotion to substantive Lt, would be eligible for promotion to the rank of substantive Cdr. It is, therefore, clear that, based on the said policy and the fact that the applicant was appointed as a substantive Lt Cdr with effect from 06.08.2012, he is claiming to be promoted as a Cdr before his release in the evening of 06.08.2019. Admittedly, the applicant completed 11 years of service in the rank of Substantive Lt on 05.08.2019. These facts were not in dispute while forwarding the representation of the applicant in the Note-sheet from Para 6 reproduced in the preceding paragraph. The line of command of the applicant admits that the applicant completed 11 years of service since promotion to the rank of substantive Lt on 05.08.2019 and should have been promoted on the substantive rank of Cdr on 06.08.2019 before his release. The respondents in their counter affidavit do not dispute the aforesaid contention. However, their objection is two-fold. Firstly with regard to the maintainability of this application on the ground that the applicant has not exhausted the departmental remedies available. However, as the applicant has raised substantial questions and is ventilating his grievance before us after having represented twice to the Competent Authority and the said Authority, having rejected



both his representations on the ground that the applicant has not exhausted the departmental remedies available, we are not inclined to dismiss this application. If we do so, it would be doing injustice to the applicant in the matter of considering his grievances. Accordingly, we propose to deal with the issues on merit.

10. On merit, the only objection of the respondents is that the applicant was an SSC Officer, his initial tenure was for a period of 10 years which came to an end on 05.08.2017 and thereafter he was granted two years' extension which came to an end on 05.08.2019. According to the respondents, as the appointment of the applicant, an SSC Officer was a tenure post and after completion of initial tenure of 10 years and two years extension on 05.08.2019, he would have been deemed to be out of employment or his contract of service would come to an automatic end on 05.08.2019 and, therefore, as he was struck-off from the rolls of the respondents on 05.08.2019 on his completing his tenure appointment, it cannot be said that he has completed 11 years of service on 06.08.2019, his date of release. However, the counter affidavit filed by the respondents is silent as to why the applicant was not released on 05.08.2019; why he was permitted to continue up to 06.08.2019 and was only released on 06.08.2019 evening,



which fact is admitted by the respondents and is also apparent from various documents that have come on record. Even though on 06.09.2016 vide Annexure-A/10, the Integrated Headquarters of Ministry of Defence (Navy) granted extension of the tenure of the applicant as an SSC Officer of 2007 batch upto 05.08.2019, when the Integrated Headquarters of Ministry of Defence, Navy which had granted extension upto 05.08.2019, issued the release order more than a year prior to his release vide Annexure-A/11 dated 02.08.2018, indicated that the applicant shall be released on 06.08.2019. In this communication Annexure-A/11, it is indicated that the Competent Authority has approved release of the SSC Officers detailed therein with effect from the date mentioned against their names and the date of applicant's release as an SSC Officer approved and mentioned by the Competent Authority is **06.08.2019**. Thereafter, in this release order, certain procedural formalities to be completed before release of the applicant were indicated from Paras 2 to 5. It is, therefore, clear from these two orders i.e. 06.09.2016 and 02.08.2018, that even though the applicant was shown to have been granted a tenure appointment as an SSC Officer upto 05.08.2019, but the same Authority, which fixed the said tenure, directed for his release only on 06.08.2019 while passing and issuing order

of release Annexure-A/11 dated 02.08.2018. In pursuance to this direction, Annexure-A/15, the GEN FORM issued to the applicant with regard to his release indicates that the applicant, an SSC Officer, is released from active service with effect from 'PM of 06.08.2019 by virtue of release order dated 02.08.2018'. The respondents do not dispute this document and, therefore, it is clear from this that the applicant was in the rolls of the respondents on 06.08.2019. He discharged his duties on 06.08.2019 and was released in the evening of 06.08.2019 only. That apart, when the applicant sought for information with regard to the amounts credited to his account at the time of release, a communication Annexure-A/16 dated 17.09.2019 was made to him, wherein it was indicated that a sum of Rs.33,396/- was credited to the applicant's account. The amount so credited indicates that he was paid salary for the period 01.08.2019 to 06.08.2019, amounting to Rs.22,414/-; he was paid arrears of TPT-DA for the period from 01.08.2019 to 06.08.2019 amounting to Rs. 864/- and he was paid arrears of TPT for the period from 01.08.2019 to 06.08.2019 amounting to Rs. 7,200/-. That apart, licence fee, service/garage fees were also recovered from the applicant amounting to Rs. 103/- and Rs. 12/- respectively for the period 01.08.2019 to 06.08.2019. Accordingly, the documents available on record and on account

of the respondents' own showing, it is clear that the applicant was in active service on 06.08.2019. Salary and all other monetary benefits due to him in accordance to the terms and conditions of the contract of service were paid to him upto 06.08.2019 and it is only on 06.08.2019 that he was released from service. Taking note of all these factors, we have no hesitation in holding that the applicant was in service on 06.08.2019. Even though the Competent Authority has fixed his tenure upto 05.08.2019 but the same Competent Authority, while ordering his release, a year prior to the conclusion of his tenure appointment vide order dated 02.08.2018, fixed the tenure upto 06.08.2019; permitted him to work on 06.08.2019; treated him to be in service upto 06.08.2019, paid all dues payable to him including the salary and allowances upto 06.08.2019 and, therefore, an assumption can be drawn that the tenure appointment of the applicant, even though ordered to come to an end on 05.08.2019 and in fact it was terminated by the respondents on account of their own action only on 06.08.2019 as a result of which, the applicant had completed 11 years of service as a Substantive Lt on 05.08.2019 and on 06.08.2019, having completed 11 years of substantive appointment as a Lt was entitled to be deemed to have been promoted to the post of 'Cdr'.



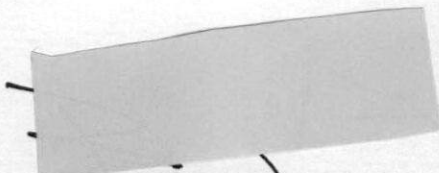
11. The contention of the respondents that the appointment of the applicant came to an automatic end on 05.08.2019 cannot be accepted for two reasons. The first being that the respondents' themselves, inspite of tenure being over on 05.08.2019, permitted the applicant to continue to be on their roll till 06.08.2019 and released him on 06.08.2019 after permitting him to work till 06.08.2019 and treating him to be on duty on 06.08.2019 and secondly, merely because a period of tenure is fixed in the offer of appointment or the order for release of a person on completion of tenure, certain administrative and procedural formalities have to be completed and until and unless these formalities are not completed, release of a person in accordance to the law cannot be given effect to. In this case also, the release of the applicant was fixed for 06.08.2019, certain formalities were directed to be completed before that date and permitting the applicant to work till 06.08.2019, he was only released on 06.08.2019, meaning thereby that his contract of service stood extended by one day by virtue of the acts of the respondents fixing his release date knowing fully well that his contract as an SSC Officer extended upto 05.08.2019 can be brought to an end on 05.08.2019 itself. The respondents, on their own, without any undue influence, misrepresentation or any acts of commission and omission on

the part of the applicant, having permitted to work till 06.08.2019, cannot now say that by operation of contract of appointment or the tenure of appointment granted to the applicant, his services came to an end on 05.08.2019 and, therefore, he cannot be granted the benefit of promotion as prayed for. It is the case where the applicant, having completed 11 years of service, as a substantive Lieutenant by virtue of the Policy dated 11.03.2005 (Annexure-A/4) and implementation procedure letter dated 14.03.2005 (Annexure-A/5), was entitled to be treated and considered to have been discharged his duties on 06.08.2019 and the respondents treating the applicant so, should pass appropriate orders granting promotion to the applicant on the post of Commander prior to his release on 06.08.2019.

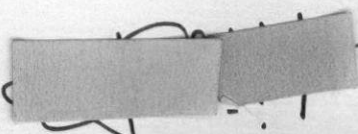
12. Accordingly, we allow this OA quashing the impugned orders dated 29.05.2019 and 06.08.2019 and direct the respondents to grant promotion to the applicant on the post of Commander before his release in accordance to the Policy letters dated 11.03.2005 (Annexure-A/4) and 14.03.2005 (Annexure-A/5), subject to, however, applicant fulfilling all the criteria laid down therein. Necessary orders in this regard be issued within a period of one month from the date of receipt of the certified copy of this order.

13. There is no order as to costs.

Pronounced in open Court on this 5<sup>th</sup> day of January,  
2022.



**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**



**[LT GEN P.M. HARIZ]**  
**MEMBER (A)**

/ng/