

O.A. No. 554/2010

19.10.2010

Present: Sh. E.J. Varghese, Advocate, counsel for the applicant.

Sh. Anil Gautam, Advocate, counsel for the respondents.

Heard learned counsel for the parties.

There is no ground to interfere in this matter. Same is dismissed.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
October 19, 2010

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

OA 554/2010

Sub Major Virendra Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. EJ Varghese, Advocate

For respondents: Mr. Anil Gautam, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L NAIDU, MEMBER.

ORDER
03.04.2013

1. The petitioner has prayed that appropriate direction may be issued to grant him the Honorary Commission of Lieutenant / Captain on 01.09.1988 i.e. on the date applicant was granted Honorary Rank of Subedar Major with all consequential benefits. The petitioner was enrolled as Havildar on 23.01.1970 and he was discharged from service in the rank of Subedar on 31.08.1997. At the time of his retirement, i.e. on 01.09.1988 the petitioner was granted Honorary rank of Subedar Major. The petitioner was not given the substantive rank, he filed a Writ

Petition No.1860/2001 in the Hon'ble High Court of Delhi which was disposed off by the Division Bench of Hon'ble High Court of Delhi on 31.08.2007 to promote the applicant to the rank of Subedar Major with effect from August 1997 and granted all benefits for this post. It was observed that,

"what we can do, and what direction should be given effect to, is to grant the rank of Subedar Major to the Petitioner with effect from the date on which the Recommendations of the Departmental Promotion Committee (DPC) held in August 1997 came into effect, assuming in favour of the Petitioner that he had been found suitable for promotion to the rank of Subedar Major by that DPC. We favourably note that the Petitioner had been granted the Honorary Rank of Subedar Major with effect from the date of his retirement, that is, 01.09.1988 on the occasion of Republic Day in 1998 as per letter dated 18.09.2000. The Petitioner will, therefore, be only entitled to pecuniary benefits that would result from his notional promotion to the rank of Subedar Major from the date on which the Recommendations of the DPC held in August, 1997 would be implemented."

2. Thereafter, the petitioner filed a Writ petition No. 8862/2008 before the Hon'ble High Court of Delhi for grant of Honorary Lieutenant (Lt.) and Captain (Capt). That petition was disposed off by the Division Bench and the Lordship has said,

"In our considered view, there is merit in the contention to the extent that the petitioner is entitled to such consideration as per his record of service.

It is, thus, directed that if the respondents have not already considered the petitioner for the honorary rank of a Lieutenant/Captain he should be so

considered within a period of three (3) months from today and the decision communicated to the petitioner within a period of one (1) month from today."

3. After this Government brought an order dated 07.10.2009 in the Para 7 it is observed that,

"AND PURSUANT WHEREOF, considering the facts and circumstances of the case, your case has already been processed for grant of Honorary Commission in the last year of service, before your retirement and hence you have exhausted all the chance, for consideration. Accordingly, the Hon'ble High Court of Delhi order dated 12 May 2009 passed in CWP No.8862 stands respectfully complied with."

4. Now the petitioner has filed this petition, since consequent upon the petitioner was conferred as Subedar Major his case for grant of Honorary Lt. and Capt has not been considered. A reply has been filed by the respondent and respondent has contested the matter and alleged that at the time when the petitioner was granted the Honorary Subedar Major rank, his case for the Lt and Capt was also considered and he was not found suitable to be granted Hony rank of Lt or Captain therefore he was granted Honorary rank of Subedar Major.

5. We have heard arguments from both the sides and considered the matter. In fact the intention of the aforesaid order passed by the Hon'ble

Delhi High Court dated 12.05.2009 was that since the petitioner had become notionally substantive Subedar Major, therefore, his case was required to be considered for the Honorary rank of Lt / Capt. afresh. But the respondents have taken a position that earlier when he was granted Hony. rank of Subedar Major on 01.09.1998 when his case was considered for the Hony rank of Lt/Capt. Therefore, there was no need for fresh consideration. But this contention of the respondent is not correct. Because the order have been passed by the Hon'ble Delhi High Court on 12.05.2009 and in pursuance of this, the petitioner was required to be considered as a substantive Subedar Major for grant of Honorary rank of Lt. / Capt. Therefore, the earlier consideration in 1998 for the post of grant of Hony Subedar Major will not make it good. Now that the situation has changed. Since earlier when he was considered for Hony Subedar Major he was only a Subedar. But after the court's earlier order he had been treated as a substantive Subedar Major, therefore, his case was required to be considered as a substantive Subedar Major for Hony Lt or Capt. This should have been done. This was the intention of the order passed by the Division Bench of Hon'ble Delhi High Court on 12.05.2009. That has not been properly appreciated by the respondents. Therefore, we direct that the case of petitioner may be considered for grant of Honorary rank of Lt. / Capt. as a substantive Subedar Major. In case he is found suitable for grant of Hony rank of Lt

/Capt, the same may be given or if he is not found suitable he may be informed accordingly. The petition is disposed off accordingly.

A.K.MATHUR
(Chairperson)

M.L.NAIDU
(Member)

New Delhi 2013
dated the 3rd April 2013
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