

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

07.

O. A. No. 02 of 2011

Sub. Maj. Hony Lt. Nachhattar Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. J.S. Manhas, Advocate.
For respondents: Sh. Mohan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. Z.U. SHAH, MEMBER.

ORDER
29.11.2011

1. Petitioner by this petition has prayed that the Respondents may be directed to grant the Petitioner rank of Hony. Capt. with effect from 26th January 1993 or 15th August 1993 with consequential benefits and should also to pay all financial benefits for Hony rank with 12% interest.

2. Petitioner was enrolled in Army Corps of Engineers on 9th July 1963 and he was granted Junior Commission in rank of Nb/Subedar on 14th August 1976 and promoted to rank of Sub Major on 6th August 1987. Thereafter Petitioner retired on 1st September 1992 and he was granted Hony. rank of Lt on 26th January 1993 with effect from 1st September 1992 i.e. the date of his retirement.

3. Petitioner was not granted certain benefits therefore litigation followed and Petitioner filed a writ petition in the Hon'ble Delhi High Court on 16th February 1993 and a statement was made on behalf of the Government before the Hon'ble Delhi High Court that Petitioner will be granted all the benefits in terms of the order dated 20th October 2006 with effect from 1st September 1992 and the order dated 20th October 2006 has also been placed on record which reads as under:

"Mil Tele 6626

Abhilekh Bengal Abhiyanta
Samooth Bengal Engineer Group
Records

PIN-900177
C/) 56 APO

NE Legal/CC No. 8/9/153/R
Legal Cell (High Court)
HQ Delhi Area
Delhi Cantt-10

CWP No. 978 Filed by JC-76885 Ex Sub Maj. Nachhattar
Singh v. UOI in Delhi High Court (REGN 47/24)

1. Refer to your Sig No. A-2524 dated 28 Sep 2006
2. The following additional benefits were entitled on the date of retirement (SOS) 1st Sep 1992, in case the Petitioner was granted Hony Lt and Hony Capt:-

(a) Sub Maj (Hony Lt)

- | | |
|------------------------------------|--------------|
| (i) Basic Pension | Rs. 1,650/- |
| (ii) Death Cum-Retirement Gratuity | Rs. 54,450/- |

(iii) Sub Maj (Hony Capt)

- | | |
|------------------------------------|--------------|
| (i) Basic Pension | Rs. 1,700/- |
| (ii) Death-Cum-Retirement-Gratuity | Rs. 56,100/- |

3. In view of the above, you are requested to apprise facts to the Hon'ble Court through CGSC on next date of hearing fixed in ibid case on 02 Jan 2007.

Therefore, Courier for this purpose is not required.

Sd/-
Lt. Col.
Senior Record Officer
For OIC Records."

4. In terms of the statement made by learned counsel for the Petitioner the Hon'ble Delhi High Court by the order dated 2nd January 2007 disposed of the matter. Thereafter a review application was filed and that review application was also dismissed by the Hon'ble Delhi High Court and the matter was taken up in SLP before Hon'ble Supreme Court and then SLP was dismissed on 2nd March 2009. Learned counsel for the Petitioner submits that in terms of that dismissal of the SLP all benefits pertaining to that have been granted to him. Now Petitioner by this petition is agitating that he be granted the rank of Hony Capt. In this connection, learned counsel for the Petitioner has invited our attention to Regulation 179 of the Army Regulations. Regulation 179 reads as under:

"179. Honorary Ranks on Retirement-

(a) A step of honorary rank on retirement with the title of honorary Risaldar Major, Subedar Major, Risaldar, or Subedar may be bestowed on JCOs who are recommended by the Chief of the Army Staff, as specially deserving of the honour.

(b) In very exceptional cases JCOs who have served with special distinction, and who have attained the rank of Risaldar Major or Subedar Major or have held the appointment of ADC to the President, a Governor or the

Chief of the Army Staff, or GOC-in-command, or who have been awarded the PVC/VC/MVC or VrC/MC may be granted the honorary rank of Captain or Lieutenant on retirement, if recommended for the honour."

5. The question is whether Petitioner as a matter of right can claim benefit of Hony.Capt. Regulation 179 (b) clearly says that in very exceptional cases JCOs who have served with special distinction, and who have attained the rank of Risaldar Major or Subedar Major or have held the appointment of ADC to the President, a Governor or the Chief of the Army Staff, or GOC-in-command, or who have been awarded the PVC/VC/MVC or VrC/MC may be granted the honorary rank of Captain or Lieutenant on retirement, if recommended for the honour. Learned counsel for the Petitioner has submitted that according to his assessment he got 42 marks and he should have been considered for the grant of the Hony. rank of Capt. though he has not pleaded that either person junior to him was granted that rank or not. Be that as it may, the fact remains can we direct the Respondents that he should be granted or he should be considered for the grant of Hony. rank of Capt. A bare reading of Army Regulation 179 (b) makes it clear that in very exceptional cases, if recommended by the Chief of the Army Staff such persons can be granted the rank of either Hony. Lt. or Hony. Capt. after retirement. It is not necessary that a person can only be granted the rank of Hony. Lt. and he can be granted the rank of Hony. Capt. It is the choice of the Chief of the Army Staff that he can if he finds that a person is meritorious he can directly be granted the rank of Hony. Capt after retirement. In the present case it appears that Petitioner's case was found an exceptional case and he was granted rank of Hony. Lt. after his retirement. We cannot direct the Respondents that he should be also considered for grant of the

rank of Hony. Capt. as an exceptional case. Whether it is an exceptional case or not it depends on the recommendations of the Chief of the Army Staff. He was a Sub. Maj and he was found meritorious therefore he was granted the rank of Hony. Lt. after his retirement. He as a matter of right cannot seek a mandamus that now on same reports he must be granted the rank of Hony. Capt. Therefore it is not a matter of right. It solely depends on the recommendations of the Chief of the Army Staff. Since the Chief of the Army Staff has only recommended him for grant of rank of Hony. Lt. therefore we do not think that we can direct the Respondents to grant him rank of Hony. Capt. Consequently, we cannot direct the Chief of the Army Staff to grant him rank of Hony. Capt. as it is for the Chief of the Army Staff to consider the case of the Petitioner on merit. Consequently, we do not find any merit in this petition and same is dismissed with no order as to costs.

6. Learned counsel for the Petitioner seeks leave to appeal before the Hon'ble Supreme Court. This is not a fit case to be certified to appeal before the Hon'ble Supreme Court as it does not involve any question of law of public importance. Leave refused.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
November 29, 2011