

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

22.

T. A. No. 598 of 2009

Writ Petition (Civil) No. 7558 of 1999

Sub. Maj. & Hony. Lt. R. K. Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Rama Shankar, Advocate.

For respondents: Sh. A. K. Bhardwaj, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

12.09.2011

The petitioner, by this petition has prayed for quashing and setting aside the letter dated 29.7.1997 and the respondents may be directed to treat intervening period of service w. e. f. 31.8.1993 till 13.1.1995 as EOL and issue a mandamus commanding the respondents to pay the pay and allowances for the aforesaid period.

2. The petitioner was inducted in Indian Army on 15.10.1965 in Education Core directly. He was promoted on 13.1.1993 as a Naib Subedar and as a Subedar also. Thereafter, he retired on 31.8.1993 after completion of 28 years of service. Thereafter, some decision was taken that the persons in Education Core can go up

Contd.....2/-

to the rank of Subedar Major. Therefore, option was asked from the persons from the retirees that if they want to join, they can do so on depositing their pension and gratuity etc. The petitioner was willing to join back and on 13.1.1995, his order of discharge was recalled and he was asked to join back. He joined back on 13.1.1995 after depositing the necessary payments which were given to him on his retirement. Thereafter, he was promoted as Subedar Major and he was also given the benefit of Honorary Lieutenant. His grievance is that he has not been given any pay and allowances for the intervening period. Therefore, he has filed this petition espouse his grievances.

3. The respondents have contested the petition and submitted that the petitioner has been benefitted by counting his period of absence as extra ordinary leave and that has been counted for the purpose of calculating pension and he was also given the rank of Honorary Lieutenant. However, he was not paid for that period on the basis of no work no pay.

4. We have considered the rival submissions of the parties and perused the record.

5. It is true that the petitioner, in the ordinary course, would not have been given the promotion of Subedar Major but for the voluntary decision taken by the

Government to benefit the persons from education core and in pursuance of the said decision of the Government realizing the need in the education department, they have opened avenues for the persons of education department for going up to the rank of Subedar Major which were not available to them earlier. Therefore, the Government took up a decision and they treated the period of absence of the petitioner as EOL for the purpose of calculating his pension and he has been given the promotion to the rank of Subedar Major. Therefore, it will not be proper to grant him pay and allowances for that period as he has not worked on the post. Consequently, the request for the same is declined. In this view of the matter, the petition is dismissed. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**September 12, 2011**