

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**  
**06.**

**O.A. No. 357 of 2011**

**Major Shiv Kumar & Ors.**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner: Mr. S.M. Dalal, Advocate**

**For respondents: Mr. Dalip Mehra, Advocate**

**CORAM:**

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

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

**ORDER**  
**21.05.2012**

1. Petitioners vide this petition has prayed that directions be issued to the respondents to grant notional increase of service by two years to the petitioners and promote them to the rank of Lt Col (Time Scale) from the dates it became due to them on completion of 13 years of service, re-fix their pay in the rank of Lt Col and pay arrears of pay and allowance for the extended period of service. It is also prayed that respondents be directed to re-fix the pension of the petitioners as applicable to the rank of Lt Col and to pay interest @ 12% per annum on the arrears of pension.

2. All these petitioners were enrolled in the Army as Sepoys between the period 1975-1979. Due to their hard work and dedication, they attained the ranks of NCOs and JCOs. The Government of India introduced a special commission designated as Regimental Commission vide Army Instruction (AI) 18/84. The retirement age prescribed under para 17 of this AI was 48 years of age or 10 years of service. This AI was further amended by AI 32/89. Retirement age for all category of officers of the Army was increased by 2

years across the board by Central Government vide their notification dated 03.09.1998. As per latest instructions and notification, the service conditions of Regimental Commission Officers (RCO) now stood as 12 years of service or 52 years of age, whichever was earlier. However, commissioning through RC entry ceased after May 1998 vide AI 10/98.

3. The Central Government appointed Ajay Vikram Singh Committee (AVSC) for suggesting changes in terms and conditions of service officers in the Army. After considering all aspects, AVS Committee gave its recommendation to grant substantive ranks of Capt at 2 years, Maj at 6 years and Lt Col at 13 years of service and other recommendations were also given by AVS Committee. The Central Government accorded approval for implementing the recommendations of AVS Committee and same was promulgated by Army HQ, MS Branch vide letter issued in December 2004, however the RCOs were excluded from the ambit of this Committee.

4. Petitioners made several representations, however matter remained pending with the Government for one reasons or the other. The Army kept on recommending to the Ministry of Defence for taking necessary steps for this category of personnel but without any result. One Maj Rabindra Singh, a RCO filed a writ petition in Kolkata High Court on the same issue for grant of 2 years extension of service. The writ petition was transferred to the Kolkata Regional Bench of Armed Forces Tribunal and Kolkata Regional Bench vide its order dated 04.04.2011 partially allowed the petition filed by Maj Rabindra Singh with the following directions:

*“(a) The retirement orders of the applicant shall remain in vogue, as the application has been retired in accordance with rules on the subject and was*

*well aware of the terms and conditions of his service. Therefore, we do not wish to interfere with the same.*

*(b) The petitioner shall be granted a notional increase of service by two years, as was proposed by the Respondents but could not reach the Cabinet. Being a notional extension of service, he shall not be paid any arrears or monetary advantage in Pay and allowances.*

*(c) However, we direct that the petitioner shall be notionally promoted to the rank of Lt. Col. (Time Scale) on completing of 13 years of such assumed service, only after fulfilling all other criteria, except length service, as required for promotion to the rank of Lt Col (Time Scale); and, only if the applicant is found suitable in all respects after holding a selection board by the Military Secretary's Branch. Such notional promotion shall only be for carrying the rank and for pension as entitled in that rank.*

*(d) The applicant shall get pension of a Major till he is promoted notionally to the rank of Lt Col. On such notional promotion to Lt Col, his pay in that rank shall be re-fixed and pension shall accordingly be fixed again in the rank of Lt Col to which he shall remain eligible.”*

**5.** We have been informed that against the above said order dated 04.04.2011 passed by the Kolkata Regional Bench of Armed Forces Tribunal, respondents preferred a SLP before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Supreme Court as informed by learned counsel for the petitioner. Learned counsel for the respondents conceded that the present case is also squarely covered by the decision given by the Kolkata Regional Bench. Our attention has also been drawn to a decision passed by the Lucknow Regional Bench of Armed Forces Tribunal in the case

of **Major Birendra Singh Tomar (Retd.) and Ors. Versus Union of India & Ors. (OA No. 29 of 2011)** on 18.10.2011 wherein Lucknow Regional Bench has followed the decision passed by the Kolkata Regional Bench dated 04.04.2011.

6. Since the matter has already been agitated and Kolkata Regional Bench has already passed an order dated 04.04.2011 and the SLP against which has also been dismissed as informed by learned counsel for the petitioner, we have no other option but to allow the present petition.

7. Consequently, we allow the petition in the light of directions given by the Kolkata Regional Bench in the case of **Major Rabindra Singh Versus Union of India and Others (TA No. 37/2010)** on 04.04.2011. Respondents are directed to grant reliefs to the petitioners in the light of the aforesaid judgment as far as possible within 3 months from the date of this order. No order as to costs.

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

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

**New Delhi**  
**May 21, 2012**  
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