

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

**20.**

**O.A. No. 64 of 2010**

**Sub Maj J.S. Pundhir**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. Naresh Ghai, Advocate.

**For respondents:** Mr. Ankur Chhibber, Advocate.

**CORAM:**

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

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

**ORDER**

**19.07.2012**

1. Petitioner vide this petition has prayed that petitioner should be given pension for the rank of Hony Captain from the date of his retirement with all other benefits. He also prayed for refund of Rs.58,153/- which has wrongly been deducted from his gratuity.

2. Petitioner was commissioned as Naib Subedar in the Territorial Army on 20.01.1986. He became Subedar on 15.07.1989 and Subedar Major on 01.02.2001. He was granted the rank of Hony Lt w.e.f. 15.08.2004 and Hony Capt w.e.f. 26.01.2005. He retired as Hony Captain on 31.01.2005. His grievance is that despite the fact that he was granted Hony ranks of Lt and Capt before his retirement, he is still in receipt of pension of a Sub Maj. He has, therefore, filed the present petition seeking aforesaid relief.

3. A reply has been filed by the respondents and they have taken the position that petitioner has not completed mandatory service to get pension of commissioned rank as per provision laid down vide Para 136 of Pension Regulations for the Army 1961 and Government of India, Ministry of Defence

letter dated 03.02.1998. Therefore, he was granted pension for the rank of Sub Maj w.e.f. 01.02.2005 and PCDA(P), Allahabad recovered a sum of Rs.58,513/- from the pay of the petitioner as he was erroneously granted retirement gratuity as applicable for Hony Rank which was not applicable to him.

4. We have heard both the parties and gone through the record. Learned counsel for the petitioner has invited our attention to a Correction Slip No. 1/2011 in respect of amendment to Territorial Army Regulations, 1948 (Revised) 1976 which reads as under;

***"AMENDMENT TO TERRITORIAL ARMY REGULATIONS 1948 (REVISED) 1976  
C.S. No. 1/2011***

1. *Regulations for the Territorial Army 1948 (1976 Edition) are amended as under :-*

*In Para 172(c)*

**For** *Junior Commissioned Officers holding Honorary ranks of Captains and Lieutenants will be paid in accordance with the rank they held prior to being granted the Honorary ranks."*

**Read** *Junior Commissioned Officers granted honorary commission of Captain and Lieutenants while in service will continue to be entitled to same pay and allowance that is paid to their equivalent Honorary Commissioned Officers in Regular Army. However, Junior Commissioned Officers granted honorary ranks of Captain and Lieutenants on retirement will be paid in accordance with the rank they held prior to being granted the Honorary rank.*

*Case No. 47144/GS/TA-3/561/US/(GS-III)/2011*

*This issues with the approval of MoD/Fin diary No 710/FIN/GS/11 dt 8/7/2011*

*(V Rajaram)  
Under Secretary to the Government of India"*

5. As per this amendment, Junior Commissioned Officers granted honorary commission of Captain and Lieutenants while in service will continue

to be entitled to same pay and allowance that is paid to their equivalent Honorary Commissioned Officers in Regular Army. However, Junior Commissioned Officers granted honorary ranks of Captain and Lieutenants on retirement will be paid in accordance with the rank they held prior to being granted the Honorary rank.

6. Petitioner in the present case was granted the rank of Hony Lt w.e.f. 15.08.2004 and Hony Capt w.e.f. 26.01.2005 prior to his retirement i.e. on 31.01.2005. Therefore, both honorary ranks he got while in service as such as per the amendment cited above, he will be entitled for the benefits for the rank of Hony Captain. Hence, respondents are directed to release pension for the rank of Hony Captain from the date of his retirement with all other benefits as per rules. The recovery effected by the respondents of Rs.58,513/- is absolutely illegal and it is directed that same be refunded to the petitioner. This exercise should be completed as far as possible within three months from the date of this order. Petitioner will also be entitled for interest @ 12% per annum on the arrears.

7. Petition is accordingly allowed. No order as to costs.

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

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

New Delhi  
July 19, 2012  
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