

**COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**OA No. 1366 of 2020**

**Sub Maj/Hony. Lt. Diwakar Prasad Kotnala (Retd.)  
.... Applicant**

***Versus***

**Union of India & Others  
.... Respondents**

**For Applicant : Ms. Archana Ramesh, Advocate**

**For Respondents : Mr. D K Sabat, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicants have filed their OAs and the reliefs claimed in Para 8 are read as under respectively:

***“A. Issue directions to the Respondents to place the case of the JCO Applicant before a DPC in BEG Centre so as to consider him for promotion to the rank of Honorary Captain in the Republic Day of 26 Jan 2021 and if in the negative then again for consideration***

*before the Independence Day 15 Aug 2021 to meet the ends of equity, justice and fair play;*

*B. Issue directions to the respondents to modify the PPO issued by the PCDA (Pension) Allahabad dated 28 July 2005 placed herein as Annexure A-1 by changing the last rank as Honorary Captain with inherent pay and allowances and subsequent revised pension if considered favorably in the DPC and duly confirmed by Army HQ and duly promulgated in the attendant circumstances to meet the ends of justice and fair play;*

*C. Pass such other and further orders to the respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.”*

#### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Army on 20.08.1974 and discharged from service w.e.f. 31.10.2005 upon completion of terms of engagement, in the rank of Honorary Lieutenant, under item II (a) annexed to Rule 13 (3) of the Army Rules 1954. The applicant had served for 31 years 02 months and 11 days in the active service.

3. The applicant was awarded Honorary Commission as Lieutenant whilst on active service, as per the Integrated

Headquarters (Army) Ministry of Defense (MoD), Ceremonial & Welfare Directorate/CW-2 policy B/43435/Policy/AG/CW-2 dated 16.05.2008, on the occasion of Independence Day vide gazette notification Part – I Sec 4 No. B/43432/ID-05/AG/CW-2 dated 15.08.2005.

4. The applicant upon retirement has been issued a PPO by the PCDA (P) Allahabad vide PPO No. S/032100/2005 dated 18.07.2005 wherein the last rank held by the applicant before retirement is shown as 'Subedar Major' and the rank for pension is also in the rank of Subedar Major. Copy of the said PPO is annexed with the instant OA as Annexure A – 1 and is marked as 'impugned order'.

5. The applicant had filed two applications dated 02.08.2019 and 07.08.2019 to the Commandant, BEG & Centre, Roorkee, Uttarakhand, against the alleged delay in forwarding of his ACR for the year 2004 resulting in delayed promotion to the rank of Honorary Lieutenant on 15.08.2005, ought to be on 26.01.2005, and is seeking the grant of Honorary rank of Captain w.e.f. 26.01.2021 or 15.08.2021, which the applicant could not be granted whilst on active service. However, the said applications were not replied to by

the respondents as it is submitted that none of these applications were ever received by the office.

6. The applicant had also preferred a statutory appeal dated 13.03.2019 to the Chief of the Army Staff (COAS) praying for the consideration in the DPC by BEG Centre along with JCOs for 26.01.2021 or 15.08.2021, however, the same was not replied to by the respondents as it is submitted that the said appeal was not received by the office.

7. Aggrieved with the non-grant of the award of rank of Hony. Captain by the respondents, in addition to the modification as sought in the PPO, the applicant has filed the present OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA for consideration.

### **CONTENTIONS OF THE PARTIES**

8. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 20.08.1974 and due to his sincerity and dedication the applicant was promoted to the highest rank of Subedar Major and was granted the award of commissioned rank of Honorary Lieutenant on 15.08.2005.

9. The learned counsel for the applicant submitted that due to delay in sending the ACR of the year 2004 by the parent unit i.e., 234 Engr Regt, for evaluation, the applicant was awarded the rank Honorary Lieutenant on 15.08.2005, belatedly w.e.f. 26.01.2005.

10. The learned counsel for the applicant submitted that since the applicant was awarded the rank Honorary Lieutenant on 15.08.2005 due to the delay, the applicant could not be awarded the rank of Honorary Captain whilst on active service prior to the retirement.

11. The learned counsel for the applicant submitted that the applicant has suffered due to the delayed onset of action on part of the respondents in sending the ACR of the year 2004 and is seeking to place the case of the applicant before DPC for promotion to the rank of Captain in two chances as per the extant policy.

12. Per contra, the learned counsel for the respondents submitted that the applicant was awarded Honorary Commission as Lieutenant on active list on the occasion of the Independence Day i.e., 15.08.2005 vide gazette notification Part – I Sec 4 No. B/43432/ID-05/AG/CW-2.

13. The learned counsel for the respondents submitted that as per the relevant policy of the IHQ – MoD Ceremonial & Welfare Directorate/CW-2 policy B/43435/Policy/AG/CW-2 dated 16.05.2008, the case of the applicant has already been considered twice for the grant of Honorary Commission on active list and the applicant during the ‘last chance’ was awarded the honorary rank as Lieutenant.

14. The learned counsel for the respondents submitted that the name of the applicant for the grant of Honorary rank of Captain after retirement was considered and the applicant was accordingly awarded Honorary Captain vide Draft Gazette Notification (extraordinary) Part I Section 4 No. B/43432/RD06/AG CW-2 dated 26.01.2006.

15. The learned counsel for the respondents also submitted that all the correspondence related to the Honorary rank in respect of the applicant have already been destroyed by the Board of Officers on 02.04.2011 after the due retention period as per the DSR Para 392 to 596 of the Regulations for the Army 1987 (Revised Edition). Proceedings of the Board of Officers is annexed as Annexure R – II to the Counter Affidavit filed on 09.11.2021.

## **ANALYSIS**

16. We have heard the learned counsel for both the parties at length and have perused the records produced before us.

17. It is the contention raised on behalf of the applicant that the parent unit of the applicant has failed to ensure the timely dispatch of the ACR to the BEG Centre and owing to the same there is a delay in consideration in the DPC in the center and onward dispatch to ADG.

18. The respondents have produced the original records pertaining to the grant of honorary commission as Lieutenant (two chances). Upon perusal of the same, it is observed that the applicant during the consideration for the award of honorary rank of Lieutenant on the occasion of 26.01.2005 had scored 30 marks as against the required cut-off of the 38 marks. The last person in the merit list in accordance with the cut – off score as provided stood at serial number 537 whereas the applicant during that consideration stood at serial number 614. There were 76 persons in between the last person who was awarded the honorary commission and the applicant, who was not there in the merit list.

19. After the first consideration on the occasion of 26.01.2005, the applicant was again considered on the occasion of 15.08.2005 (last/second chance in the last year of active service). During this last consideration, the applicant had scored 32 marks as against the cut – off marks of 31 and the applicant had stood at serial number 499 in the merit list. Since the applicant was one mark above the minimum cut-off marks, the applicant was considered and granted the award of Honorary commission on the active list as Lieutenant on 15.08.2005.

20. Qua the 'Consideration and Chances' for the grant of the award of Honorary commission to a JCO on active list, it is essential to advert to the policy of the IHQ (Army) – MoD Ceremonial & Welfare Directorate/CW-2 policy B/43435/Policy/AG/CW-2 dated 16.05.2008. The relevant extract of the said policy is reproduced hereinbelow which states to the effect: -

P.T.O.

Telephone : 23018193  
ASCON : 35132

REGISTERED SDS/POST

Ceremonial & Welfare Directorate/CW-2  
Adjutant General's Branch  
Integrated Headquarters of MoD (Army)  
South Block, DHQ - PO  
New Delhi - 110011

B/43435/Policy/AG/CW-2

16 May 2008

Records REG (R)

Policy for award  
to Army Commis

(All HQ Command and Record Offices)

**HONORARY COMMISSIONS/RANKS TO JCOs  
AND DAFADARS/HAVILDARS**

1. This letter aims at enhancing efficiency/accuracy by consolidating all the letters issued on the subject from time to time.
2. The present system of grant of Honorary Commission and Ranks to JCO and Dafadars/Havildars on active list and retirement is given in three parts as follows :-
  - (a) Part I - Honorary Commissions to JCOs on Active List.
  - (b) Part II - Honorary Ranks to JCOs on Retirement.
  - (c) Part III - Honorary Ranks to Dafadars/Havildars on Retirement.

**PART I - HONORARY COMMISSIONS TO JCOs ON ACTIVE LIST**

**Consideration and Chances**

3. All Ris Maj/Sub Maj and Ris/Sub of the Regular Army including those of Defence Security Corps and Territorial Army will only be considered for grant of honorary commissions on the active list in the last year of their colour service in two chances.
4. Those who have been decorated twice - one of which should be for gallantry including Mention-in-Dispatches will be considered in the last two years of their colour service and will be accorded four chances. (COAS commendation card will not be counted towards this consideration).
5. JCOs who proceed on premature retirement on any ground without completion of their colour service or enhanced tenure (after having opted for it) are not eligible for grant of Honorary Commission.
6. JCOs who have availed one chance or two chances in the rank of Ris/Sub and get promoted to the rank of Ris Maj/Sub Maj will be eligible for consideration again for the grant of Honorary Commission in last year of their colour service (ie before retirement) in the rank of Ris Maj/Sub Maj and shall be accorded two chances.

Part – I of the ibid policy under the ‘consideration and chances’ in paragraph 3 states that **all subedar major of the regular army including those of Defence Security Corps (DSC) and territorial army will only be considered for grant of honorary commissions on the active list in the last year of their color service in two chances.**

21. From the record in original as produced by the respondents, it is evident that the case of the applicant has fairly been considered twice in the last year of his color service as per the ibid policy applicable and accordingly the applicant has been awarded the rank of Honorary Lieutenant on the occasion of 15.08.2005.

22. The respondents vide their counter affidavit filed on 09.11.2021 submitted that the applicant has also been granted the rank of Honorary Captain, as per the ibid policy dated 16.05.2008, after the retirement on the occasion of 26.01.2006 and a Para – II dated 27.01.2006 (annexed as annexure R – V to the counter affidavit) to that effect was also released wherein the applicant was granted the honorary rank of Captain on his retirement on 31.10.2005.

23. The applicant has already been granted fair consideration twice for the award of honorary commission in the last year of his color service and the applicant would not have made a meritorious case for the award of rank of Honorary Lieutenant on the occasion of the 26.01.2005 even with the ACR of the year 2004 be taken on record as the last person in the merit list in accordance with the cut – off score as provided stood at serial number 537 with 38 marks whereas the applicant during that consideration stood at serial number 614 with 30 marks as against the cut – off score of 38 marks. There is a difference of 08 marks in the merit score of the applicant and the minimum threshold for being awarded the rank of Honorary Lieutenant and this difference could not be bridged had the ACR for the year 2004 was also considered.

### **CONCLUSION**

24. In view of the above analysis, we are of the view that the case of the applicant is not fit for the grant of promotion to the rank of Honorary Captain as the applicant has already been given two fair considerations / chances in the last year of his color service for the grant of honorary commission and

has accordingly been awarded the honorary rank of Lieutenant on the occasion of 15.08.2005.

25. Since the applicant was awarded the honorary rank of Lieutenant on 15.08.2005 prior to his discharge on 31.10.2005, the respondents are directed to rectify, calculate, sanction and issue the necessary PPO in the last rank held by the applicant, i.e., 'Honorary Lieutenant' and to modify the emoluments / benefits accrued accordingly from the date of retirement. The dues of the difference in the rate of pension for the rank of Subedar Major and Honorary Lieutenant shall be paid by the respondents within a period of three (03) months from the date of receipt of copy of this Order and further direct for commencement of pension in the rank of Honorary Lieutenant, failing which the applicant shall be entitled to interest @ 6% p.a.

26. The OA is thus disposed of. No order as to costs.

27. Pending Miscellaneous Application(s), if any, stands disposed of accordingly.

Pronounced in the open court on this 7<sup>th</sup> day of April, 2026.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

Sectt/P