

COURT NO. 3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 3652/2024

WITH

MA 3919/2024

Maj S.N. Malhotra (Retd) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. R.S. Chhillar, Advocate

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 3919/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [(2008) 8 SCC 648] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

2. Being aggrieved by the action of the respondents in not granting him pension in the rank of Lieutenant Colonel, the applicant has filed the present OA seeking the following reliefs:

*(a) To direct the respondents to grant him pension in the rank of Lieutenant Colonel (i.e. the rank which he held at the time of retirement).*

*(b) In the alternative, to grant him the rank and pension of Lieutenant Colonel on the ground that a Major with more than 21 years of service is granted the rank and pension of Lieutenant Colonel.*

*(c) To grant such other reliefs as may be deemed fit and proper in the facts and circumstances of the case.*

3. The case of the applicant, in brief, is that he was commissioned in the Indian Army on 11<sup>th</sup> December, 1962. He contends that he was granted acting rank of Lieutenant Colonel with pay and allowances and that steps were initiated for his placement against a supernumerary vacancy. It is stated that on 11<sup>th</sup> February, 1980 the matter regarding his promotion to the rank of Lieutenant Colonel was processed and that on 11<sup>th</sup> November, 1980 a

supernumerary vacancy in the rank of Lieutenant Colonel was created. According to him, DO Part II Orders were issued for retention of acting paid rank, pay fixation in the rank of Lieutenant Colonel was carried out on 3<sup>rd</sup> January, 1991 and he continued to discharge duties in that rank. He superannuated on 31<sup>st</sup> March, 1992 after rendering more than 28 years of service and claims to have retired in the rank of Lieutenant Colonel. Subsequently, correspondence ensued between the Principal Controller of Defence Accounts and the Military Secretary's Branch regarding his last pay rank, wherein it was reflected as Major. The applicant asserts that this is erroneous and that he is entitled to pension in the rank of Lieutenant Colonel. The applicant has further stated that even otherwise the fact that he has completed more than 21 years of service as a Major, hence, as per policy dated 21<sup>st</sup> November, 1997 he is entitled for promotion as a Lt Col. He also made representations in 2024 seeking correction of pension and payment of consequential

benefits. Alleging inaction on the part of the respondents, he has approached this Tribunal.

4. The respondents, in their counter affidavit, have stated that the applicant was commissioned on 11<sup>th</sup> December, 1962 and that he was involved in disciplinary proceedings under Sections 57(a), 57(c) and 69 of the Army Act and was placed under DV ban. It is further stated that prior to completion of the disciplinary proceedings, the applicant absented himself on 30<sup>th</sup> March, 1992 and was declared a deserter with effect from that date. He was superannuated on 31<sup>st</sup> March, 1992 on attaining the age of superannuation in the substantive rank of Major and was granted pension accordingly. After being apprehended in September 1993, the disciplinary proceedings were completed, resulting in forfeiture of eight years of past service for pension and award of severe reprimand. The respondents have clarified that the applicant was granted acting rank of Lieutenant Colonel only for specified temporary periods and was never granted substantive

rank of Lieutenant Colonel (Selection or Time Scale). As per the records of the Military Secretary's Branch, he was considered for grant of substantive rank of Lieutenant Colonel (Time Scale) but was not approved by the competent authority in view of applicable policies and his disciplinary background. Consequently, the last substantive rank held by the applicant at the time of retirement was Major and pension has rightly been regulated on that basis. The respondents have also contended that the documents relied upon by the applicant merely relate to authorisation of strength or forwarding of correspondence and do not constitute grant of substantive rank.

5. We have heard the learned counsel for the parties at length and carefully perused the pleadings, annexures and the original records placed before us. Upon a comprehensive consideration of the rival contentions, the following issues arise for determination:

- (i) Whether the applicant was ever granted the rank of Lieutenant Colonel (Selection or Substantive Time Scale)?

- (ii) Whether the grant of acting rank, pay fixation or creation of a supernumerary post confers a right to pension in the higher rank?
- (iii) Whether the applicant is otherwise entitled to the rank and pension of Lieutenant Colonel by virtue of having completed 21 years of service as per the MoD policy letter of 21<sup>st</sup> November, 1997?

6. It is a settled principle in service jurisprudence that pension is regulated on the basis of the rank held at the time of retirement, unless specific statutory provisions provide otherwise. Acting or officiating rank does not automatically mature into selection grade or substantive time scale promotion in that rank. In the present case, the materials relied upon by the applicant demonstrate that he was granted acting rank of Lieutenant Colonel for specified periods, certain administrative actions were initiated for placement against a supernumerary vacancy and pay fixation was carried out corresponding to acting arrangements. However, none of the documents on record establish that a Selection Board approved him for substantive promotion or the competent authority sanctioned his substantive promotion or a gazette

notification was issued conferring substantive rank of Lieutenant Colonel (Selection or Time Scale). Authorisation of a supernumerary post or continuation in an appointment does not *ipso facto* amount to substantive promotion. A supernumerary post is a device to accommodate an individual without disturbing the sanctioned strength and it does not dispense with the requirement of formal approval by the competent authority for substantive rank. There is no order on record demonstrating that the applicant was substantively promoted against such supernumerary vacancy. Administrative processing or proposal cannot substitute a formal promotion order.

7. On the contrary, the records produced by the respondents clearly show that the applicant was considered for grant of substantive rank of Lieutenant Colonel (Time Scale) but was not approved by the competent authority, in accordance with the policy then in force. It is specifically stated that an officer not placed in the acceptable grade for Time Scale rank would not be

given further consideration. We find no material to contradict this position. In this regard, it would be appropriate if we quote the letter dated 5<sup>th</sup> August, 1991, which shows that the applicant was not granted substantive rank of Lt Col (Selection Grade). It reads:

*"38183/Amdts/Inf/120/MS-Retirement 05 Aug 91*

*Headquarters  
Western Command  
Chandimandier*

**RETIREMENT ON SUPERANNUATION**

*1. The following amendments is made in this HQ letter NO. 38183/Mar 92/Inf/282/MS Retirement dated 27 May 91, Appendix 'A' Srl No. 14, Column (b) :-*

*For : A/Lt Col Sham Narain Malhotra  
(IC 13944A), Rajput*

*Read : Maj Sham Narain Malhotra  
(IC 13944AS), Rajput*

- 2. The officer may please be informed accordingly.  
4. Please ack.*

*(PK Rampal)  
Col  
Col MS (Retirement & Release)  
KriteySena Sachiv  
For Military Secretary"*

8. In the absence of any formal order granting substantive promotion, the acting arrangement cannot be construed as having conferred any vested or enforceable right upon the applicant. Acting rank, by its very nature, is

temporary and contingent and does not crystallize into a substantive entitlement in the absence of due approval by the competent authority in accordance with the prescribed procedure. Accordingly, Issues (i) and (ii) are answered against the applicant.

9. As far as Issue No. (iii) is concerned, the respondents have placed on record that the applicant was involved in disciplinary proceedings under the Army Act, he was placed under DV ban, he absented himself prior to completion of disciplinary proceedings and was declared a deserter and he was subsequently awarded forfeiture of 8 years of past service for pension and severe reprimand which implies that his 29 years, 3 months and 20 days of commissioned service gets reduced to 21 years, 3 months and 20 days.

10. The applicant has alternatively contended that even if he was not considered for select grade promotion as Lt Col, a Major with more than 21 years of service is to be granted the rank and pension of Lieutenant Colonel (TS)

as per MoD letter of 21<sup>st</sup> November, 1997. This contention is misconceived on 2 counts.

a) Time Scale promotion is not automatic upon completion of a particular number of years. It is subject to fulfilment of prescribed criteria, vigilance clearance and approval by the competent authority. Length of service is a necessary condition but not a sufficient condition. The applicant was admittedly considered and not approved. Therefore, mere completion of qualifying service does not entitle him to notional or automatic promotion.

b) Further, in view of the law laid down in *Suchet Singh Yadav and others Vs. Union of India and others* [(2019) 11 SCC 520], the benefit of the policy letter dated 21<sup>st</sup> November, 1997 is available only to those officers who were in service as on 1<sup>st</sup> January, 1996. The applicant does not satisfy this requirement and, therefore, cannot claim the benefit of the said policy.

11. Pension under the applicable Pension Regulations is determined with reference to the substantive rank held on the date of retirement. The records clearly establish that

the applicant superannuated on 31<sup>st</sup> March, 1992 in the substantive rank of Major. No substantive promotion order to Lieutenant Colonel (TS) was in existence on that date. The letter dated 6<sup>th</sup> November, 2020 would make it clear that the applicant was not granted the substantive rank of Lt Col (Selection). It reads:

*“ 378852/Col(By Sel)Misc/MS-8A*

*06 Nov 2020*

*MILITARY SECRETARY'S BRANCH*  
*(MS-8A)*

*PROMOTION IN THE RANK OF LT COL IN RESPECT OF*  
*IC-13944A MAJ SN MANHOTRA (RETD)*

*1. Reference you Note No. 12681/IC-13944/T-4/MP-5(B) dated 31 Jul2020.*

*2. As per record held with this office IC-13944 Maj Sham Narain Malhotra, was not granted the substantive rank of Lt Col (Selection). Gazette Notification is done only for the substantive rank of Lt Col(Selection).*

*(TK Mohaptra)*  
*Section Officer*  
*MS-8A”*

Therefore, the fixation of pension in the rank of Major is in conformity with the governing regulations.

12. We find that no vested or accrued right in favour of the applicant has been demonstrated. A mere expectation of promotion or pendency of administrative processing

does not create an enforceable legal entitlement. Accordingly, the claim for grant of rank and pension of Lieutenant Colonel is devoid of legal merit. The reliefs sought cannot be granted.

13. The OA is, therefore, dismissed as devoid of merit. No order as to costs.

Pronounced in the open Court on this 24<sup>th</sup> day of March, 2026.

  
[RASIKA CHAUBE]  
MEMBER (A)

  
[JUSTICE NANDITA DUBEY]  
MEMBER (J)

/vks/Alex/