

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 657 of 2010

Joginder Singh & others	Petitioner(s)
Vs		
Union of india and others	Respondent(s)

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For the Petitioner (s) : Mr. Nareh Ghai, Advocate

For the Respondent(s) : Mr. Gurpreet Singh, Sr. PC.

**Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) Naresh Verma, Administrative Member**

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**ORDER
20.01.2014**

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The petitioners have filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 praying for grant of pensionary benefits @ 50% of their pay in the honorary rank of Lieutenant/Captain with interest @12% per annum by setting aside PAO letter dated 3-02-2009 (Annexure A-1).

Shorn of un-necessary details, the brief facts of the case are that all the petitioners joined as recruits in the Territorial Army. During service they served in field and operational areas and were promoted to the various higher ranks. Petitioners No. 1,2,4,6, 8 and 9 were given the rank of Honorary Captain whereas petitioners No. 3,7 and 10 were granted the rank of Honorary Lieutenant prior to their retirement.

It is averred in the petition that as per the Gazette Notification issued by the President of India, the Honorary Lieutenant/Captains have been given the pay scale of Rs. 27000/27700, while the Susbedars have been given the pay scale of Rs. 16100/- as per Special Army Instructions No. 1/S/98 w.e.f. 01-01-2006 which is also applicable to Territorial Army. Since they have granted the Honorary ranks of Lieutenant/Captain while in service, they are entitled to the pension @ 50% of the pay admissible for the

ranks of Honorary Lieutenant/Captain. As per the copies of PPOs which have been issued by the PCDA (P), Allahabad and attached with the petition, the petitioner Nos. 1 to 4 have been granted the pension which is admissible to Subedars. As such, the action of the authority is illegal and contrary to the Rules and Regulations applicable to the Territorial Army. Feeling aggrieved, a Legal Notice dated 15-02-2010 was also served on behalf of petitioner Nos.1 to 3 by their Counsel Mr. Naresh Ghai, Advocate, on the respondents, but to no avail. Ultimately the petitioners have filed the present petition seeking the relief as stated earlier.

On notice having been issued, the respondents have filed the reply in which a preliminary objection has been taken that no cause of action accrued to the petitioner No.4, Ex. Subedar & Honorary Captain Manohar Lal. He was enrolled in 126 Inf Bn (TA) JAK RIF on 01-08-1980. Subsequently, he was transferred to 161 Inf Bn (TA) H&H, JAK LI on 06.01.2004 vide Additional Dte Gen TA IHQ Mod (Army) Letter No. 43558/GS/TA-3 (a) dated 08-12-2003.

In para 1 of the reply, it is stated that JCO applicant Manohar Lal was granted Honorary Commission as Lieutenant on Active List on 15-08-2009 and further granted Honorary Commission as Captain on active List on 26-01-2010. On completion of his term of engagement, he was proceeded to Pension Establishment on 31-07-2010. His claim for grant of pension in the rank of Honorary Captain was sent to PCDA (P), Allahabad in the month of April 2010 which was rejected by the PCDA vide Annexure R-1. The JCO applicant was granted service pension in the rank of Subedar vide PCDA (P), Allahabad, PPO dated 03-08-2010 (Annexure R-2). Bank draft amounting to Rs. 3,58,557/- was also sent to him on account of his final settlement of account.

On merits, the stand of respondents is that as per Rule 172 (c) of Regulations for the Territorial Army -1948 (1976 Edition), the pay and allowances of JCOs holding Honorary Rank of Captain and Lieutenant will be paid in accordance with the rank they

held prior to being granted the Honorary Ranks. Copy of the said rule has been attached as Annexure R-IV with the reply.

It is the further stand of the respondents that the Army personnel who are enrolled in the Territorial Army and granted Honorary Ranks are discharged/retired under Territorial Army Regulation -1948, are not eligible for pension in the rank of Honorary Lieutenant/Captain as per rule 172 (c) of Regulations for the Territorial Army 1948. Since the petitioners were not eligible for pension in the rank of Honorary Lieutenant/Captain as per rule, they were granted pension in the rank of Subedar which was held by them prior to their retirement. On these grounds, the respondents pray for the dismissal of the petition.

We have heard the learned counsel for the parties and have perused the documents on record.

In the present case, the respondents have taken a preliminary objection in the written statement that no cause of action accrued to the petitioner. However, during course of arguments, this point was not agitated by the respondents. Hence, it need not to be gone into.

It is not in dispute that the petitioners are personnel of Territory Army which was raised as part & parcel of Regular Army to support and supplement it. The Army Acts, Rules & Regulations and Instructions applicable to the personnel of Regular Army are also applicable to the individuals of Territorial Army in the matters of their appointments/discharge/retirement including the Pay and Allowances etc.

During the course of arguments, it was vehemently argued by the learned counsel for the petitioners that the petitioners while in service were Honorary Lieutenant/Captains on the Active Lists. Some of them were granted the Honorary Commission on the occasions of Republic Days 2009 and 2010. In this regard, he has placed on record the messages given by the Commanding Officers 16 to 18 conveying their congratulations to them. Therefore,

they are entitled to the same pay and allowances that are paid to their equivalent Honorary Commissioned Officers in Regular Army. As such they should have been allowed the pensionary benefits as are admissible for the ranks of Honorary Lieutenant/Captains. In support of his claim, the counsel for the petitioner has placed reliance on the amendment made in para 172 (c) of Territorial Army Regulations 1948 (Revised 1976) vide CS No.1/2011 issued with the approval of MoD Fin Diary No. 710/FIN/GS/11 dated 8/7/2011, which is reproduced as under:-

In para 172 (c)

For “Junior Commissioned Officer holding Honorary ranks of Captains and Lieutenant will be paid in accordance with the rank 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 allowances 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.”

A perusal of the above quoted rule clearly reveals that the Junior Commissioned Officers granted Honorary Commission of Captain and Lieutenants while in service would be entitled to the same pay and allowances that are paid to their equivalent Honorary Commissioned Officers in the Regular Army. In the aforesaid amendment, it has been made clear that the Junior Commissioned Officers granted honorary ranks of Captain and Lieutenants on retirement will be paid in accordance with the ranks they held prior to being granted the Honorary rank.

In the reply filed by the respondents it has nowhere been stated that the petitioners were not granted the Honorary ranks of

Lieutenant/Captains while in service. Rather, it has been clearly admitted that the JCO applicant Manohar Lal, Ex.Subedar was granted Honorary Commission as Lieutenant on active list on 15-08-2009 and he was further granted Honorary Commission as Captain on active list on 26-10-2010. According to their assertion, he proceeded to Pension Establishment on 31-07-2010 on completion of his term of engagement. This fact does not leave any manner of doubt that the petitioner Manohar Lal was granted Honorary ranks of Lieutenant and Captain while in service. However, nothing has been mentioned in the reply in respect of any other petitioner. Neither it was the stand of the respondents that any of the petitioners was granted the honorary rank of Lieutenant/Captain on his retirement, nor any such argument was raised during the course of arguments by the learned counsel for the respondents. However, in the reply nothing has been mentioned in respect of any other petitioner, except Manohar Lal. Thus, we are of the view that as per the latest amendment made in Para 172 (c) of Territorial Army Regulations, 1948, referred to above, the petitioners were entitled to the same pay and allowances that are admissible to their equivalent Honorary Commissioned Officers in Regular Army since they were granted honorary ranks while in service. Consequently, they are entitled to pension @ 50% of their pay and allowances along with all other retiral benefits as are admissible for the ranks of Honorary Lieutenant/Captain.

In view of the foregoing discussion, we find merit in the petition and the same is allowed. The respondents are directed that the

pension of the petitioners be calculated on the basis of the pay and allowances admissible to the equivalent Honorary Commissioned Officers in the regular Army. The revised PPOs shall be issued in respect of the petitioners and difference of retiral benefits be paid to them within with interest @ 6% within six months from the date of receipt of a certified copy of this order, failing which they shall be entitled to interest @ 10% per annum on the actual amount due to them till payment.

(Justice Prakash Krishna)

(Air Marshal (Retd) Naresh Verma)

20.01.2014
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Whether the judgment for reference to be put on Internet- Yes/No.