

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No 1****O.A. No 30 of 2017**Friday, this the 13th day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Atul Kumar Jain, Member (A)**Smt Bijay Kumari Mahapatra, widow of Late Maj (Retd) PK Mahapatra, r/o E-198, AWHO Colony, Tyagi Vihar, Near Bangla Bazaar, Jail Road, Lucknow (U.P.)**

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh, Advocate.**
Applicant

Versus

1. Union of India and Others through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of Min of Def, New Delhi.
3. The Director General of Armed Forces Medical Services (DG-1X), MoD 'M' Block, New Delhi - 110001.

..... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents **Central Govt Counsel.**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) To direct respondents to consider applicants name for Notional Promotion since 16 Dec 2004 till retirement to the rank of Lt Col as he had worked for the same period under same medical category.

(ii) To direct the respondents to pay all consequential wages/dues as applicable to the applicant with retrospective effect.

(iii) To pass any other order as the lordship may deem fit and proper in the above stated circumstances of the case.

(iv) Allow this application with cost.

2. Learned counsel for the applicant submitted that applicant was enrolled in the army on 22.01.1970 as Sepoy. He was commissioned as non technical entry on 15.10.1995. He served in army from 16.10.1995 to 2005. He was placed in low medical category A2P2 in December 1998 and he was in same medical category upto year 2001. He was promoted to the rank of Maj in the year 2002. Applicant retired from service on 31.03.2005. On

24.11.2005, he was informed that he has been considered for promotion from Maj to Lt Col by Time Scale (TS) but he was not considered for promotion to the next higher rank notionally whereas all others in the above stated list were being considered for promotion. Applicant made representation but he was informed that he cannot be promoted due to being low medical category. Being aggrieved, applicant has filed instant O.A. for grant of promotion of Lt Col and for grant of Pay and allowances of Lt Col.

3. Per contra, learned counsel for the respondents submitted that applicant was enrolled in army on 22.01.1970. He was granted Permanent Commission in Army Medical Corps Non Technical (NT) wef 16.10.1995 under the terms and conditions laid down in AI 18/89 with notional seniority wef 15.12.1987. He was promoted to the rank of Maj wef 15.12.2000 on completion of 13 years of reckonable service as per the policy. Applicant retired from service in the rank of Maj on 31.03.2005 on attaining the age of 56 years. Director General Armed Forces Medical Service (DGAFMS) vide letter dated 21.11.2005 directed that the officers who had retired in intervening period i.e. between 16.12.2004 to 28.10.2005 in the rank of Maj should be considered for promotion to the rank of Col (TS)/Lt Col. Para 3 of this letter clearly stipulates that such promotions can be conferred after ascertaining the medical category and

disciplinary back ground as on the due date. Criteria and guidelines for grant of substantive ranks of Lt Col by time scale laid down vide AO 23/1990 and para 5 of said Army Order specifies that medical classifications acceptable for grant of substantive rank of Lt Col by Time Scale. The direction of Office Order DGAFMS was disseminate the respective units and applicant was part of the list of officers who were so considered. The last unit of the officer Mil Hospital Danapur intimated that the applicant was in Low Medical Category S1H1A2P2E1 and accordingly, applicant was informed that he was not eligible for promotion to the rank of Lt Col in accordance with provisions of Para (b) of AO 23/1990. Applicant vide application dated 28.01.2006 and 26.01.2007 requested that he may be conferred the rank of Lt Col. He was informed vide letter dated 22.02.2007 that since he was in low medical category A2P2 at the time of superannuation and hence he was not eligible for promotion. Learned counsel for the respondents pleaded that instant O.A. is devoid of merit and lacks substance and is liable to be dismissed.

4. We have heard learned counsel of both the parties and perused the documents available on record.

5. The question before us to decide is “whether the applicant who retired from service in the rank of Maj on 31.03.2005 is

eligible for grant of notional promotion to the rank of Lt Col (TS) or not?

6. In the instant case applicant was granted Permanent Commission in Army Medical Corps Non Technical (NT) wef 16.10.1995 under the terms and conditions of laid down in AI 18/89 with notional seniority wef 15.12.1987. He was promoted to the rank of Maj wef 15.12.2000 on completion of 13 years of reckonable service as per the policy. He retired from service on 31.03.2005 in the rank of Maj after attaining the age of superannuation i.e. 56 years in Medical Category A2P2. DGAFMS vide letter dated 24.11.2005 directed that the officers who had retired in intervening period i.e. between 16.12.2004 to 28.10.2005 in the rank of Maj should be considered for promotion to the rank of Col (TS)/Lt Col subject to fulfilling medical and disciplinary criteria. Name of the applicant was also considered for notional promotion to the rank of Lt Col (TS) as he was retired from service on 31.03.2005. Since he was in low medical category A2P2, he was not notionally promoted to the rank of Lt Col (TS). Para 3 of this letter clearly stipulates that such promotions can be conferred after ascertaining the medical category and disciplinary back ground as on the due date. Criteria and guidelines for grant of substantive ranks of Lt Col by time scale are also laid down in Appendix to AO 23/1990. Para 5 sub para (a) of said Army Order states that

officers of SHAPE-1 or S1H1A1P2E1 or S1H2A1P1E1 or S1H1A1P1E2 or S1H2A2P1E1 Medical Classification are acceptable for grant of substantive rank of Lt Col by Time Scale. Applicant was placed in low medical category A2P2, hence he was not granted substantive rank of Lt Col by Time Scale. In the sum and substance of this case, we find that the applicant has failed to prove his case. We have no valid reason to interfere with the denial of promotion to the rank of Lt Col (TS) to applicant.

7. As a result of foregoing discussions, the present Original Application lacks merit and is liable to be dismissed and is accordingly **dismissed**.

8. No order as to cost.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 13 January, 2023
Ukt/-