

**Court No.1**  
**(List A)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Transferred Application No. 1 of 2016**

Tuesday, this the 31<sup>st</sup> day of January 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

(JC-90064) Sub (Retd) Om Prakash Sharma, s/o Late Shri Asarfi Lal Sharma, R/O Village Basai, Post Fatehabad, District Agra,

.....Petitioner

Ld. Counsel for the : **Shri Rohit Kumar, Advocate**  
Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Army Headquarters, D.H.Q., New Delhi.
3. Director General of Medical Services (Army), Army Headquarters, Adjutant General Branch, D.H.Q. PO, New Delhi.
4. Comptroller General of Defence Accounts, West Block-V, R.K. Puram, New Delhi.
5. Controller of Defence Accounts, Other Ranks (North), Meerut.
6. Officer-in-Charge Army Medical Corps Records Office, Lucknow.
7. Pay Accounts Officer (Other Ranks), Lucknow.

...Respondents

Ld. Counsel for the : **Shri Sunil Sharma, Central**  
Respondents. **Govt Counsel assisted by**  
**Maj Soma John, OIC, Legal Cell.**

**ORDER (ORAL)**

1. Being aggrieved with the order of discharge while holding the rank of Subedar, the petitioner had preferred Writ Petition No. 37362 of 1991 in the High Court of judicature at Allahabad which has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 1 of 2016.
2. We have heard Shri Rohit Kumar, Ld. Counsel for the petitioner and Shri Sunil Sharma, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.
3. The petitioner was enrolled in the Indian Army on 26.07.1961. At the time of enrolment his actual date of birth was recorded in the Sheet Roll as 04.07.1938 but at some stage in service erroneously the date of birth was recorded as 15.03.1942.
4. Grievance of the petitioner is that he retired on 10.02.1989 vide order dated 23.01.1989, but before retirement he was not considered for Honorary Commission as should have been done as per Army Order 174/74. It is admitted that the tenure of the rank of Subedar is 28 years of service or 50 years of age, whichever is earlier.
5. Submission of Ld. Counsel for the respondents is that keeping in view the correct Date of Birth/service of the petitioner on the rank of Subedar the petitioner was liable to be discharged on 01.08.1988. However on account of some clerical mistake in the Date of Birth the petitioner continued to work beyond the due date of retirement and he was finally retired on 10.02.1989 when the anomaly was noticed.
6. Assailing the arguments advanced by Ld. Counsel for the respondents, Ld. Counsel for the petitioner submitted that the date of birth of the petitioner was recorded as 15.03.1942 hence he was

entitled to serve up to the year 1992. Ld. Counsel for the petitioner further submitted that the date of birth i.e. 15.03.1942 was recorded by the respondents' ministerial staff for which the petitioner cannot be blamed. The anomaly was noticed when Sheet Roll of the petitioner was scrutinized on 10.01.1989 while processing his case for promotion to the rank of Sub Maj.

7. There appears to be no dispute that inadvertently the ministerial staff recorded the date of birth of the petitioner as 15.03.1942 in the retirement register, but actual date of birth of the petitioner was 04.07.1938. Accordingly the petitioner should have retired at 50 years of age or 28 years of colour service on the rank of Subedar. Ld. Counsel for the petitioner did not deny that the date of birth of the petitioner was originally recorded as 04.07.1938, and in case it is true the petitioner should have retired from service on attaining the age of 50 years or 28 years of colour service, whichever is earlier.

8. So far as submission of petitioner's counsel that the petitioner cannot be blamed for continuance in service even after Jul 1988, a question cropped up whether the petitioner was entitled to continue for four more years keeping in view his date of birth was erroneously recorded as 15.03.1942? Once the factum of correct date of birth is not disputed then continuance in service on the rank petitioner was holding keeping in view the actual date of birth seems to suffer from substantial illegality. The moment a person attains the age of superannuation under service regulations of the Army read with provisions contained in the Army Act, he ceases to continue in service and all duties and statutory rights flowing from such continuance cease to exist the moment he/she retired from service.

Section 10 read with Section 18 of the Army Act, 1950 provides that an incumbent shall be entitled to continue in Army service during the pleasure of the President and such pleasure shall continue till the age of superannuation provided under the Army Regulations. Accordingly in advertent continuance in service beyond the age of superannuation keeping in view the actual date of birth i.e. 04.07.1938 shall not confer any right under the Army Act and Regulations framed thereon nor such continuance shall entitle the petitioner to any service benefits. Inadvertent mistake with regard to entry of date of birth never extends any right to the employee. The members of the Indian Army shall have right of service benefits till the date he/she continues in service in view of original date of birth which according to Ld. Counsel for the respondents is date of birth recorded in High School Certificate. In the present case, admittedly the date of birth of the petitioner as recorded in the High School Certificate is 04.07.1938.

9. In view of our observations made hereinabove no statutory right accrued to the petitioner to be considered for grant of Honorary rank of Lt/Capt on account of extended period of service because of inadvertent mistake on the part of the respondents. Right to be considered for promotion is the fundamental right but its foundation must be statutory in nature keeping in view the date of birth and length of service. In case any person fulfills the statutory requirements, he/she shall be entitled to promotional avenues. The petitioner could not have been considered for Honorary Rank before retirement under these circumstances. However the petitioner was considered for Honorary Rank of Sub Maj in Aug 1989. The maximum which can be made available to the petitioner is not to

recover the salary paid to him while working during illegally extended period, but it shall not permit him to be granted promotional avenues during such illegal extended period.

10. Based on correct date of birth on any ground whatsoever the petitioner could not have been granted promotional avenue keeping in view the fact that he continued in service on the basis of incorrectly recorded date of birth.

11. In view of above the T.A. lacks merit and deserves to be dismissed.

12. It is accordingly **dismissed**.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**

Dated: 31 Jan 2017