

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 301 of 2012****Saturday, this the 18th day of March, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

1. Major Padam Bahadur Gurung (Retd) (RC 00750Y)
S/o Shri Bhim Bahadur Gurung
House No. 280, Krishna Vihar
Village & Post – I.I.P Mohkampur
Dist – Dehradun (Uttarakhand) Pin-248005
2. Major Gam Bahadur Gurung (Retd) (RC 00688X)
S/o Shri Purna Bahadur Gurung
C/o Shri Padam Bahadur Gurung
Village & Post – I.I.P Mohkampur
Dist – Dehradun (Uttarakhand) Pin-248005
3. Major Tej Bir Subba (Retd) (RC 00768P)
S/o Late Janga Man Subba
C/o Shri Bhim Bahadur Gurung
Village & Post – I.I.P Mohkampur
Dist – Dehradun (Uttarakhand) Pin-248005
4. Major Govind Singh Uniyal (Retd) (RC 00776N)
S/o Shri Pan Singh Uniyal
Village – Loharisal Malla, PO-Kathgharia Kaladhungi Road
Near Block Haldwani, Distt – Nainital (Uttarakhand) Pin 263139
5. Major Amar Bahadur Rai (Retd) (RC 00836X)
S/o Late Sher Bahadur Rai
House No. 27, Village : Ramgarh, Post : Clement Towa,
Dehradun Cantt (Uttarakhand) Pin -248002
6. Maj Hemant Kumar Gurung (Retd) (RC 008575N)
S/o Late Shri Shiam Kumar Gurung
C/o Shri Padam Bahadur Gurung
Village & Post – I.I.P Mohkampur
Dist – Dehradun (Uttarakhand) Pin-248005
7. Major Prahlad Chandra Ratten Karki (Retd) (RC 00868A)
S/o Shri Chandra Bahadur
Gurung "JUNPALU" 18B, Garhi Cantt
Dehradun Cantt (Uttarakhand), Pin – 248003

8. Major Shiv Darshan Singh (Retd) (RC 00883P)
S/o Late Shyam Singh
C/o Maj PCR Karki
18B, Garhi Cantt, Dehradun Cantt (Uttarakhand), Pin – 248003
9. Major Rana Pratap Singh (Retd) (RC 00912Y)
S/o Shri Late Devi Feran Singh
Village – Turkawliya, PO – Amarediha,
Dist – Basti (UP) Pin – 272194
10. Major Anil Thapa (Retd) (RC 00928K)
S/o Late Maj Kishan Singh Thapa
147 – South Vanasthali, Mandir Lane, Ballupur,
District – Dehradun (Uttarakhand) 243001
11. Major Madhav Prasad Bhattra (Retd) (RC 00933P)
S/o Late Tika Ram Bhattarai
Flat No. 102, Pramila Plaza Gandhi Road,
Thatipur (Near Chauhan Pyau), Gwalior – 474006 (MP)
12. Major Gambir Singh (Retd) (RC 00942W)
S/o Late Jeet Singh
Vill – Tipli, PO – Jajal, HPO – Narender Nagar,
Dist – Tehri Garhwal (Uttarakhand) Pin – 249175
13. Major Narayan Babu Shrestha (Retd) (RC 00960Y)
S/o Late Nar Bahadur Shrestha
76, Adarsh Nagar, Neel Matha Bazar,
Lucknow Cantt (UP)
14. Major Bhupal Singh Rautela (Retd) (RC 0961F)
S/o Late Bhim Singh Rautela
Vill – Dev Vihar Lohariasal Malla, PO – Kathgharia (Haldwani)
Dist – Nainital, Pin – 263139 (Uttarakhand)
15. Major Bache Singh Mehra (Retd) (RC 1004H)
S/o Ram Singh Mehra
Village – Jai Dev Pur (Satya Vihar Colony), PO – Haripur Naik
(Haldwani), Dist – Nainital, Pin 263239 (Uttarakhand)

..... Applicants

Ld. Counsel for the Applicant: **Shri Veer Raghav Chaubey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence,
South Block, New Delhi.

2. The Chief of Army Staff, Army Headquarters, Dak Sena Bhawan, New Delhi.
3. The Adjutant General A.Gs Branch, 1-H.Q. of Ministry of Defence Army Headquarters, New Delhi.
4. The Principal CDA (P), Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh,**
Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) Direct the opposite parties to grant the applicants a Notional increase of service by 02 (two) years as proposed by the opposite parties being Notional Extension Service.
- (ii) Direct the opposite parties to treat the applicants be Notionally promoted to the rank of Lieutenant Colonel (Time Scale) on the completion of 13 years of such assumed service.
- (iii) Direct the opposite parties to pay the applicants the pension of the post of Major till they are promoted the rank of Lieutenant Colonel and thereafter their pay and pension may be directed to be re-fixed against the Notional promotion to the rank of Lieutenant Colonel.
- (iv) Direct the opposite parties to also extend the benefits of the judgment and order passed in Transfer Application No. 37 of 2010 by the Hon’ble Kolkata Bench of Armed Forces Tribunal dated 04.04.2001 to the applicants.

- (v) That the costs of this original application may also be awarded to the applicants from the opposite parties.
- (vi) That any other order or direction which this Hon'ble Tribunal deems just and proper in the circumstances of the case may also be passed in favour of applicants as well as in the interest of justice."

2. The factual matrix on record is that the applicants were enrolled in the Indian Army and later on commissioned as Regimental Commissioned Officers (RCOs) on different dates between 1992 to 1996 and applicants have been superannuated in the rank of Major between 31.12.2004 to 31.12.2008 after serving a period of 12 years. The grievance of the applicants is that they have not been given the benefit of extended age of retirement as well as promotion to the post of Lieutenant Colonel (Lt Col) as extended to other commissioned officers working in the Indian Army w.e.f. December, 2004.

3. Learned counsel for the applicant submitted that applicants were enrolled in the Indian Army and they were granted commission as Regimental Commissioned Officers (RCOs) on different dates between 1992 to 1996 and after serving a period of 12 years, applicants have been superannuated in the rank of Major between 31.12.2004 to 31.12.2008. As per Ajay Vikram Singh Committee (AVSC), the applicants have not been given the benefit of extended age of retirement to two years as well as promotion from Major to the rank of Lieutenant Colonel as extended to other commissioned officers working in the Indian Army w.e.f. December, 2004. As per Govt. of India, Ministry of Defence letter dated 09.09.1998, retirement

age of all Army officers was increased by two years which resulted that RCOs were to serve for a period of 12 years or till attaining the age of 52 years whichever was earlier. Later on, as per Govt. of India, Ministry of Defence letter dated 13.01.2006, retirement age and service of RCOs was enhanced from existing 52 years of age or 12 years of service to 54 years of age or 14 years of service whichever is earlier.

4. Learned counsel for the applicants placed reliance on the judgment of the AFT (RB) Kolkata in TA No. 37 of 2010, **Major Rabindra Singh & Others vs. Union of India and Others**, decided on 04.04.2011 and pleaded that applicants case is squarely covered with the judgment and accordingly, they should also be extended the benefit of the judgments granting two years extension of service and promotion to the rank of Lt Col and its consequential benefits (pay and pension of Lt Col rank).

5. Learned counsel for the respondents submitted that applicants were granted RCO as per AI 32/89 as amended vide corrigendum AI 5/93 by which retirement age of RCO is 50 years of age or 10 years of tenure/service, whichever is earlier. The retirement age was enhanced to 52 years or 12 years of tenure as per Vth CPC recommendations vide Govt. of India, Ministry of Defence letter dated 03.09.1998. The applicants have been retired after 12 years of service as RCOs or 52 years of age, whichever is earlier in accordance with terms and conditions as laid down in Army Instructions (AI) 32/89 which is legally enforceable and therefore, no

right of the applicants has been infringed in any manner. As far as benefit of AFT (RB) Kolkata judgment in the case of **Major Rabindra Singh & Others** (supra) is concerned, the same relief is not admissible to the applicants and Original Application is liable to be dismissed.

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

7. We find that similar case for increase of two years of service and grant of promotion to the rank of Lieutenant Colonel to the Regimental Commissioned Officers has already been decided by the AFT (RB) Kolkata in **Major Rabindra Singh & Others** (supra). The operative portion (para 22) of the judgment is reproduced as under :-

22. In view of the facts and circumstances as mentioned above, the transfer application is partially allowed to the extent above, on contest, without any cost with following directions :-

(a) The retirement orders of the applicant shall remain in vogue, as the applicant has been retired in accordance with rules on the subject and was well aware of the terms and conditions of his service. Therefore, we do not wish to interfere with the same.

(b) The petitioner shall be granted a notional increase of service by two years, as was proposed by the Respondents but could not reach the Cabinet. Being a notional extension of service, he shall not be paid any arrears or monetary advantage in Pay and allowances.

(c) However, we direct that the petitioner shall be notionally promoted to the rank of Lt. Col (Time-Scale) on completion of 13 years of such assumed service, only after fulfilling all other criteria except length service, as required for promotion to the rank of Lt Col (Time Scale); and, only if the applicant is found suitable in all respects after holding a selection board by the Military Secretary's Branch. Such notional promotion shall only be for carrying the rank and for pension as entitled in that rank.

(d) The applicant shall get pension of a Major till he is promoted notionally to the rank of Lt. Col. On such notional

promotion to Lt Col, his pay in that rank shall be re-fixed and pension shall accordingly be fixed again in the rank of Lt Col to which he shall remain eligible.

8. We also find that Civil Appeal No. 1399 of 2013, filed by the Union of India & Others against the judgment of the AFT (RB) Kolkata in the case of **Major Rabindra Singh & Others** (supra) has been dismissed by the Hon'ble Apex Court vide order dated 02.03.2023 stating that "The aforesaid directions as given will apply across the board, and benefit will be given to all RCOs notionally and in similarly situated RCOs and who were in service at the terms of the judgment passed by the tribunal."

9. In view of above, the Original Application is allowed in the light of the directions given by the AFT (RB) Kolkata in the case of **Major Rabindra Singh & Others** (supra). The respondents are directed to grant same relief to all the applicants of the present Original Application within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: March, 2023

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