

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 567 of 2021 with M.A. No. 612 of 2021**Friday, this the 1<sup>st</sup> day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex Major Taj Mohd Sheikh

S/o PM Sheikh

R/o H. No. 592K/50 Subhani Khera, Telibagh, PS Cantt,

Distt – Lucknow (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri K.K. Misra**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQs, New Delhi.
3. Director Gen Armed Forces Medical Services, New Delhi.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,  
Central Govt Counsel.**ORDER (Oral)**

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) To direct the respondents to grant the rank of Lt Col (Time Scale) to the applicant from the date of completion of 21 years commissioned service in the Army, i.e. from 03.08.2001, as per the policy on the subject.
- (ii) To direct the respondents to thereafter, grant the next rank of Colonel (Time scale) from the date of completion of 26 years commissioned service, i.e. 03.08.2006 to the applicant in the Army as per the policy on the subject.

- (iii) Thereafter, direct the respondents to pay the consequential benefits of these ranks, including difference of pay & allowances and thereafter, the difference of amount in pension.
- (iv) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.
- (v) Cost of the case may be awarded in favour of the applicant."

2. Brief facts of the case are that applicant was enrolled in the Army on 27.11.1970 as Sepoy and subsequently he was commissioned in the Army on 03.08.1980 in AMC as Non Technical Officer. The applicant was promoted to the rank of Major in August 1993 and was posted to AMC Centre as Quartermaster. While serving in Centre during Nov. 1994 an allegation against the applicant was made relating to accepting gratification as a motive for procuring enrolment of a person and a charge under AA Section 64 (e) was levelled against the applicant. After detailed investigation by Court of Inquiry, applicant was tried by General Court martial and being found guilty, he was awarded sentence of Cashiering and six months rigorous imprisonment. During the year 1998, applicant filed a Writ Petition No. 1036 (MB)/1998 in Lucknow Bench of Allahabad High Court for quashing the punishments awarded to him which was later transferred to this Tribunal and was numbered as TA No. 48 of 2011. After hearing both the parties, this Tribunal allowed T.A. vide order dated 06.07.2017 and applicant was restored in service on the rank which he was holding at the time of cashiering. Now the applicant has filed the present Original Application stating that consequential

benefits of service also include promotion to the next higher rank i.e. Lt Col and Col (Time Scale) which were not granted to the applicant on rendering 21 years of service (Lt Colonel) and 26 years of service (Colonel) (Time Scale) respectively.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Army on 03.08.1980 in AMC as Non Technical Officer. The applicant was promoted to the rank of Major in August 1993 and was posted to AMC Centre as Quartermaster. While serving in Centre during Nov. 1994 an allegation against the applicant was made relating to accepting gratification as a motive for procuring enrolment of a person and a charge under AA Section 64 (e) was levelled against the applicant. After detailed investigation by Court of Inquiry, applicant was tried by General Court martial and being found guilty, he was awarded sentence of Cashiering and six months rigorous imprisonment. During the year 1998, applicant filed a Writ Petition No. 1036 (MB)/1998 in Lucknow Bench of Allahabad High Court for quashing the punishments awarded to him which was later transferred to this Tribunal and was numbered as TA No. 48 of 2011. After hearing both the parties, this Tribunal allowed T.A. vide order dated 06.07.2017 and passed following order :-

“T.A. is accordingly allowed. Impugned order dated 18.7.1995 (Annexure-5 to the petition), order dated 20.07.1995 (Annexure-6 to the petition) are set aside with all consequential benefits. Petitioner shall be restored in service on the rank which he was holding at the time of cashiering, in case some service is left to his credit otherwise he shall be deemed to be in service and notionally retired on completing service for rank and for the purpose of payment of arrears of salary and pensionary benefits. Let consequential benefits be paid to the petitioner expeditiously say within four months from today.

Apart from the petitioner, respondents shall communicate this order forthwith to the authorities concerned.”

4. Learned counsel for the applicant further submitted that it is relevant to mention that vide order dated 06.07.2017, this Tribunal had reinstated the applicant in service with all consequential benefits w.e.f. 11.12.1995, the date he was cashiered. The applicant was holding the rank of Major and therefore, he was entitled to serve till attaining the age of 56 years i.e. upto 30.11.2008. It is also pertinent to add that consequential benefits of service also include promotion to the next higher rank i.e. Lt Col and Col (Time Scale) which were not granted to the applicant on rendering 21 years of service (Lt Colonel) and 26 years of service (Colonel) (Time Scale) respectively. He further submitted that applicant made correspondence with DGAFMS, New Delhi vide letters dated 20.12.2019 and 20.10.2020 but the same were not replied by the respondents. He pleaded for grant of promotion to the applicant.

5. Heard learned counsel for the parties and perused the material on record.

6. We have perused the records and analysed the submissions of both the counsels and find that applicant was restored in service on the rank which he was holding at the time of cashiering and deemed to be in service and notionally retired on completing service for rank and for the purpose of payment of arrears of salary and pensionary benefits. Hence, it is clear that order was ‘deemed to be in service and notionally retired on completing service for rank’, i.e., ‘Major’. Therefore, there is no such assumption in the order with regard to

promotion to the post of Lt Col and Colonel (Time Scale) on completion of 21 and 26 years of service respectively.

7. The order dated 06.07.2017 passed by this Tribunal in T.A. No. 48 of 2011 has been complied with by the respondents and there is nothing more to be granted to the applicant. Hence, prayer made in Original Application has no force and therefore, applicant is not entitled for any further promotion.

8. In view of above, Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**. Misc. Application No. 612 of 2021 i.e. delay condonation application also stands **dismissed**.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: October, 2021

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