

# SUPREME COURT OF INDIA

IC 29547 L.Bobby Joseph

Vs.

Union of India

C.A.No. of 2019

(L.Nageshwara Rao and Hemant Gupta,JJ.,)

04.10.2019

## JUDGMENT

### **L.Nageswara Rao,J.,**

1. The Appellant was granted Short Service Commission on 15.06.1969 and Permanent Commission on 15.06.1974. His promotion/seniority was fixed w.e.f. 12.08.1970. He voluntarily proceeded for his pre-mature retirement w.e.f. 15.07.1991 in the rank of Major. He was granted pension by an order dated 29.07.1991, as Major.

2. By an order dated 25.09.1991, the Appellant was granted substantive rank of Lt. Colonel. The Appellant sought for revision of pension as he was entitled for payment of pension applicable to the rank of Lt. Colonel (TS) pursuant to the implementation of the 5th Central Pay Commission. As the request made by the Appellant was rejected, he approached the Armed Forces Tribunal, Regional Bench, Kochi, which directed the reconsideration of the representation made by the Appellant.

3. By way of implementation of the direction issued by the Armed Forces Tribunal, the Respondent reconsidered the matter pertaining to the payment of pension applicable to the rank of Lt. Colonel (TS) to the Appellant. By observing that the Appellant did not complete 21 years of reckonable service which was required for grant of pension to the Lt. Colonel, as per the Army Order dated 20.03.1990, the Respondents held that the Appellant was not entitled for payment of pension applicable to the Lt. Colonel (TS). The Military Secretary Branch, M3-8A Integrated Headquarters of Ministry of Defence (Army) South Block, New Delhi was of the opinion that the Appellant fell short of the requisite 21 years by a period of 30 days.

4. Challenging the proceedings dated 30.04.2015, the Appellant filed O.A. No.110 of 2015 before the Armed Forces Tribunal. The Armed Forces Tribunal dismissed the O.A., dissatisfied with which, the Appellant has filed the above Appeal.

5. The Tribunal accepted the submissions made on behalf of the Respondents that to be

placed in the rank of Lt. Colonel (TS), a person should have 21 years of reckonable service. In case of Short Service Commissioned Officers who were granted Permanent Commission, the date of the Permanent Commission shall be taken into account for the purpose of promotion and seniority. Considering that the Appellant was granted permanent Commission w.e.f. 15.06.1974 and seniority from 12.08.1970, his reckonable service would be 20 years 11 months. In such view of the matter, the Tribunal concluded that the Appellant was not entitled to the relief claimed.

6. After retirement of the Appellant, an order for payment of pension was issued on 29.07.1991. His service for the payment of pension was shown to have been 22 years 1 month and 1 day. He was granted pension in the rank of Major. The Appellant has placed before us an order dated 15.10.1991 by which the competent authority approved the promotion of officers of 1970 to the substantive rank of Lt. Colonel by time scale. The officers whose names were found in the list annexed to the said order were directed to wear the badges of the rank of Lt. Colonel (TS). The name of the Appellant is shown at Serial No.11 of the list that was annexed to the order dated 15.10.1991.

7. Having been promoted to the rank of Lt. Colonel, the Appellant is entitled to payment of pension in the rank of Lt. Colonel (TS). In response to our query about the order dated 15.10.1991, the learned Additional Solicitor General, on instructions submitted that it was issued due to a mistake. She fairly submitted that the said order has not been withdrawn. The reliance placed on the Army orders to consider the reckonable service for the purpose of promotion/seniority as Major is of no avail to the Respondents in view of the order dated 15.10.1991. The Appellant cannot be denied payment of pension applicable to the rank of Lt. Colonel (TS) on the ground that he fell short of the reckonable service of 21 years. The Appellant retired in the year 1991 and has been made to run from pillar to post to get his rightful pension. We deem it appropriate that apart from his entitlement to the pension applicable to the post of Lt. Colonel (TS), he is also entitled to be compensated for the avoidable litigation to which he was unnecessarily dragged into.

8. For the aforementioned reasons, we allow the Appeal with costs, assessed at Rs.50,000/- (Rupees Fifty Thousand only) which shall be payable to the Appellant within a period of four weeks.