

**FORM NO – 21**  
**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**APPLICATION NO : TA 88 OF 2010 (WP 4132 (w)/2007)**

**FRIDAY, TWENTYFIRST DAY OF DECEMBER, 2012**

**CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)**  
**Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Lieutenant Colonel Dipak Kumar  
Bhattacharyya, S/o Late Kabi Kinkar  
Bhattacharyya, residing at 96/1, Ashok Nagar,  
P.O. Ashok Nagar, Dist. 24 Parganas (North)

..... Petitioner

-VS -

1. Union of India represented through  
the Secretary, M/o Defence, South Block  
P.O. DHQ, New Delhi-110 011
2. Chief of Army Staff, South Block,  
Integrated head Quarters, MOD (Army),  
New Delhi 110011
3. Military Secretary (MS Retirement), Army Headquarters,  
PO DHQ, New Delhi-110 011.
4. Director General of Retirement, Army Headquarters,  
P.O. DHQ, New Delhi-110 011
5. Controller of Defence Accounts (Officers)  
Golibar Maidan, Pune 411 001
6. GOC-in-Chief, Headquarters,  
Eastern Command, Fort William,  
Kolkata-700 021

..... Respondents

For the applicant : Mr. Dibyajyoti Raha, Advocate

For the respondents : Mr. D.K.Mukherjee, Advocate

## **O R D E R**

### **Per Lt. Gen. K.P.D.Samanta, MEMBER (Administrative)**

This petition was initially filed by the petitioner, who is a Lt. Col (TS), before the Hon'ble High Court at Calcutta as writ petition No. WP 4132 (W) of 2007 ventilating his grievance against the action of the respondents in not extending of his service upto 54 years and also for not allowing him appropriate higher pay scale of Colonel (TS) and consequent enhanced pension. After the establishment of the Armed Forces Tribunals consequent upon coming into force of Armed Forces Tribunal Act, 2007, same has been transferred to this Bench for disposal and accordingly, it has been renumbered as TA 88 of 2010.

2. The case of the applicant, in brief, is that he was commissioned in the Corps of Engineers on 12.5.1974 as a Short Service Commissioned Officer. But he was absorbed in the regular cadre after completion of 5 years service through due process of selection w.e.f. 12.5.79. During the course of his employment, he was promoted to the rank of Lt. Colonel (Time Scale) and he retired from that position with effect from 28.2.06 (AN) on attaining the age 53 years, which, as per terms and conditions of his service, was the retirement age for all Lt. Cols (Time Scale).

3. The applicant has explained that earlier there were two grades for Lt. Cols. – one was Lt. Col. (Time Scale) and the other Lt. Col. (Selection Grade). However, as per A.V.Singh Committee (AVSC) recommendations, which were accepted by the Govt. the

two grades for Lt. Cols. were abolished from December, 2004 and all Lt. Cols. (TS) were placed in the same pay scale i.e. that of Lt. Col. (SG) and were termed as Lt. Col. After implementation of the said AVSC recommendations, the applicant was also expecting to be placed in the rank of Lt. Col. and thereafter Colonel (Time Scale) {(Col. (TS))}, which as per AVSC recommendation, was to be granted on completion of 21 years of commissioned service. In that case, the retirement age also would have been enhanced upto 54 years. Having not attained the rank of Lt. Col. and then Col. (TS), the applicant had to retire with effect from 28.2.2006 on attaining the age of 53 years. In the list of dates, as submitted by the applicant, it appears that he was promoted to the rank of Lt. Col. (TS) in 1986. This appears to be a typographical error, since at the relevant point of time, the rank of Lt. Col. (TS) could only be given on completion of 21 years, therefore, he should have got such rank only in 1996 and not in 1986.

4. In the meantime, on account of certain omissions and commissions with regard to inadequate/irregular documentation relating to the event of his divorce with his wife, a court of inquiry (CoI) was held against the applicant in 2004 and based on the report of such CoI, a DV (Discipline & Vigilance) Ban was imposed on the applicant on 12.5.2004. This ban, it appears, was never lifted thereafter till the date of retirement of the applicant, i.e. on 28.2.2006. The respondents in their counter affidavit at para 22 have submitted that such DV ban continued till June 2006 i.e. even after the retirement of the applicant in February 2006.

5. As already indicated above, the AVSC recommendations were implemented with effect from 16.12.2004 for all those, who were in service at that point of time. As per the said recommendations, the time scale promotion was granted to officers upto the rank of

Colonel and the first selection grade rank was applicable from the rank of Colonel upwards. As per said recommendation, the time scale rank of Col.(TS) would accrue to an officer having fulfilled certain conditions after completion of 21 years of service. Under the authority of the said AVSC recommendations, the retirement age for all Lt. Colonel (TS) was on attaining the age of 53 years and for Lt. Colonel including Col. (TS), it was 54 years.

6. The applicant although in service while the AVSC recommendations were being implemented, i.e. in December 2004, was not granted the benefit of the same and accordingly, he did not receive the time scale promotion to the rank of Col.(TS) despite the fact that he had already rendered 21 years of service much before December 2004. The grievance of the applicant is that he has been singled out and deprived of the benefit of higher retirement age of 54 years which was granted to all other Lt. Cols. (TS), who became Lt. Col. and then Col (TS). He has annexed the relevant order dt. 28.3.2005 (annexure-P2) which clearly shows that officers (Lt. Cols.) named in appendix A thereto would retire on attaining the age of 54 years while the sole name of the applicant was appearing in appendix B and he was to retire at the age of 53 years. The applicant has, inter alia, challenged this notification, which is his impugned order, as arbitrary, illegal and discriminatory.

7. As highlighted by the applicant in his petition, the sole cause for his not getting the benefit of AVSC recommendations was due to the fact that he was subjected to a court of inquiry and was also placed under DV ban for having divorced his wife and in that manner alleged to have committed certain omissions and commissions. His further grievance is that even though such DV ban was imposed in May 2004, but the

proceedings were not concluded within a reasonable period of time though he repeatedly made representations to the authorities for knowing the fate of such proceedings but without any result. However, just a few days before his retirement i.e. on 13.2.2006, he was issued with a show cause notice asking him to give reply within 7 days of its receipt. However, in view of such short notice, the applicant could not give his reply and finally, only 5 days prior to his due date of retirement i.e. on 23.5.2006, he was communicated by the GOC-in-C, Eastern Command “severe displeasure (recordable)” by way of administrative action. Ultimately, the applicant had to retire with effect from 28.2.06 on attaining the age of 53 years without getting the rank of Lt. Col and then Col (TS) and extension of service upto 54 years and also without getting the benefit of A V Singh committee’s recommendations of higher pay scale and/or rank pay. Being aggrieved, he moved the instant writ petition before the Hon’ble High Court at Calcutta which has since been transferred to this Tribunal, as already indicated above. In this petition, the applicant has prayed for quashing of the order dt. 28.3.2005 by which he was directed to retire at the age of 53 years w.e.f. 28.2.06 and also for re-fixation of pay and consequential arrears and also higher pensionary benefits accordingly.

8. The respondents have opposed the application by filing a counter affidavit in which they have not denied the facts, as averred by the applicant in his petition. They have admitted that the applicant was commissioned in the Corps of Engineers on 12.5.74 as Short Service commissioned Officer and was granted the rank of Lt. Col. (TS) from July 1996. It is also admitted that after implementation of the AVSC recommendations, he was due to be promoted to the rank of substantive post of Lt. Col. but since he was under D V ban at the relevant time, he was not promoted to the aforesaid substantive

rank. It was also made clear that he could not have been promoted to Col (TS), unless he was first made a substantive Lt. Col. Being on DV Ban, he was neither eligible to get substantive rank nor any promotion. As such, he retired as Lt. Col. (TS) on 28<sup>th</sup> Feb 2006 on attaining the age of 53. In para 11, the respondents have inter alia stated as follows :-

“ I further assert that the petitioner was granted Lt. Col. (TS) with effect from July 1996. After implementation of AV Singh Committee report, the petitioner was due for his substantive rank of Lt. Col. with effect from 16<sup>th</sup> December, 2004. However, he was not granted the rank of the substantive post of Lt. Col. because of which he was not eligible for consideration for grant of substantive rank of Col (TS), and he remained under Disciplinary Ban with effect from 12<sup>th</sup> May 2004 till the date of his retirement. Since the petitioner was holding the rank of Lt. Col. (Time Scale) under Disciplinary Ban and he retired at the age of 53 years and also entitled to pay and allowances applicable to Lt. Col. (Time Scale) only as per law.”

9. It is further submitted by the respondents that after implementation of AVSC report, it was decided that with effect from 16<sup>th</sup> December, 2004 all Lt. col. (Time Scale) would be granted the rank of substantive post of Lt. Col., under the authority of Govt. of India vide circular Nos. 18(1)/2004/D(GS-1) dated 21<sup>st</sup> December, 2004 read with Army Order No. 8/2005/PS. It is clarified that under the aforesaid army order, substantive rank of Lt. Col could be granted to only those officers who fulfilled the criteria mentioned in the said order and one of the criterion was that the officer should not be under any Disciplinary & Vigilance Ban. Since the applicant was placed under DV ban before December, 2004, he was not granted the substantive rank of Lt. Col. and consequently, his retirement age was also not enhanced to 54 years and he had to retire as per existing rule for TS Lt. Col i.e. at the age of retirement i.e. 53 years.

10. It is further stated that a show cause notice was issued to the applicant on 13.2.2006 for taking disciplinary action on certain omissions/commissions for which he

was already on DV ban. The matter for which such show cause notice was issued are that after obtaining a divorce decree dissolving his marriage with Mrs. Suborna Bhattacharyya, the applicant did not inform the same to the authority and no Part II order was published to that effect. Not only that; even after the divorce, the applicant drew some benefits from the office in the name of his divorced wife which was illegal and irregular. The details of such acts by the petitioner are narrated at page 5 of the counter affidavit. However, the applicant did not file any reply and therefore, the GOC-in-C, Eastern Command i.e. competent authority awarded severe displeasure (recordable) to the petitioner holding that his conduct was blameworthy vide order dt. 23.2.2006 (annexure-P3).

11. The respondents have also filed a supplementary affidavit in which they have annexed relevant documents viz. Army Order, Govt. order implementing the AVSC report etc. Lastly, the respondents have submitted that no illegality or irregularity was committed and the applicant was rightly denied the benefit of AVSC recommendation in view of pendency of D V ban against him.

12. The applicant has filed a rejoinder as also a supplementary rejoinder against the counter affidavit and supplementary affidavit wherein he has more or less reiterated his contentions raised in the main petition, apart from annexing certain documents.

13. We have heard the ld. advocates for both the sides in extenso and have carefully gone through the various documents placed on record.

14. Ld. advocate for the applicant has very strenuously argued the case by highlighting the facts as narrated above. He has raised mainly two-fold contentions. His first contention is that the applicant was wrongly denied the benefit of AVSC

recommendation, as according to him, Lt. Cols (TS) were all granted substantive rank of Lt Col, but he was denied. Secondly, all Lt. Cols, who completed 21 years' of service were promoted to Col (TS) after fulfilling certain criteria, but he was denied. As a result, the applicant has been deprived of serving upto the age of 54 years and had to retire at 53 years and thus earned lesser pensionary benefits which has caused great hardship to him.

15. His other contention is that even if the DV ban was imposed on the applicant in May 2004, but the respondents did not take any effective step to finalise the proceedings. Meanwhile by the order dt. 28.3.05, the respondents have already decided that the applicant would retire at the age of 53 years. Therefore, it is quite clear that they had already decided not to give any benefit of the AVSC recommendation to the applicant, which is also manifested from the fact that they did not take any step to finalise the proceeding within a reasonable period of time. Referring to the Army order, ld. counsel for the applicant has submitted that it is stipulated that the proceeding relating to DV ban must be concluded expeditiously so that an officer need not suffer indefinitely in the matter of service benefits like promotion etc. In spite of repeated requests by the applicant no action was taken by the respondents purposely to deny him the benefit. It is only a few days before his date of retirement, the show cause notice was issued on 13.2.06 giving only seven days time to give reply while as per relevant army order, reasonable time, say one month, should have been given to give reply. Therefore, the applicant could not give his reply to the show cause notice for lack of time as many allegations have been in the said show cause notice for which time was required to collect necessary details to prepare the reply. However, without waiting for such reply, the authorities communicated the punishment of "severe displeasure (recordable) to the



applicant by order dt. 23.2.06 i.e. only 5 days prior to his retirement. This attitude clearly shows that the respondents were prejudiced and determined to harm the applicant by denying him his legitimate dues and enhanced age of retirement. This is a clear case of violation of natural justice where without giving adequate opportunity, the respondents have punished the applicant.

16. Mr. D.K.Mukherjee, ld. adv. for the respondents, apart from relying on various averments made in the counter affidavit, submitted that no illegality was committed and since the applicant failed to give his reply to the show cause notice within the stipulated time, the competent authority had passed appropriate orders in accordance with rules. Moreover, the applicant has also not challenged such award of punishment and therefore, he cannot raise such issue at this stage.

17. We have given our anxious consideration to the rival contentions and very carefully gone through the rules and instructions on the subject.

18. It is undisputed fact that the applicant, at the relevant point of time, was holding the rank of Lt. Col. (TS). It is also not in dispute that a DV ban (D Type) was imposed upon the applicant on 12<sup>th</sup> May 2004 for certain omissions and commission on his part for which a court of inquiry was also held. It is also admitted by both parties that the A V Singh committee's recommendation came into force from 16th December 2004 and according to the same, all Lt. Cols. (TS) would be placed in substantive grade of Lt. Col. According to the ld. adv. for the applicant such placement was automatic and all such Lt. Cols.(TS), who were in service at the relevant date, were granted the benefit excepting the applicant and thus it was a case of hostile discrimination in violation of Art. 14 and 16 of the Constitution of India. The ld. adv. for the applicant has relied on the MOD order

dt. 21.12.2004 (annexure-R3) on the subject of restructuring of the officers' cadre of the Army. Paras 3,4 and 8 are relevant which may be quoted below :-

“3. Officers will be eligible for grant of substantive rank of Lieutenant Colonel on qualifying promotion examination Part D. Subject to this, seniority in service of officers will be protected until they complete 13 years reckonable commissioned service. Loss of seniority for non-qualification in promotion examinations already awarded will continue to hold good. Qualification in Part D examination will no longer be mandatory for grant of substantive rank of Major. Promotions accruing from para 2 above shall also **be subject to the officers fulfilling other criteria to be notified immediately by the Army Headquarters through Army Orders.**

4. Those serving in the rank of Lieutenant Colonel (Time Scale) will now be eligible for grant of the substantive rank of Lieutenant colonel. The existing rank of Lieutenant colonel (Selection) shall remain applicable till the existing Lieutenant colonel (Selection) are either promoted to the rank of Colonel (Selection) or Colonel (Time Scale) or are retired. No further consideration for promotion to the rank of Lieutenant Colonel (Selection) shall be made after 16<sup>th</sup> Dec 2004.

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**8. Detailed criteria and procedure for grant of substantive rank of colonel by time Scale will immediately be notified by the Army Headquarters through Army Order.**

19. However, ld. adv. for the respondents has clarified that such placement was not automatic because as per army order No. 8/2005/PS detailed criteria has been notified, It will be useful to refer to the Army Order 8/2005/PS dt. 18.4.2005 (annexure-R6 to the supplementary affidavit filed by the respondents) regarding criteria for grant of substantive promotions in respect of Lt. Col, which inter alia states

3. A Major will be eligible to be promoted to the substantive rank of Lt. Col. provided he/she fulfils the following conditions :-

- (a) His/Her gazette notification of substantive Major has been published.
- (b) He/she has completed the prescribed length of reckonable commissioned service for promotion to the rank of substantive Lt. Col.
- (c) He/she has passed promotion examination Part B and Part D in accordance with the provisions of SAI 1/S/85, as amended.

(d) His/her overall assessment in UAC is B (minus) or higher and/or he/she has been recommended for promotion in ACRs and has not been graded below average in his/her ACRs.

**(e) He/She is not under a disciplinary ban and there is no disciplinary case pending against the officer.**

(f) Any punishment awarded to the officer has been taken into account.

(g) The officer is not on an Adverse or Review Report.

(h) the officer has rendered full pay service”

20. In view of the above rule position, it is quite clear that only because the applicant was placed under DV ban, he could not be given such promotion and consequently higher retirement age. We, however, take note of the fact that the applicant has been a Lt. Col (TS) since 1996, i.e. on completion of 21 years of commissioned service, which was an applicable terms and conditions of service, prior to AVSC that became effective only from 16 Dec 2004. Therefore, there is no ground to accept the submission of the respondents that applicant was not a substantive Lt. Col (TS) in 2004. Under such circumstances, he should have been automatically converted to a Lt. Col, instead of being a Lt. Col (TS), in accordance with AVSC report quoted *ibid*. DV Ban was imposed upon the applicant only on 12 May 2004. In any case, we find from a document dated 02 Jan 1997 (Army HQ MS Branch letter No. 37457/21/75/Jul/MS 8A dated 02 Jan 1997) submitted by the applicant through a supplementary affidavit during hearing that he was already granted substantive rank of Lt Col (TS vide the above order.

21. It is the admitted position by both parties that the applicant was placed under DV ban on 12.5.2004, which continued till he retired, on the basis of a court of inquiry held against him. The allegation against him was that he did not intimate the fact of his divorce with his wife and by suppressing such fact, he drew certain benefits in the name of his said divorced wife which amounted to gross misconduct. It is also an admitted fact

that a court of inquiry was held on the basis of complaint received and before the DV ban was imposed, in which the applicant participated.

22. It is also admitted by the respondents that the disciplinary proceeding after imposition of DV ban (D type) continued and a show cause notice was issued only a few days before the date of retirement of the applicant i.e. on 13.2.06 in which seven days time was given to reply to the show cause notice and when the applicant failed to comply, final order of "severe displeasure(recordable) was passed ex parte and communicated on 23.2.06 when the applicant had only five days left for his retirement.

23. We have gone through the order dt. 23.2.06 as annexed to the petition. We find that relying on the court of inquiry report, such punishment was passed. There is no mention of any other proceedings that were held against the applicant between the period from imposition of ban in May 2004 till the date of final order on 23.2.06 excepting issuance of show cause notice on 13.2.06.

24. In this context, the policy on imposition of DV Ban and its effect, as has been enumerated in the AG Branch's order No. A/56728/A/AG/DV-1(P) dt. 4.7.2000 (annexure-R5), relied on by the ld. advocate for the applicant, may be considered for better appreciation of the position.

25. In para 3 of the said policy letter it has been stated as follows :-

“ DV Ban is imposed only when the competent disciplinary authority takes cognizance of an offence. Cognizance is taken of an offence as soon as the disciplinary authority, competent for the purpose, applies its mind to the offence with the intention of initiating disciplinary or administrative proceedings against the offender in respect of the offence. Imposition of DV Ban therefore has its origin in the decision of the Commander to initiate disciplinary/administrative action. Similarly, the removal of DV Ban is contingent upon finalization of disciplinary/administrative proceedings against the officer concerned by the competent authority. The duration of DV Ban can, therefore, be minimized if cases are finalized

expeditiously. Career management as a concept is closely linked with the Discipline and Vigilance aspects of the officer concerned. It is, therefore, imperative that commanders in chain must finalize disciplinary/administrative action cases as quickly as possible in the interest of both the officer and the organization.

4. To ensure that the period of provisional DV ban is reduced to the minimum, the authority concerned will ensure that –

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(d) In administrative action cases, the affected officer be asked to reply to show cause notice (SCN) within a reasonable time frame, say 30 days from the date of its receipt by the officer. Regular monitoring should be carried out and where inordinate delay occurs in respect of reply to the SCFN the competent authority may examine the feasibility of taking an ex parte decision and issue the censure award in an appropriate form.

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7. The authorities responsible for initiating disciplinary/administrative action against an officer must ensure that all such cases are vigorously processed to finality so that the officer stays under Provisional DV Ban for minimum inescapable period. This ensures that the officer is not subjected to unwarranted hardship in so far as his posting/transfer, promotion both in substantive and acting ranks, premature retirement, release or acceptance of resignation, grant of study leave, nomination on foreign/career courses, honours and awards and grant of pension are concerned.”

26. From the above it is seen that adequate instructions have been issued by the army authorities to avoid any delay in conclusion of disciplinary proceedings against an officer and the duration of DV ban is minimized so that the officer concerned should not suffer unnecessarily in the matter of his promotion, pension etc.

27. In fact, the Hon'ble Supreme Court also time and again impressed upon finalization of disciplinary proceedings as expeditiously as possible and even cautioned that in case of any undue and unexplained delay in finalization of disciplinary

proceedings, the court may quash the proceeding itself. In this context, it will be relevant to rely on the following decisions of the Hon'ble Supreme Court.

28. In the case of **State of A.P. –vs- N. Radhakishan**, (1998) 4 SCC 154 it has held as under :-

“19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of the charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

Similarly, the Apex Court in **Govt. of A.P. & Ors. –vs- V.Appala Swamy** [(2009) 1 SCC (L&S) 440] after consideration various judgments has held that -

“So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, no hard-and-fast rule can be laid down. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are : (1) where by reason of the delay, the employer condoned the lapses on the part of the employee; (2) **where the delay caused prejudice to the employee**. Such a case

of prejudice, however, is to be made out by the employee before the inquiry officer. The High Court did not consider any of the aforementioned aspects. Therefore, the impugned judgment of the High Court was not sustainable.”

29. In the present case, we have already seen that because of imposition of DV Ban (D type) on the applicant on 12.5.2004, he was not given his due promotional post, which accrued to him on the basis of AVSC recommendation and which all other Lt. Cols, who were in position on 16 December, 2004, received, thereby the retirement age of the applicant was also not extended upto 54 years as was done in case of others. The respondents very much knew and it is their stand in this case as well, that because of this DV ban the applicant could not be granted the *ibid* benefit. However, we find no explanation from the respondents for not concluding the proceedings early, as was the guideline issued by AG's Branch circular dt. 4.7.2000 as quoted above. We also find that the applicant was pursuing the matter with the authorities for early conclusion of the proceeding but without any result. After imposition of DV ban, the show cause notice for taking administrative action was issued only on 13.2.06, a fortnight before his retirement, and again no explanation is there why they took more than 20 months to issue the show cause notice. Then too, adequate time was not given to the applicant for giving reply which is tentatively fixed as 30 days. Such show cause notice was issued even when the applicant was on authorized leave for 53 days vide annexure P7 to the supplementary A/O to S/A filed by the respondents. The impugned punishment order was issued *ex parte* in the absence of reply and it relied only on the court of inquiry report and there is no indication whether any further proceedings were held or not in between. Therefore, it is clear that there was undue and unexplained delay on the part of the respondents to conclude the proceedings against the applicant as a reason of which, the applicant has

suffered irreparable loss in the matter of higher pay scale, higher retirement age and consequently higher pensionary benefits, which he was otherwise eligible to get.

30. We are aware of the legal position that ordinarily, court or tribunal should not interfere with the decision of the disciplinary authorities unless there is violation of any statutory rules or there is violation of natural justice or if it is a case of no evidence. But considering the matter very carefully, and keeping in view the ratio of the decisions enunciated by the Hon'ble Apex Court, as quoted above, we are of the considered view that it is a fit case where this Tribunal should interfere and set aside the proceedings against the applicant for the ends of equity and justice.

31. Now, we come to the fact that subsequent to an unduly long (12.5.04 till the date of administrative censure on 23.2.06) period of subjecting the applicant to the rigours of a DV Ban, the authorities finally awarded him a recordable censure in the form of "severe displeasure-recordable", which we find as per rules, does not debar an officer from promotion unlike the DV Ban. Therefore, there was no reason whatsoever, firstly not to promote him to Col (TS) after considering that he was a substantive Lt Col earlier, and secondly, not to lift the DV Ban in a reasonable time frame. It appears to be a gross negligence on the part of MS Branch and DV Directorate of the Army HQ.

32. In view of our discussions made above, the Transferred Application is allowed to the following extent :-

- i) The DV Ban imposed upon the applicant on 12.5.2004 is set aside.
- ii) In accordance with the AVSC recommendations applicable with effect from 16<sup>th</sup> December, 2004, the applicant shall be promoted to the rank of Col (TS) after considering him to be a substantive Lt. Col.



- iii) (a) His retirement now shall be notionally extended upto the age of 54 years i.e. upto 28.2.2007.  
(b) His retirement order, which is impugned, vide Appendix B to the letter dated 28 Mar 2003 at Annexure-P2 of the TA, is quashed.
  - iv) But he shall not be eligible to receive back salary during this notionally extended period of service. However, he will be entitled to get difference of back salary on promotion as Col (TS) from 16.12.04 till the date of his actual retirement i.e. on 28.2.06 without any interest.
  - v) The applicant will be entitled to get higher pension based on his notional pay on the deemed date of his retirement on 28.2.07.
  - vi) This order be implemented and revised PPO issued and all admissible arrears of salary as indicated above be paid to the applicant within three months from the date of receipt of a copy of this order failing which the entire amount will carry interest at the rate of 12% per annum.
33. The application is disposed of accordingly without any order as to costs.
34. Let plain copy of the order be handed over to both parties.

(LT. GEN. K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)