

ARMED FORCES TRIBUNAL, KOLKATA BENCH

TRANSFER APPLICATION NO. 37/2010

ON MONDAY THIS DAY 4TH APRIL, 2011

CORAM:

HON'BLE JUSTICE SHRI S K GUPTA, MEMBER (JUDICIAL)

HON'BLE LT GEN K P D SAMANTA, MEMBER (ADMINISTRATIVE)

Major Rabindra Singh (No. RC-900K)
S/o Late Kamala Singh
Signal Regiment, Eastern Command
Red Road Camp, Fort William
Kolkata- 700 021APPLICANT(S)

By Mr. Maity along with Mr. S.C. Basu, Advocates.

Versus

Union of India and 4 others

1. **Union of India** service through the Secretary
Ministry of Defence, South Block, New Delhi.
2. **The Chief of Army Staff,**
Army Headquarters, Dak Sena Bhawan
New Delhi – 110 011
3. **The Adjutant General,**
AG's Branch, IHQ of MoD, Army/DHQ P.O.
New Delhi – 110 001
4. **The General Officer Commanding-in-Chief**
Headquarter, Eastern Command, Fort William
Kolkata- -21
5. **The Commanding Officer,**
Eastern Command, Signal Regiment
Red Road Camp, Fort William
..... RESPONDENT(S)

By Mr. Kaushik Kanti Maiti, Advocate.

ORDER

AS PER LT GEN K P D SAMANTA, HON'BLE MEMBER (ADMINISTRATIVE):

1. The petitioner, RC No. 900K, Major Rabindra Singh, had filed a Writ Petition in the Hon'ble Calcutta High Court numbered as WP No. 23369(W)/06, which was later transferred to this Armed Forces Tribunal and re-numbered as TA No. 37/2010. The petitioner was a Regimental Commissioned Officer (RCO) in the Indian Army, in Corps of Signals. He joined in the ranks of Corps of Signals and was a Havildar until he got Regimental Commission (for brevity 'RC') in Signals on 23rd December, 1994. He retired from the Army on completion of his terms of engagement, as per rules in vogue, on 31st December 2006, in accordance with Army Headquarter letter dated 30th December, 2005 (Annexure P-3 of the Petition). He retired based on the terms and conditions of RC services as stipulated in Army Instructions 18 of 1984 as amended by Army Instructions 32/89(Annexure P-1 of the Petition), which contains a further amendment vide MoD letter of 3rd September, 1998. The ibid instructions restrict the service span of RC Officers to 12 years or up to the age of 52 years whichever is earlier. The petitioner has prayed for setting aside his retirement orders issued by the Military Secretary's Branch, Army Headquarters (impugned order at Annexure P-3) dated 30th December, 2005.

Facts of the Case:

2. The petitioner felt that he, being a RC officer, had been subjected to discriminatory treatment by the authorities committing deliberate lapses by not revising his retirement age/ service upwards as was done for other entries amongst commissioned officers in the Army, post implementation of Ajay Vikram Singh Committee (AVSC) Report in December 2004. He has submitted in Paragraph-6 of his petition that despite the best efforts of the Military Secretary Branch and Adjutant

General's Branch in Army Headquarter; department of finance and AG in the Ministry of Defence, recommending enhancement of age of RC Officers of the Indian Army by 2 years from existing 52 years or 12 years of service, whichever was earlier, to 54 years of age or 14 years of service. To establish above intents and efforts of the Army Headquarters and Ministry of Defence, the petitioner has produced many letters recommending above facts (letters dated 27-4-05, 3-10-05, 13-3-05, 18-1-06 and 27-1-06), all of which has been issued by the Army Headquarters, Military Secretary Branch and attached as Annexure P-4, collectively, to the petition). Despite the positive recommendation by these authorities, no age/service increase materialised, thus, compelling him to retire on 30-12-06 as per old terms and conditions in the rank of Major. The petitioner further emphasised that he, like all other RC officers, was after all a 'regular commissioned officer' working shoulder to shoulder with them in all regimental assignments. Terms of engagement of all officers were so amended after December 2004 (post AVSC) to ensure that none retired at a rank below that of Lt Col, if he was qualified; even Short Service Commissioned Officers (SSCO), both men and women, who could not be selected to get regular commission, were allowed to serve longer by increasing their terms from 10 to 14 years, so that they could become Lt Col. The petitioner, according to him, was discriminated against amongst similarly placed officers.

3. The petitioner felt aggrieved with such discrimination, post implementation of AVSC Report Part-I that excluded him from reaping the benefit of service extension thus denying him the rank of Lt Col. The petitioner had also made representation on 18th September, 2006, before he retired, through proper channel to the AG's Branch, Army Headquarter, requesting for an urgent action for enhancement of retirement age of RC Officers from 52 years to 54 years based on the recommendations and proposals forwarded by the higher authorities as stated earlier. Unfortunately, as submitted by the petitioner, he, till date, has not received any response with regards to ibid representations.

4. Notwithstanding the above, the petitioner clarified during his oral submission that the case with the draft cabinet note for increase of retirement age of RC Officers was turned down by Ministry of Finance because they felt it needed cabinet approval. Moreover, such expenditure on a cadre that had ceased to exist since January 1998 primarily for the benefit of few remaining officers was not convincing while proposing a cabinet note to revise the terms of engagement for the RC officers of the Army. The proposal, thus, remained foreclosed despite positive recommendations from Ministry of Defence and Army Headquarters. The aforesaid point was not contested by the respondents or their counsel.

5. The petitioner, while submitting that the authorities made gross discrimination in respect of RC Officers while extending the benefit of extension of other categories of officers like Short Service Commissioned Officers, he also brought to our notice that subsequent to the 6th Pay Commission Report in January 2006, the case of Regimental Commissioned Officers was considered and it was recommended that they would receive extension of service up to the age of 54 years or 14 years of service, whichever was earlier. These were factual points and not contested by the respondents.

6. The petitioner, being a RC officer was, as brought out by him, discriminated after implementation of three orders.

- a) First such order was AI 5/97 as amended by AI 10/98, corrigendum No.6, Case File No. 08254/PC/Org2(MP)(a)893D(AG)/Def(Fin) U.O No. 164/AG(PA)/98 dated 10th March 1998 (Annexed as R-2 of Affidavit in Opposition). This order introduced a new category of commissioned officers from ranks, 'Special Commissioned Officer (SCO)', which was established primarily for employment in appointments that were, until then, held by officers of Special List (SL) Quarter Master (QM) and Regimental Commissioned Officers (RCO) cadres in units. As per this Army Instruction, AI 10/98, (Para 24 thereof), RCO cadre was to cease from 1st January 1998 and SL (QM) was to cease with immediate effect. However, this AI also

mentioned that the serving officers of these two cadres were to continue to be governed as per their existing terms and conditions as regulated by their respective Army Instructions. AI 18/84, as amended by AI 32/89 (Annexure P-1 of Petition and Annexure R-1 of A/O) and MoD letter of 3rd September 1998, thus continued to control the fate of the remaining RC officers. The petitioner claims that the AI 5/97 was not as damaging to them as the amendment of AI 10/98 was.

- b) The second order was the AV Singh Committee Report of 21 December 2004 that has been referred in Paragraph 7 of the Petition. This Report (AVSC Report, Part- I) was meant for non select ranks and was approved by the Union Cabinet on 16th December 2004. Therefore its implementation was with effect from 16th December 2004. Instructions for its implementation had been elucidated in an Order of December 2004 issued by the Army Headquarter Military Secretary Branch (Letter No.04477/MS Policy of Dec 04, Annexure P-2 of Petition). The AVSC Report, according to Petitioner, has excluded the RC officers from its consideration, while it has included all other categories of commission in the Army. He has thus been aggrieved and terms this report as discriminatory against the RCO.
- c) The third order was MOD ID No. 19/(71)/2009-D (MS) dated 24 December 2009 that allowed RC officers, serving at that time, to be transferred to PC (SL) entry as a onetime dispensation /waiver to existing provisions. Those RC officers could thus serve up to the age of 57 providing them the scope of reaching up to Lt Col and beyond. The petitioner, in his supplementary affidavit, has brought out this issue and we have perused ibid and other connected relevant orders on IAST (Inter Arms/Service Transfer), as submitted by the respondents on 4th March 2011,

7. The petitioner in his writ petition has repeatedly emphasized that, post AVSC Report in 16 December 2004, terms and conditions of Short Service Commissioned Officers and Women's Special Entry Officers, who were found unsuitable for absorption into regular cadre and were on extension, were changed, wherein they could serve for 14 years instead of stipulated 10 years so that they could complete 13 years service so as to reach the highest non-select rank of Lt Col. The RC officers,

though treated as regular officers, were left out perhaps because they were considered a dead cadre subsequent to introduction of SCO cadre vide AI 5/97 as amended vide AI 10/98.

8. AI 18/84 as amended, clearly laid down that RC officers could not change their Arm/Service and the provisions of inter arm/service transfer (IAST) was not applicable to them. Petitioner, in his supplementary affidavit submits that, yet this facility was allowed to select few (57) RCOs in 2009. These 57 RC Officers were fortunate to be now governed under such terms and conditions as would be applicable to SCO or SL Officers. They would now retire at the age of 57 and could reach the rank of a time scale Colonel. Why could this privilege not be allowed earlier in 2004 onwards when Government was reluctant to increase their terms of engagement to 14 years /54 years of age? Petitioner terms it as discriminatory amongst equally placed officers.

9. Respondents' plea that rules (AI 5/97 as amended by AI 10/98) dictated that RC cadre ceased from 01 January 1998; therefore no changes to its terms and conditions could be undertaken. In that case, as pointed out by the counsel for the petitioner, how did the following changes take place?

(a) Retirement age of RC Officers were amended. While service was extended from 10 to maximum of 12 years, the age was increased by four years from 48 to 52. It was done, so that the RC officers could reach the highest of the then existing non-select rank of Major that was attainable only after 11 years of service. Hitherto fore, an officer needed to put in 13 years of service to become a substantive Major, but it was reduced to 11 years post 5th CPC when the rank of Second Lieutenant was abolished and ages of retirement for all ranks were increased by two years. It just goes to substantiate that terms and conditions of service of RC officers were always improved/revised in tune with that of all

other officer cadres even after terming it as 'ceased' vide an army instruction (AI 10/98) published in May 1998.

(b) As per AI 18/84 as amended, RC officers were not allowed to get acting Major rank. Things changed later (authority not known); the petitioner himself was promoted to paid-acting Major on 29 January 2002 and substantive Major on 16 December, 2004.

(c) Inter arm/service transfer (IAST) was permitted in 2009 which was again a change to laid-down terms and conditions stipulated in AI 18/84 as amended.

(d) Changes as mentioned in 6th CPC were effective from 1 January 2006 and the RC officers again were entitled to such changes/improvements, which were implemented, post 6th CPC.

10. The petitioner, therefore, felt that there was no reason for the Government to selectively exclude the RC Cadre officers from receiving the benefits of the AVSC Report, by not making amends to their terms of engagement, so that they could retire as Lt Col, which became the highest non-select rank. The petitioner further brought out that the rules were changed in 1998 to allow the RC officers to reach to the rank of Major (highest non-select rank at that time); why not now to allow them to be Lt. Col (highest non-select rank post AVSC)? The appointments that were held by Majors were now (post AVSC) tenable by Lt. Colonels, making it a mere upgrade of rank. It appears from the various Annexure to the petition that the Army HQ and MoD (Finance) were in favour of such a change (14 years service/54 years age), but perhaps MoD or Ministry of Finance rejected such a proposal in 2008, as evident from the Annexure (Army HQ AG Branch letter No. B/32313/Rabindra Singh /AG/PS-2(a) dated 5th October 2010) to the supplementary affidavit by the petitioner.

11. The petitioner, in Paragraph 4 (iii) of his affidavit in reply dated 12 July 2007, has annexed (Annexure R-1) one order dated 13 November 2006 by Hon'ble Justice R C Gandhi of Rajasthan High Court. This order, in response to a similarly

circumscribed matter (retirement of one RCO, Major Bhanwar Singh Rathore, WP No. 8411 of 2006), had stayed the retirement order till the respondents took a decision on a contemplated change to the retirement terms of the RCOs. The Army HQ vide their communication dated 28 December 2006, in response to the ibid Court Order, had held back their retirement orders issued to that petitioner, Major Bhanwar Singh Rathore, (Annexure R/1 to the petitioners Affidavit –in-Reply). We have now been given to understand by the respondents that Hon'ble Rajasthan High Court has vacated the ibid stay vide their order dated 22-2-2007 in the case of Major Gajraj Singh Yadav Vs. Union of India and other similar cases. While vacating the stay in the ibid judgment, the Hon'ble Justice Ajay Rastogi had, in the concluding paragraphs, mentioned that:-

“It appears that recommendations regarding increase of age of service of RC Officers certainly have been made and it has been accepted at some level of the department, but it is still pending for final decision; in absence whereof, mere recommendations cannot be considered which may change the age of retirement of the present petitioner at the present moment.”

The ibid judgment was produced before us by the respondents during their submission on 4th March, 2010. While considering the sum and substance of the ibid decision of Gajraj Singh (supra), we find that the Hon'ble Rajasthan High Court was clearly assured by the respondents that there were ongoing process to ultimately seek extension of age and service (54 years of age/14 years of service) by the government with regard to the RC officers of the Army. We, however, notice that none of these have fructified so far and the concerned RCOs have retired in accordance with earlier terms and conditions of 52 years of age/12 years of service.

12. The learned counsel for the respondents in their Affidavit-in-Opposition (in short 'A/O') have reiterated that the petitioner was fully aware of the terms and

conditions of service of Regimental Commissioned Officer and had accepted such conditions while being Commissioned. Therefore, the respondents submit that he would remain bound by such terms and conditions without any change. They further added that the terms and conditions of service for various entries/categories of Officers in Indian Army would always be different and that could not be construed as discrimination or illegality.

13. The respondents, in their affidavit have mentioned that the petitioner retired on 31-12-06 on completion of 52 years of age vide Military Secretary's Branch letter of 30th December, 2005 (impugned order). They also submitted that there was no wilful discrimination against the RC Officer either in the AV Singh Committee Recommendations or in implementation thereof. Moreover, as stated by the Respondents, the AVSC report did not recommend any increase in retirement of age of any entry/category of the Indian Army. *Report of the AV Singh Committee Recommendation was not enclosed by the respondents but we asked for a copy for a perusal which was submitted by them on 4th March, 2011 in a sealed cover being confidential in nature.*

14. It is strange that the respondents continued to submit that the case for age/service increase in respect of the Regimental Commissioned Officer was still under consideration. Therefore, their stand continued to remain the same as it was, while they submitted before the Hon'ble Jaipur Bench of Rajasthan High Court. In the Affidavit-in-Reply (in short 'A/R) to the A/O, the learned counsel for the petitioner mentioned that the RCO's cadre was discriminated as they were wrongly excluded from AV Singh Committee Report for being given extension of service. He further relied on important letters/memo's initiated by the Military Secretary's Branch/ AG's Branch as mentioned earlier.

Analysis of Facts

15. We have examined all documents and relevant Army instructions as submitted before us and attached as annexure to various affidavits. We have also heard the learned counsels for both the parties. Before we arrive at any conclusive remark, we would like to apply our mind to following issues:-

- a) **Army Instructions 5/97 mentioned that PC (SL) and RCO entries were to be merged to form a new cadre as SCO (Special Commissioned Officers) with better terms and conditions. What was the logic to amend this Army Instruction by another Army Instruction, AI 10/98, in a matter of less than one year?**
- b) **In case any cadre ceases to exist, in that case, what is the fate of the remaining officers in that cadre? Does their terms and conditions of service remain dynamic or are frozen?**
- c) **It is an admitted fact that the Ministry of Defence and all authorities in the Army Headquarter were in favour of increasing the age and service of RC Officers by 2 years, but why was it not taken to its logical end?**
- d) **Admittedly, the Army Headquarter resorted to a method of inter-arm transfer under provisions of Army Order 16/95 with a special sanction from the Government (MoD ID No. 19/(71) 2009-D(MS) dated 24th December, 2009) to convert the remaining RC Officers from their present category to PC (SL) category. Why the same was not done in December 2004, when the RCOs were denied two years of age increase which was done for other categories?**

e) AV Singh Committee Recommendations (as submitted by the respondents on 4th March 2011) did not make any recommendation for any categories of officers with regards to increase in age of retirement. It merely recommended that, amongst others, officers could be elevated up to time scale Lt. Col on completion of 13 years of service instead of 20 years of service hitherto fore. Similarly, the said report also recommended lowering the service span requirement for other non-select ranks, for the purpose of keeping the Army young and making the service more attractive, which was the objective of the said Committee. By implication, all officers of the Indian Army would reach the highest non-select rank of Lt. Col. Accordingly, terms and conditions of those categories of officers, like SSCOs, both men and women, who could not be selected for regular commission and were allowed an extension up to a total of 10 years of service, were improved upon so that they could serve a year beyond 13 years and remain eligible to attain the rank of Lt Colonel (Time Scale). Why were the RCOs left behind with a service restriction up to 12 years, thus being curtailed to retire in the rank of Major? Why was their terms and conditions not kept dynamic?

16. Implication of, "RCO's Cadre will cease w.e.f. 01st Jan, 1998". It will be grossly inadequate to assume that a particular cadre of Commissioned Officers, RCOs in this case, would cease to exist from a retrospective date, i.e. 1st Jan, 1998 vide an order promulgated on 1st May, 1998 (AI 10/98, Corrigendum No.6 paragraph-7). Such a retrospective order with instructions that remainder RC Officers would continue to serve the Army under the then existing terms and conditions, appears unjust. By implication, the respondents, perhaps, wanted this cadre of RCO to be faded out without injecting any dynamic changes in the career prospects of this section of commissioned officers, whose entry was stopped from a retrospective date. The

remainder RCOs in service on that day, including the applicant, were, perhaps, expected to continue till they retired, while their peers in similarly placed entries would remain eligible to revisions and improvements in terms and conditions of service. At this point we also note that the original Army Instructions (AI 18/84), while laying down service conditions for RCO category mentioned that

“.....All other terms and conditions would be same as for permanent Regular Commissioned Officers.”

Therefore, the RCO's cadre should attain the non-select ranks (Captain, Major, and Lt Col) after putting in required number of years of service as was applicable to other regular officers. Initially, RC officers were promoted to the rank of Captain after putting in four years of service and would retire as a Captain after attaining the age of 48 (AI 18/84). Later it was amended so that he could serve for ten years or till the age of 48 years whichever was earlier (AI 32/89). Interestingly, the validity of (AI 32/89) was till 31-12-1995; but we found no records to indicate that there was any order to revive these instructions. Subsequent to issuance of Army Instructions 10/98, we found that there was one more change in service conditions of RCOs; their maximum service/age limit was increased from 10 years to 12 years and they were allowed to rise up to the rank of Major with an age limit of 52 years (**Govt. of India, Ministry of Defence Letter No. F, 14(3)/98-D/AG dated 3rd September, 1998, stipulating that RCOs would retire on attaining 52 years of age or on completion of 12 years of service whichever was earlier**). It is therefore, very clear that the authorities have all along been making revisions to the terms and conditions of RCOs in conformity with the rest of the Army. It may be noted that prior to 01-01-1996 (Vth Pay Commission), there was a rank of 2nd Lieutenant in the Army and an officer could attain the rank of Major only after 13 years of reckonable service. A general change in accordance with recommendations of the Vth Pay Commission abolished the rank of 2nd Lieutenant, thereby allowing a commissioned officer to attain the rank of Major on completion of 11 years of service. The same was further reduced based on the recommendations of

the AVSC report, as per which, officer could be promoted to Major on completion of 6 years of service and Lieutenant Colonel after 13 years of service. It is thus admitted fact that the RCO category of officers were always considered whenever there was an upward revision in pay and allowances and such service conditions for the Army in general right up to Vth & VIth Central Pay Commission. The respondents could not provide any documents to support their plea that the RCOs could not benefit from the lowering of service for attaining substantive ranks, as applicable, and implemented in the of AVSC report. It may be in Organisational interest to stop a particular entry by ceasing recruitment through such an entry, but it is not practicable nor appropriate enough to freeze the terms and conditions of the existing officers of such an entry by isolating them from the remainder regular officers of same rank and post who continued to be eligible for upward revision and improvement of service conditions. It amounts to denial of natural justice and discrimination, when the authorities segregate a group of officers and deny them the general benefit applicable to others. In this case, the applicant, from RCO entry, appears to have been the victim of such discrimination, as pleaded by him. Yes, Army Instructions 10/98, dictated to cease RCO's entry and allowed the remainder officers to be governed under Army Instructions 32/89. In that case, Army Instructions 32/89 should have remained dynamic to change, because this Army Instruction dealt with service conditions of personnel and not with inert objects. We noted that contents of this Army Instructions (AI 10/98 of May 1998) were changed in September, 1998 in consonance with revision of cadre structure in general and while injecting improvements to terms and conditions of service and pay and allowances etc. The authorities appear to be selective while infusing changes to Army Instructions 32/89, because it concerned RCO's.

17. **Efforts of Army Headquarters and Ministry of Defence to Enable Enhancement of Retirement Age of RCOs.** RCOs, as the name suggests, are Regimental Officers Commissioned to serve in units. Such regimental appointments

were initially up to the rank of Captain and later Major. They were employed as Company Officers and Company Commanders. Based on AVSC Part –I report, which was implemented on 21st December, 2004, appointments of Company Commanders, until then tenable by Majors, were held by Lt Colonels. Accordingly, Lieutenant Colonel became the highest non-select rank in the Army which was attainable after 13 years of service, which used to be 20 years earlier. In fact, service brackets of non-select ranks in the Army were lowered subsequent to recommendations made by the AVSC Part-I, as a measure to make the Army young and attractive for the youth of the nation. It was one of the objectives of AVSC because the Army had a tremendous shortage of officers. While, implementing the AVSC, the Army and the Ministry of Defence made amendments to many governing Army instructions which had implications on terms and conditions of service. The applicant in his petition has brought to our attention as to how the service limits of SSC Officers both men and women was enhanced from 10 to 14 years primarily to allow them to reach the rank of time scale Lieutenant Colonel on completion of 13 years of service. The respondents, however, explained that such changes were done generally to make the SSC more attractive to the youth which was one of the objectives of the AVSC. Nevertheless, the fact remains that the AI 32 /89 relating to the RCOs, remained untouched and the applicant, along with few more RCOs, were admittedly left out to retire in the rank of Major unlike their peers in other entries who could serve longer and reach the minimum rank of Lt. Col. We find from many internal communications of the Ministry of Defence and the Army Headquarters, collectively annexed as Annexure P-4 to the writ petition, where the Ministry of Defence and the Army Headquarter appear to have been convinced that the RCOs should also get the benefit of an upward revision of age and service so that they too, like other categories in the Army, could attain the rank of Lt. Col before retiring. In this connection, the petitioner specifically drew our attention to Annexure P-4, U.O. No. 1(53)/96-AG (PA) dated 13-1-06. This note clearly confirms of a government proposal relating to enhancement of retirement age of RCOs by 2 years (52 to 54 years of age and from 12 to 14 years of service

respectively, whichever was earlier). While approving the said proposal in principle, Ministry of Defence (Finance) advised to get this proposal approved by the Cabinet since earlier such proposal was also concurred by the Cabinet. There appears to be no further action by the respondents, perhaps because, the cadre had ceased under (AI 10/98). It would have been just and apt for the government to either proceed with a Cabinet note to enhance their terms of engagement, or take steps to transfer the existing RCOs, of which the applicant was a part, to another cadre with longer span to serve; which they finally did through an inter arm/service transfer (IAST) order issued on 24th December, 2009, which benefited the then serving RCOs. The applicant had however, retired by then. The question remains, whether the RCOs in service between 24th December, 2004, date when AVSC was implemented, and 24 December 2009, date when IAST was for RCOs was approved, were treated in a fair and just manner? The petitioner fell in this bracket and had to retire in December, 06.

18. **Assurances By the Respondents in Hon'ble Rajasthan High Court and Inter-Arm Service Transfer (IAST) for RCOs:-**The petitioner has brought to our notice that there was a case filed in the Hon'ble Rajasthan High Court, Jaipur Bench (WP No. 8411/2006- Major Bhanwar Singh Rathore Vs Union of India). In the ibid case Major Bhanwar Singh Rathore, a RC officer, had challenged his retirement orders on the ground that there was a case taken up by the government for enhancement of the age of retirement of the RCOs (Annexure R/1 to A/R). In the ibid case, the Hon'ble Rajasthan High Court of Jaipur Bench had granted a stay in the said retirement, but the respondents gave us to understand that the stay was later vacated based on a decision communicated in (WP No. 9632/06 in the case of Major Gajraj Singh Yadav Vs. Union of India) on a similar matter. Photocopies of extracts of ibid judgments of Hon'ble Jaipur Bench of Rajasthan High Court were submitted by the respondents. We observed from both these judgments that the respondents (Military Secretary's Branch and Govt of India) have, in no uncertain terms, assured the Hon'ble High Court that the government was doing all it could to enhance the age of

retirement of RCOs, but those who had to retire during the process of decision making could not be held back. In accordance with *ibid* judgments, that petitioner had to retire; but we would like to quote the following to substantiate the assurances given by the government to the Hon'ble High Court.

“From the material, it appears that the recommendations certainly have been made and it has been accepted at some level of the department, but it is still pending for final decision before the Ministry of Defence.”

After going through the documents annexed at Annexure P-4(collectively) to the writ petition and the assurances by the government mentioned in the *ibid* judgments and the Court order at Annexure R-1 (collectively) to the Affidavit-in Reply, we are of the opinion that the Army Headquarters and the Ministry of Defence had been keeping the applicant in dark from December, 2004 to December, 2009, until they decided to meet the aspirations of few (57) RCOs by allowing them the option of IAST, i.e. enabling them to change from RCOs to PC(SL) under special circumstances. One wonders why, such an option could not be thought of and offered to the applicant before he retired? The Applicant's plea has been that there was no option before him except to hopefully await a change of policy for enhancement for his age of retirement. We also note that long pending assurances often delay judicious dispensation of justice to all affected personnel.

19. **Applicability of AVSC Report Part-I:** - In the Affidavit-in-Reply, the learned counsel for the petitioner submitted that the RCOs cadre was discriminated upon, being wrongly excluded from the AVSC report. The respondents clarified that AVSC report was for a general purpose for making changes in terms and conditions of service of officers in the Indian Army in order to decrease the age of Commanders and make the Army more attractive so that more youth could join the Army. It was an

effort to find ways to address the officers' shortage in the Indian Army; recommend structural changes to enable quicker and higher promotion at comparatively younger age and was based on a study report subsequent to performance of Commanders at various levels in Kargil War. Therefore, it had no specific bearings towards RCOs *per se*. We have examined the AVSC report that was submitted to us by the respondents on 4th March, 2010. Our observations are as under:-

- (a) There is no mention that the RCOs are excluded from the recommendations of this report.
- (b) There is a section (paragraph-7 to 15) relating to "*Need to meet Individual aspirations*". Therefore, the Government, while implementing, could not remain blind to the *aspirations* of one section of its officers (RCOs), no matter how few they were in number and notwithstanding the fact that commissioning through this entry had ceased by an order of May 1998, i.e. AI 10/98. The AVSC report was objective and indeed aimed to achieve its goal of reform; but leaving out the aspirations of the RCOs, except 'lip service' through empty assurances, while implementing this Report, appears unfair and discriminatory.
- (c) The recommendations and its implementation by the Military Secretary's Branch suggests that the requirement of service span for non-select ranks would be ; Captain in two years, Major in six years, Lt. Col (Time-Scale) in 13 years and Col (Time-scale) in 26 years. There was no reason as to why these implementations were denied to the RCO's, even if it required a Cabinet note to enhance their retirement limit from 12 to 14 years.

An analysis of the AVSC report clearly reveals that it could not have been applied to officers in the Indian Army of various entries in a selective manner. In this case, however, it appears unjust to exclude the RCOs from the benefit of this report.

Our Views and Decision

20. Consequent to analysis of above issues and contents of relevant documents including all Army Instructions, AVSC report that were produced before us, we applied our mind to all submissions made by both the parties through affidavits and in person. Having considered all relevant matters, we are of the opinion that while the authorities should abide by rules created by the Government, they cannot be discriminatory while implementing them dispensing advantage to one section of its employees while denying the same to another similarly placed section or individual. From the course of events as ascertained above, it is clear that some sections of the administration (AG's Branch, Army HQ, MOD (Fin) and MOD (AG)) became conscious that unfair discrimination would be caused to the remainder serving RCOs, if their terms of engagement was not enhanced by two years. It would deny them the rank of Lt Col, which would otherwise be attained by each and every other officer, whether regular or short service, of the Army. Their efforts, as visible from various recommendations, appear to have been stonewalled by some other department, who stalled their proposal to the Cabinet. Nevertheless it is appreciative of the MoD and the Army HQ (AG) to take recourse to IAST, as a special measure, to give justice to these RCOs. The petitioner was left out with mere hopes and assurances given to him. Let us examine as to in what manner we can deliver justice to him and on what grounds, for which we consider the following:-

- (a) Was it appropriate and logical for the government to issue the retirement orders (the impugned order) dated 30-12-2005 instructing that the applicant would retire on 31-12-06 on completion of 52 years of service as per the terms and conditions governing his entry vide Army Instruction 32/89?

(b) Was it judicious on the part of the government not to take any action to enhance the retirement age of RCOs by two years, despite repeated recommendations from the Army Headquarters and departments within Ministry of Defence?

(c) Why could not the opportunity of Inter-Arm/Service Transfer be offered to the applicant before he retired, like it was offered to others on 24 December, 2009?

20. Having considered all relevant points, statutory orders and rules on the subject, we are of the opinion that:-

(a) The retirement orders in respect of the applicant issued on 30-1-2005 (the impugned order) was in accordance with rules in vogue. Therefore, its implementation must hold; and needs no interference from the Court of law. In similar cases, the Rajasthan High Court, Jaipur Bench also had vacated the stay on such retirement orders and allowed them to be implemented, notwithstanding the fact that the proposal to enhance the retirement age was indeed in progress.

(b) We are of the considered view that the government, perhaps the Finance Department hesitated to progress the proposal for enhancement of retirement age of RCOs to the Cabinet, which was, as has been given to understand by the applicant and not contested by the respondents, the competent body to sanction such enhancement. It was definitely not a judicious action to stub the aspirations and legal content in such proposal that had the support of the Army authorities and certain departments of the Ministry of Defence. Extinguishing the aspirations of personnel without assigning any reasons is like sowing the seeds of discontentment which must be avoided by all means by the government dealing with its military. In the instant case, we feel justice could have been given to the RCOs, including

this applicant, but it appears to have been denied because they were few in numbers. There was no further enrolment in this cadre and because their voice to dissent or to agitate was feeble, muffled with hopeless assurances by the authorities. We must find ways to undo such injustice to the extent that is practicable.

(c) The method of meeting the aspirations of the RCO's through the manner of IAST as a special measure, therefore, is appreciable, but could have been resorted to earlier when the authorities knew that some sections of the government was unwilling to push the proposal for enhancement of retirement age of RCO's to the Cabinet. Nevertheless, the applicant did not at any stage agitate or approach for such an option. Therefore, no further comment on this issue would lead to any viable solution.

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.

23. The aforesaid directions shall be complied within a period of three months from the date of receipt of this order. Let a plain copy of the order be handed over to the learned counsels for both the parties. The copy of the AVSC report as submitted by the respondents, being confidential in nature, shall be returned in a sealed cover by the Registry to the counsel of the respondents.

[HON'BLE LT GEN K P D'SAMANTA]
MEMBER (ADMINISTRATIVE)

[HON'BLE SHRI JUSTICE S K GUPTA]
MEMBER (JUDICIAL)