

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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OA 656 of 2012

Pritam Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Abhimanyu Sharma , Advocate
For the Respondent(s) :	Mr R N Sharma, CGC

**Coram: Justice Rajesh Chandra, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**JUDGMENT
08.03.2013**

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1. By this petition, the petitioner prays for a direction to the respondents to release the service pension and other pensionary benefits in the rank of Subedar as per revised Driver Mech Transport trade wef 01.01.1996 in Group 'Y' and not in Group 'E' consequent upon the implementation of the recommendations of 5th Central Pay Commission.

2. The petitioner retired from service as Subedar (Driver MT) on 31.08.1997. The grievance of the petitioner is that consequent upon revision of the pay scales of his trade Driver MT by the 5th Central Pay Commission, the pension of the petitioner was not fixed as per para 6(d) of Appendix 'A' to SAI 1/S/97 (Annexure A-4). Appendix 'D' clearly stipulates that Driver MT comes under the category of Combatant Group 'Y'. The petitioner is entitled for pensionary benefits w.e.f. 1.1.1996 and his pension be fixed as per Table No. 37 (Annexure A-3) and not as per Table No.40 because the Driver MT Trade falls under the category of Combatant Group 'Y' as per Appendix 'D' (Annexure A-4) clause 7.3. of Circular No.430.

3. On 28.12.2011, the petitioner made a representation which was replied vide letter dated 10.1.2012 by the Records that the Driver MT is placed in group 'E' and not in group 'D' and hence pension has been correctly revised as per table No.40 of Govt. of India, MoD letter dated 8.3.30110. The office Circular 430 dated 10.03.2010 of the Principal Controller of Defence Accounts (Pension) states that

the Driver MT is placed in 'Y' category. Thus, the petitioner falls under Table No. 37 and not under Table No.40 as stated by the Records. The counsel for the petitioner has relied upon a judgment of the High Court of Punjab and Haryana Chandigarh in **Jai Narayan Jakhar v. UOI and another** (CWP No. 15400 of 2006) decided on 14.01.2008 in support of his contention.

4. In the reply filed by the respondents it is stated that the petitioner was enrolled in the Army on 29.8.1969 and retired from service prematurely on 31.8.1997 on completion of service limit as laid down in para 16 of Regulations for the Army Revised Edition 1987 under Item No.1(i)(a) of Army Rule 13(3) with liability to serve in the Reserve for a period of five years or attainment of 50 years of age. Therefore, his pension has not been revised according to Appendix 'B' to SAI 1/S/1997 which is according to the policy of 5th Central Pay Commission. His Service pension has been fixed as per Appendix 'A' to SAI 1/1997. As per SAI/1/S/1998 Trade Driver MT was placed in group 'E' and not in Group 'D' as stated and petitioner was granted service pension in the rank of Sub @ Rs.1230/- per month in Group 'E' plus DA. Para 7.3 is applicable to the PBOR who were discharged on or after 10.10.1997 and this para is not applicable to the petitioner because he was retired on 31.8.1997 i.e. prior to 10.10.1997. Therefore, as per SAI/1/S/1998, the petitioner who was working in the Trade of Driver MT was correctly placed in group 'E' and not in Group 'D'.

5. Heard the learned counsels for the parties.

6. The only ground on which the benefit of para 7.3 has been denied to the petitioner is that the petitioner retired before 10.10.1997 i.e. on 31.08.1997. In this connection the judgment of Punjab and Haryana High Court in **CWP No. 15400 of 2006 (Jai Narain Jakhar vs Union of India and others)** dated 14-01-2008 may be referred in which the following has been held:

"The petitioner has claimed a writ of mandamus directing the respondents to release the retiral benefits of the petitioner in the pay scale of 5620-140-8140/-. The petitioner was appointed on 07-09-1974 as Navy Boy. He attained the age of superannuation on 31-05-1996 as Chief Petty Officer. On the date of superannuation his pay scale was 4650-125-6900/-. The Department found that there is anomaly in the implementation of the recommendations of the 5th Pay Commission and consequently vide circular Annexure P1, Chief Petty Officers were given pay scale of 5620-140-8140/-. However, it was pointed out that such revised pay scales shall be given effect from 10-10-1997. Subsequently, on 16-12-1997 vide Annexure P2, it was pointed out that the subsequent enhancement in scales as approved by the Government of India, Ministry of Defence on 21-11-1997 will be effective from 10-10-1997. The provisions of such instructions are applied to all the categories of personnel, who were on the effective strength of the Navy as on 01-01-1996 or who join the Navy service thereafter. The benefit of such revised pay scale on account of removal of anomaly was not extended to the petitioner for the reason that he has

attained the age of superannuation on 31-12-1996 i.e. prior to issuance of circular Annexures P1 and P2 as the said anomaly was sought to be removed effective from 10-10-1997. It is contended by the petitioner that once the anomaly in the pay revision is sought to be removed, it shall be applicable to the petitioner, who has retired after the implementation of recommendation of the 5th Pay Commission w.e.f. 01-01-1996 and thereafter the artificial date fixed as 10-10-1997 is wholly unjustified and irrational. In reply, it has been pointed out that the implementation of 5th Pay Commission recommendation the pay scales were introduced in two phases i.e. firstly, from 01-01-1996 to 09-10-1997 and secondly from 10-10-1997 onwards. The introduction of second revision of pay scales w.e.f. 10-10-1997 was an outcome of trade rationalization in the Armed Forces based on the recommendations of the report of Ajit Kumar Committee constituted by the Ministry of Defence. Since the pay scales were revised in two phases and the petitioner was not in service as on 10-10-1997, the petitioner is not entitled to revision in retiral benefits.

Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, it was found by the respondents that there is anomaly in the Pay Scales. Once the anomaly in the Pay Scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 01-01-1996. There is no explanation as to why the said anomaly is sought to be removed from 10-10-1997. In the absence of any explanation of removal of anomaly from 10-10-1997, we do not find the action of the respondents fixing such date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale. In view of the above, we allow the present writ petition and direct the respondents to recalculate the amount of pension on the basis of revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. The exercise be completed within a period of three months from today. The writ petition stands disposed of in above terms.

(HEMANT GUPTA) JUDGE

MOHINDER PAL) JUDGE

(January 14, 2008)''

7. The above decision dated 14-01-2008 of Punjab and Haryana High Court rendered in **CWP No. 15400 of 2006 (Jai Narain Jakhar vs Union of India and others)** was affirmed by the Apex Court vide judgment dated 21-11-2008 rendered in **SLP (Civil) No. 15128 of 2008 (Union of India vs. Jai Narayan Jakhar)**.

8. The petition is disposed of with a direction to the respondents to allow all the benefits of para 7.3 to the petitioner as these benefits are allowed to those PBORs who were discharged on or after 10.10.1997. The petitioner will be entitled to all these benefits w.e.f. 01.01.1996. However, the arrears will be restricted to three years prior to the filing of the petition i.e. 06.03.2012.

The entire calculation will be made and the amount will be paid to the petitioner within a period of six months from today, failing which the petitioner will be entitled to an interest at the rate of 10% per annum on the amount so calculated.

(Justice Rajesh Chandra)

(Air Marshal (Retd) SC Mukul)

08.03.2013

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Whether the judgment for reference is to be put on internet? Yes / No.