

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**RA 27/2018 with MA 620/2018 & 1392/2019 IN OA 707/2016**

**In the matter of :**

**Maj Ajit Singh Rath**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Ms. Archana Ramesh, Advocate**

**For Respondents : Gp Capt Karan Singh Bhati, Sr CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT. GEN. RANBIR SINGH, MEMBER (A)**

**O R D E R**

Seeking review of an order passed by this Tribunal on 12.10.2017 in OA No. 707/2016, this application has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008.

2. Invoking the jurisdiction of this Tribunal, the applicant filed the Original Application and it was contended that in OA No. 1046/2016 decided by a Coordinate Bench of this Tribunal on 11.09.2017 in the case of ***Major S.Y.Kaluskar (Retd.) Vs. Union of India and Others.*** The issue has been considered

and claiming benefit of pay scale of Lt. Col. (TS) to Officers holding the rank of Major who had retired with a specific length of service both pre and post commencement of the 5<sup>th</sup> Central Pay Commission, applications were filed.

3. In the applications filed, the issues pertain to grant of the rank of Lt. Col. (TS) and various other benefits. As far as the present applicant is concerned, after taking note of various submissions, the application was allowed and in Para 17, the following directions were issued: -

***(1) Since the applicant retired on 02.05.1996, he will not be entitled to the rank of Lt. Col (TS). He will, however, be granted the scale of Lt. Col for his pension with the rank pay of Major, subject to verification by the respondents that he fulfils the criteria of stagnation of one year as a substantive Major, based on the provisions of the Government of India (Ministry of Defence) letter dated 21.11.1997, with effect from 01.01.1996; and***

***(2) The respondents shall ensure that all actions in this regard are completed in four months from the date of receipt of this order, failing which interest@ 8% per annum will be paid to the***

***applicant on all arrears, till the date of actual payment.***

4. However, in this review application it is now stated before us that the applicant has been granted the scale of Lt. Col. for his pension with the rank pay of Major, subject to verification by the respondents that he fulfils the criteria of stagnation of one year as a substantive Major. Grievance of the applicant is that when the application of the applicant was decided on 12.10.2017, similar reliefs claimed for by various other applicants were also decided by the same Bench on 12.10.2017 namely OA No. 795/2016, Major K. Ramesh (Retd.) Vs. Union of India & Ors. , OA No. 796/2016, Major Arun Kumar Saxena (Retd.) Vs. Union of India & Ors., OA No. 797/2016, Major Premanathan Vadakumthani Vs. Union of India & Ors. and OA No. 798/2016, Major Dhiman Bose (Retd.) Vs. Union of India and Ors. In all these cases also, identical issues were involved and all these applications were disposed of and the order passed in the case of Mr. K. Ramesh and other cases reads as under: -

### **Order of the Tribunal**

- (i) The applicant will be entitled to the rank of Lt. Col (TS) with effect from the date of his completion of 20 years of service, provided he fulfils the other necessary criteria for the rank of Lt. Col(TS) i.e. discipline, etc.;***
- (ii) The applicant will be entitled to the pay scale of Lt. Col (TS) with rank pay of Maj from the date of his stagnation, for one year I the rank of substantive Maj based on the provisions of Government of India letter dated 21.11.1997;***
- (iii) The applicant will be entitled to full pay and pension of Lt. Col (TS) from the date on which he got the rank based on 4(i) hereinabove;***
- (iv) Unless a specific individual issue is raised with regard to 4(i) above, the respondents shall publish grant of the rank of Lt. Col. (TS) in conformity with 4(v) below;***
- (v) The respondents shall ensure all actions in this regard are completed in four months from the date of receipt of this order, failing which interest @ 8% will be paid to the applicant on all arrears till the date of actual payment.”***

5. It is averred that after the aforesaid order was passed in all the cases decided on 07.10.2017 Para 4(ii) has been deleted and when the same was not done in the case of the applicant, this application has been filed. It is the case of the applicant that in all the cases, the direction to pay the applicants the pay scale of Lt. Col. (TS) with rank pay of Major from the date of his stagnation for one year, in the rank of substantive Major based on previous provisions of the Government of India letter dated 21.11.1997 has been deleted whereas in the case of the applicant, it has not been done so. Seeking deletion of the aforesaid part of the order and contending that the applicant is also entitled to claim his rank of Lt. Col. as was granted in other cases, this application has been filed.

6. Learned counsel for the applicant took us through various orders passed in the matter and emphasized that except in the case of applicant, the final directions given have been amended whereas in the case of the applicant which was also decided on the same day, the correction having not

been affected this application for review. Shri Bhati, Sr. CGSC appearing for the respondents vehemently opposed the aforesaid claim and argued that the Learned Tribunal has decided the matter in the light of various judgments as are referred to in the order and the order passed by Hon'ble Supreme Court also in the case of Suchet Singh Yadav Vs. Union of India 2018 SCC online Page 230, based on the policy of this Government of India dated 14.01.2020 wherein after completing of certain period of service as a Major, the Officer is entitled to the pay scale of Lt. Col.(TS) and that also to certain categories of employees who were in service as on 01.01.1996.

7. It is argued that as the case of Major K.Ramesh Vs. Union of Indian & Others relied upon by the applicant, also refers to the order passed in the case of the applicant Major Ajit Kumar Rathi on 12.10.2017 and after taking us through the order passed in the case of applicant Rathi on 12.10.2017 and the case of Major K Ramesh Vs. Union of India & Others, it is argued that in the case of the applicant,

a detailed order containing various others reasons have been indicated which are not available in the case of the applicant and this being a conscious order it cannot be said to be an order passed erroneously or an error apparent on the face of the record warranting review or recall. Accordingly learned counsel prays for dismissal of the application.

8. We have gone through the averments made before us, so also, the order passed in the case of K Ramesh (supra) wherein the prayer contained in Para 4 (ii) of their orders have been deleted. We find that in all the cases i.e. Major K Ramesh (supra), Arun Kumar Saxena (supra), Major Premnathan Vadakumathani (supra), Major Dhiman Bose (supra) and Major Rajeev Chopra (supra), a short order has been passed on 12.10.2017, and in Para 2, the following assertions are made: -

***“2. Since the issue has been covered by the ratio of Maj. Ajit Singh Rathie v. Union of India and another in OA No. 707 of 2016 decided on 12.10.2017, which followed the case Maj. Kaluskar (supra), this OA is also disposed of in the light of the case Maj Ajit Singh Rathie (supra). Further to these***

***orders, we are also seized of this Tribunal's order in Wg. Cdr. V.S. Tomar (Retd.) v. Union of India and others (T.A. No. 442 of 2010 decided on 21.05.2012), wherein, specifically MoD Letter No. 14(1)/98/D(AG) dated 14.01.2000, included in Govt. of India (MoD) Letter No. 1(26)/97/11/D (Pay/Services) dated 29.02.2000 has been deemed to have come into force from 01.01.1996, the date of commencement of the 5<sup>th</sup> Central Pay Commission"***

the directions in Para 4 as reproduced hereinabove are issued. However, in the case of the present applicant, the order passed is a detailed order consisting of more than 18 pages and 17 paragraphs. Even though the order is passed on 12.10.2017 and it refers to the consequential effect of the order passed on 11.09.2017 in the case of ***Major S.Y.Kaluskar (Retd.) Vs. Union of India and Others*** (supra), various issues have been taken note of and thereafter, two directions have been issued which reads as under: -

***"(1). Since the applicant retired on 02.05.1996, he will not be entitled to the rank of Lt Col (TS). He will, however, be granted the scale of Lt. Col for his pension with the rank pay of Major, subject to***



***verification by the respondents that he fulfils the criteria of stagnation of one year as a substantive Major, based on the provisos of the Government of India (Ministry of Defence) letter dated 21.11.1997, with effect from 01.01.1996 and***

***(2). The respondents shall ensure that all actions in this regard are completed in four months from the date of receipt of this order, failing which interest @per annum will be paid to the applicant on all arrears, till the date of actual payment.***

9. In the case of the other applicants, a specific direction has been issued to the respondents to grant the rank pay of Lt. Col (TS) to the applicants like K. Ramesh & others whereas such a direction is not indicated in the order passed by the applicant. Except for deleting Para 4(ii) on the ground of disparity, between Para 4(ii) and other parts of the order, the review has been allowed in the case of K. Ramesh and Ors. Whereas in the case of the applicant, the original direction of the Tribunal did not contain the directions as contained in Para 4(iii), 4(iv) and 4(v) (supra). There seems to be specific inclusion of directions in other cases of K.Ramesh & Ors. and a specific exclusion of certain directions in the

case of the applicant. The final directions given in the case of K Ramesh and Others in Para 4 and the final directions given in Para 17 in the case of the applicant are after different analysis on facts. That being so, there seems to be a conscious omission in the case of the applicant in the matter of granting relief in as much as the directions contained in Para 4(iii), 4(iv) are not available in the case of the applicant.

10. In our considered view, taking note of the substantive difference in the tenure of the order passed in the cases, we are of the considered view that it is not an error apparent on the face of the record. It seems to be some specific inclusion and exclusion, in the orders, passed in the different sets of cases and, therefore. it is not appropriate for us to modify or review the order. Instead, in case the applicant has any grievance with regard to the manner in which relief has been granted to the applicant, the applicant may challenge the same in accordance with law, it is not a case of error apparent on the face of the record and hence the review is not maintainable.

11. Accordingly, finding the prayer made in the application to be beyond the scope of review available to us, based on the nature of the orders passed, we dismiss the application.

Pronounced in the open court on this day of 20<sup>th</sup> April 2023.

**[RAJENDRA MENON]**  
**CHAIRPERSON**

**[RANBIR SINGH]**  
**MEMBER (A)**

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