

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

57.

MA 1386/2022 IN OA 1914/2020

AVM Amarjeet Ahuja (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. V.S. Mahndiyan, Advocate

WITH

58.

MA 1975/2022 IN OA 2554/2021

AVM D.S. Dagar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. V.S. Tomar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

59.

OA 686/2022 WITH MA 883/2022

AVM A.K. Singh (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ankur Chhibber, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
21.10.2022

MA 1386/2022 IN OA 1914/2020

In the case of the present applicant, OA 1914/2020
was allowed on 10th November, 2021. As the order has not

been implemented and the benefits conferred on the applicant, this application for execution has been filed. Notice was issued to the respondents and the execution proceedings are pending since 20th May, 2022. Considering the fact that in the case of *Air Vice Marshal P. Subhash Babu Vs. Union of India and Ors.* (OA NO.2342/2019) the order has been implemented, we direct the respondents to implement the order passed in this case and confer all benefits in accordance to the order passed within a period of four weeks and submit a compliance report failing which coercive action will be taken against the officer committing default in the matter of implementation of the order.

Put up again on 25th November, 2022.

MA 1975/2022 IN OA 2554/2021

This MA filed for early hearing of the matter is allowed.
MA stands disposed of.

OA 2554/2021

Since the issue involved in the present case stands covered by an order passed by us in the case of *Air Vice Marshal P. Subhash Babu Vs. Union of India and Ors.* (OA NO.2342/2019) on 4th November, 2020, we take the OA on board and proceed to decide the same.

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant holding the rank of Air Vice Marshal, Indian Air Force, has filed the aforesaid OA and the relief claimed in Para 8 reads as under:

a) Direct the respondents to fix the pay of the applicant by taking into account MSP as stipulated in Para 12 (c) read with Para 7 (iv) and 3 (g); and

b) Call for the records based on which the Respondents have fixed pay of the Applicant lower than officers junior to him based on Air Force Officers Pay Rules 2017 issued by the Respondents after coming into effect of the recommendations of 7th Central Pay Commission.

c) Quash the said impugned order dated 15.10.2019 by Decreeing the same as arbitrary; and

d) To direct the respondents to step up the pay of applicant from the retrospective date of 19 Apr 2021 as he was promoted to the rank of 19 Apr 2021.

It is the grievance of the applicant that as his pay is lower than the officers junior to him, he is entitled to stepping up of his pay to be brought at par with his juniors.

The issue involved in this matter, according to the applicant, stands concluded by the judgment of this Tribunal in the case of *Air Vice Marshal P. Subhash Babu Vs. Union of India and Ors.* (OA No.2342/2019) dated 4th November, 2020.

The respondents have, however, tried to distinguish the matter by filing a counter affidavit on the ground that the

juniors are drawing pay/pension more than the applicant by virtue of inclusion of Military Service Pay (MSP) in the pay whereas the applicant is not entitled to include his MSP as the benefit of MSP has not been extended to him in view of Para 3 (i) and 12 (iii) of the Air Force Officers Pay Rule, 2017.

From the submissions made before us, we find that in sum and substance the objection of the respondents is that persons like the applicant who are promoted to the rank of AVM are not authorized to draw MSP as per Air Force Officers Pay Rules, 2017 but as the junior officers are drawing more pay on account of inclusion of MSP, the applicant cannot be permitted to compare his basic pay with junior officer by including MSP with the basic pay.

Having heard learned counsel for the parties and after considering the submissions made before us, we note that the respondents are in fact relying upon the same set of objections which had been considered and rejected not only by the Delhi High Court in the case of **AVM S.N. Chaturvedi Vs. Union of India** (1990 SCC Online Del 406) on 12th October, 1990 but also by us in the case of **Air Vice Marshal P. Subhash Babu** (supra). On a specific query being put, we are informed by the respondents that the orders passed by us in the case of **Air Vice Marshal P. Subhash Babu** (supra) have

been implemented and benefit extended to the applicant in that case.

Keeping in view the aforesaid, we see no reason to take a different view from the one already taken by us in the case of *Air Vice Marshal P. Subhash Babu* (supra).

Accordingly, taking note of the totality of the circumstances and for the grounds and reasons already considered and decided by us in the case of *Air Vice Marshal P. Subhash Babu* (supra) and finding the objections of the respondents raised again in this matter to be unsustainable, we allow this OA and direct the respondents to step up the pay of the applicant w.e.f. 19th April, 2021; fix his pay and grant him all the benefits within a period of three months from the date of receipt of a copy of this. The applicant will also be entitled to arrears of pay retrospectively w.e.f. 19th April, 2021.

The OA is allowed. There will, however, be no order as to costs.

Pending MA(s), if any, also stands disposed of.

MA 883/2022 IN OA 686/2022

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in *Union of India and others*

Vs. Tarsem Singh (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

OA 686/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant holding the rank of Air Vice Marshal, Indian Air Force, has filed the aforesaid OA and the relief claimed in Para 8 reads as under:

a) Call for the records based on which the Respondents initially fixed the pay of the Applicant lesser than the officers junior to him based on Air Force Officers Pay Rules 2017 issued by the Respondents after coming into effect of the recommendation of 7th Central Pay Commission and thereafter issuing lesser pension to him accordingly in terms of impugned PPO No. 331201810283 dated 10.12.2018 and thereafter quash the same.

b) Direct the respondents to step up the pay of the Applicant with effect from 01.08.2016 equivalent to the pay received by the Air Commodore ranked juniors officers of the Applicant by invoking the instruction of more beneficial clause or otherwise in the light of the judgements dated 04.11.2020, 10.11.2021 and 20.12.2021 passed by this Hon'ble Tribunal in similarly filed Original Applications and other such judgments passed by Hon'ble Delhi High Court referred above and accordingly grant him all arrears and other related consequential benefits on such fixation of pay with the penal interest @ 18% with effect from 01.08.2016 till his date of retirement;

(c) Direct the Respondents to step up the pension of the Applicant to Rs.1,16,550/- with effect from the date he retired from service i.e. on 31.12.2018 accordingly thereby issuing fresh PPO to him as has been granted to his juniors who are getting more pension than him by invoking the instruction of more beneficial clause or otherwise in light of the judgements dated 04.11.2020, 10.11.2021 and 20.12.2021 passed by this Hon'ble Tribunal in similarly filed Original Applications and other such judgments passed by Hon'ble Delhi High Court referred above and accordingly grant him all arrears and other related consequential benefits on such fixation of pension with the penal interest

@ 18% and post-retirement benefits due to him such as Leave Encashment, Composite Transfer Grant etc. accordingly with effect from 31.12.2018;

(d) Direct the Respondents to further step-up the pay of the Applicant again if any of his junior in a subsequent time frame draws more pay/pension than the Applicant and non effective benefits may also be re-worked and benefit may be passed to the Applicant automatically.

It is the grievance of the applicant that as his pay/pension is lower than the officers junior to him, he is entitled to stepping up of his pay/pension to be brought at par with his juniors.

The issue involved in this matter, according to the applicant, stands concluded by the judgment of this Tribunal in the case of *Air Vice Marshal P. Subhash Babu Vs. Union of India and Ors.* (OA No.2342/2019) dated 4th November, 2020.

The respondents have, however, tried to distinguish the matter by filing a counter affidavit on the ground that the juniors are drawing pay/pension more than the applicant by virtue of inclusion of Military Service Pay (MSP) in the pay whereas the applicant is not entitled to include his MSP as the benefit of MSP has not been extended to him in view of Para 3 (i) and 12 (iii) of the Air Force Officers Pay Rule, 2017.

From the submissions made before us, we find that in sum and substance the objection of the respondents is that

persons like the applicant who are promoted to the rank of AVM are not authorized to draw MSP as per Air Force Officers Pay Rules, 2017 but as the junior officers are drawing more pay on account of inclusion of MSP, the applicant cannot be permitted to compare his basic pay with junior officers by including MSP with the basic pay.

Having heard learned counsel for the parties and after considering the submissions made before us, we note that the respondents are in fact relying upon the same set of objections which had been considered and rejected not only by the Delhi High Court in the case of *AVM S.N. Chaturvedi Vs. Union of India* (1990 SCC Online Del 406) on 12th October, 1990 but also by us in the case of *Air Vice Marshal P. Subhash Babu* (supra). On a specific query being put, we are informed by the respondents that the orders passed by us in the case of *Air Vice Marshal P. Subhash Babu* (supra) have been implemented and benefit extended to the applicant in that case.

Keeping in view the aforesaid, we see no reason to take a different view from the one already taken by us in the case of *Air Vice Marshal P. Subhash Babu* (supra).

Accordingly, taking note of the totality of the circumstances and for the grounds and reasons already

considered and decided by us in the case of *Air Vice Marshal P. Subhash Babu* (supra) and finding the objections of the respondents raised again in this matter to be unsustainable, we allow this OA and direct the respondents to step up the pay of the applicant w.e.f. 01st August, 2016; fix his pay and grant him all the benefits within a period of three months from the date of receipt of a copy of this order. The applicant will also be entitled to arrears of pay retrospectively w.e.f. 01st August, 2016. The respondents are further directed to step up the pension and grant other consequential benefits to the applicant w.e.f. 31st December, 2018 by issuing a corrigendum PPO.

The OA is allowed. There will, however, be no order as to costs.

Pending MA(s), if any, also stands disposed of.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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