

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

47.

OA 4/2020 with MA 3/2020

Wg Cdr Mahesh Chander Sudan (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC with
Mr. Yogeshwar K. Purohit, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
06.01.2025

The applicant vide the present OA makes the following prayers:-

"To quash/set aside the impugned order dated 22.01.2019.

(b) To direct the respondents to grant the retiral benefits to the applicant in accordance with 7th CPC.

(c) To direct the respondents to fix the anomaly in the service pension of the applicant w.e.f. 01.01.2016.

(d) To direct the respondents to pay 12% interest on the arrears accrue to the applicant.

(e) To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case."

2. The basic premise of the applicant is to the effect that in as much as he superannuated on 31.12.2015 he was not given any pensionary benefits as per the 7th CPC recommendations. The applicant further submits that his grievance is that his retiral

benefits have been fixed in terms of 6th CPC treating him as a pre-2016 retiree whereas he should be treated as a retiree w.e.f 01.01.2016 and that the 7th CPC benefits would then accrue to him.

2. A perusal of the record indicates that vide Annexure A-2, a representation made by the applicant for the grant of pensionary benefits as per 7th CPC, reliance was placed by the applicant on the order of the Hon'ble Central Administrative Tribunal, Principal Bench dated 17.04.2018, in the case of *GC Yadav Vs. Union of India & Ors.* (OA No.571/2017) who retired on 31.12.2015, submitting to the effect that vide the said order, the date of retirement of that applicant was deemed to be 01.01.2016 and he was held entitled for the grant of 7th CPC benefits.

3. The respondents through their counter affidavit have refuted the claim of the applicant and have placed reliance in the order dated 19.07.2019 of this Tribunal in OA 873/2016 in the case of *Gp Capt (Retd) P K Singh & Anr. vs. UoI & Ors.* wherein, it has been specifically observed whereby vide 13 to 15 thereof to the effect;-

“13. We have given careful consideration to the arguments from both sides and find that the primary issue before us is whether the applicants, who retired on 31.12.2015, can be granted retiral and pensionary benefits as per recommendations of 7th CPC, which are effective w.e.f. 01.01.2016, by accepting the applicants' contention that they be deemed to have retired on 01.01.2016 (instead of 31.12.2015).

14. The applicants have cited certain orders/judgments where entitlements of salaries/pension were granted in some cases by the Courts by interpreting policy in a manner that the petitioners were deemed to have retired on the following day, i.e. the first day of the next month. On the other hand, the respondents have cited the Govt. of India policy which lays down that military officers will retire on the last day of the month in which they attain the age of superannuation. We are in agreement with the respondents that the applicants' case is distinguishable from the facts of the judgments/orders that have been cited, and thus, the applicants cannot derive any benefit from these.

15. Thus, we are in agreement with the respondents who have stipulated that 7th CPC benefits would be applicable only to those who are in service on or after 01.01.2016. As the applicants retired on 31.12.2015, they cannot be entitled to retiral and pensionary benefits of the 7th CPC, which took effect only on 01.01.2016. Ordered accordingly.”

Apparently, in terms of the order dated 19.07.2019 in OA 873/2016 and the factum that the said order has been upheld by the Hon'ble Supreme Court vide order dated 30.06.2021 in Civil Appeal Diary No. 11218/2021, the issue involved in the present proceedings is no longer *res integra*. It is also essential to observe that even the order dated 17.04.2018 of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA 571/2017, was assailed by the UOI & Ors. i.e. the respondents, arrayed to OA 571/2017 before the Hon'ble High Court of Delhi vide W.P. (C) No. 9062/2018, and the said writ petition filed by the Union of India was allowed with it having been observed vide paragraph 22 thereof to the effect:-

“22. For all the aforesaid reasons, we allow the present writ petition and set aside the impugned order passed by the Tribunal. We hold that the respondent was not entitled to pay revision with effect from 01.01.2016 under the Seventh Central Pay Commission recommendations since he superannuated on 31.12.2015 and he was not entitled to fixation of his pension on the premise that he retired from service on 01.01.2016. The parties are left to bear their respective costs.”

4. The challenge made by Mr. GC Yadav, the applicant of OA 571/2017 to the abovementioned order of the Hon’ble High Court of Delhi dated 23.10.2018 has also been dismissed vide order dated 24.05.2024 of the Hon’ble Supreme Court in SLP No. 33558/2018, observing categorically to the effect vide Para 2 thereof to the effect:-

“2. Office memorandum dated 4 August, 2016 relied on by the petitioner does not come to his aid, instead, it makes the position clear that there is no error on the part of the respondents in denying the petitioner benefits of revision of scales of pay as per the 7th Pay Commission recommendations. There is absolutely no reason to interfere with the impugned judgment and order passed by the High Court of Delhi dismissing the petitioner's writ petition: hence, the special leave petition is dismissed.”

5. In the circumstances the prayer made by the applicant cannot be allowed and the OA is thus dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)