

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.

**T.A.No.243 of 2009**

[WP(C) No.949 of 1989 of Delhi High Court]

Lt Col Trilok Singh

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioners : Mr.J.S. Manhas, Advocate

For the Respondents: Maj Sangeeta Tomar, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER

**ORDER**

1. Petitioner by this writ petition has prayed that respondents be directed to pay him differential on principal amount of back wages, pension, gratuity etc. amounting to Rs.5,06,690/- and interest @12% and pay pension corresponding to basic pay scale of Rs.5,700/- entitled to Major/Lt. Col Trilok Singh.

2. Brief facts necessary for disposal of present petition are that petitioner was granted permanent regular commission on 03.06.1956 in the Army. Petitioner was promoted to the substantive rank of Major based on merit cum seniority in due course of time. He was incharge of Vehicle Sub Depot in 1976. A complaint was filed against him on certain charges and he was charged and directed to face the court martial proceeding. In court martial, he was found guilty and dismissed from service with rigorous imprisonment of one year on 06.03.1978. Against said order of punishment passed by the court martial, petitioner filed writ petition and Hon'ble High Court of Allahabad quashed the order of court martial vide order dated 08.05.1986. Thereafter, review petition which was filed by respondents dismissed and Special Leave Petition filed by respondents before Hon'ble Supreme Court was also rejected. Thereafter, petitioner was reinstated in service with effect from 20.07.1978 vide letter dated 15.03.1988. Thereafter, petitioner retired on attending superannuation by the order dated 29.04.1988 retrospectively with effect from 31.07.1986 in the rank of Lieutenant Colonel (Time Scale) with effect from 03.06.1981. Petitioner was paid a sum of Rs.2,79,627/- as arrears of pay and allowances vide

sanctioned letter dated 17.08.1988 and a sum of Rs.11,922/- as pay of rank of Lt Col (Time Scale) vide letter dated 30.01.1989. However, the wages were not paid over a period of about 10 years and the pensionary benefits were disbursed after a delay of about 20 years viz-a-viz the due date. Petitioner claiming difference of principle amount under the head of arrears of pay and allowances, ration allowance, house rent, outfit allowance, LTC, medical expenses, arrears of pension, DCRG, computed pension, encashment of 6 months leave at the time of retirement and encashment of leave not availed since 1977 to 1984 and onwards. Net total worked out by the petitioner at tune of Rs.5,06,690/- with interest @12%.

3. After hearing learned counsel for petitioner we found that his grievance with regard to his fixation of pay appears to be well founded. The grievance of petitioner in short is that he should have been fixed at the time of retirement in the rank of Major at Rs.5100/- as basic. In view of 4<sup>th</sup> Pay Commission which came into effect with effect from 01.01.1986. As per recommendation of 4<sup>th</sup> Pay Commission dated 18.03.1987, there is integrated pay scale for officers upto rank of Brigadiers including AMC, ADC and RVC



Officers but excluding military nursing service officers and equivalent in the Navy and the Air Force was Rs.23000-100-2900-150-4200-EB-150-5100 and rank pay for major and equivalent was Rs.600/-, Lt. Col. (Selection) and equivalent was Rs.800/-, Colonel and equivalent was Rs.1000/- and Brigadier and equivalent was Rs.1200/-. We are concerned with petitioner who became Lt. Colonel in time scale. Therefore, so far as the rank pay is concerned, he was given Rs.600. The question with regard to basic pay is concerned, he has not been correctly fixed. As per fixation, petitioner had been fixed at basic pay of Rs.3800. We fail to understand how this figure has been arrived at. The petitioner was in service since 1956 and if he is to be fixed in running integrated pay scale of the officers then basic pay is Rs.3200 and after 16 years of service @ Rs.100 increment per year which will come to Rs.3900 and after Rs.3900 the increment was Rs.150 that he would cross within two years that is after completion of 18 years of service, he would be in the pay scale of Rs.4200. At Rs. 4200 there is an efficiency bar. Thereafter further increment on Rs.150 makes basic pay as Rs.5100. The petitioner was fixed at basic pay of Rs.3800 which is not understandable. Since the petitioner after 18 years of service i.e. in 1974 his basic pay would have completed

Rs.4200 and after crossing the efficiency bar, he should get increment of Rs.150 per year and maximum of Rs.5100. So far as the question of efficiency bar is concerned that has already been laid down by Circular dated March 16, 1988 which reads as under:-

No. 1 (6)/88/D (Pay/Services)  
Government of India,  
Ministry of Defence,  
New Delhi, March 16, 1988

.....  
Subject :- IMPLEMENTATION OF THE FOURTH PAY COMMISSION'S  
RECOMMENDATIONS-APPLICATION OF EFFICIENCY IN THE INTEGRATED  
PAY SCALE SERVICE OFFICERS.  
.....

In this communication the heading Qualitative Requirement and Procedure for rendering efficiency bar certificate, Clause 5 reads that *"professional competency of the officer will be assessed based on the ACRS/ICRs/ARs on record from 12<sup>th</sup> year of service for the purpose of efficiency bar in the integrated pay scale. In overall assessment the officer should have got satisfactory reports in the ACRs/ICRs under consideration. Any adverse remarks/ratings in qualities reflecting the moral fibre of an officer will be taken due note of by the Competent Authority during consideration and fitness or otherwise to cross efficiency bar will be decided on the merit of each case."* Similarly Clause 6 also says that *an officer who does not qualify to*

*cross the efficiency bar on first consideration will be given two additional reviews, consequently during the succeeding two years with additional ACR/ICR/ARs on record, by the competent authority. Officers not found fit to cross the Efficiency Bar will be informed of the decision of the competent Authority after every screening. Officers failed to qualify efficiency bar after three such annual considerations by the Competent Authority, his service shall be liable to be terminated under the provisions of Army Act 19 and Army Rule 15.*

4. So far as the present case is concerned, we do not know whether his case of crossing of efficiency bar was at all considered or not. Apparently he has been fixed in the basic pay of Rs.3800/- in the integrated pay scale. It appears that the case for crossing of efficiency bar in case of petitioner did not arise but as we mentioned above petitioner after completion of 18 years of service i.e. in 1974 he would have reached to the pay scale of Rs.4200 and at that stage his ACR should have been considered whether he is fit to be permitted to cross efficiency bar or not. This aspect seems to have not been considered at any level. Though the authorities have tried to fix him at Rs.3800 but we fail to understand how they could fix him at



Rs.3800 whereas as per the scheme of things, he should have been fixed at a minimum scale of Rs.4200 and subject to crossing of the efficiency bar he would have given the benefit of further increment and he would have ended after crossing the efficiency bar at Rs.5100.

5. In these circumstances, we think that petitioner's fixation has not been properly done in the integrated pay scale of officers. Therefore, we set aside the fixation of petitioner at Rs.3800 as basic and remit back the matter to the authorities to reconsider the matter and fix the petitioner taking into consideration his length of service in the pay scale of 2300-5100. However, we direct for the purpose of crossing the efficiency bar, his record may be considered in the light of the circular dated 16.03.1988 and if he is found suitable for crossing the efficiency bar on the basis of his record obtaining by that time for a period of 12 years then he should be given also benefit thereof and he may be fixed accordingly. However, his other grievances regarding amount for LTC, leave encashment amount, ration allowance, outfit allowance, LTC, medical expenses, we are not impressed by that at all. However, leave encashment due to him

should also be considered and if he is entitled to other amount of gratuity on the basis of aforesaid revision, then all consequential benefits should be given to him. This whole exercise should be done within three months. Petition is accordingly disposed of in the light of aforesaid observations. No costs.

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[Justice A.K. Mathur]  
Chairperson

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[Lt. Genl. ML Naidu]  
Member

New Delhi  
13<sup>th</sup> November, 2009