

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

O.A. No.224/2011

NCT Chiranjeelal

.....Petitioner

Versus

Union of India & Others

.....Respondents

For Petitioner

Mr. Prabodh Kumar, Advocate

For Respondents

Mr. Satya Sharawat Adv, proxy for

Mr. Ankur Chhibber, Advocate

CORAM

HON;BLE JUSTICE A.K.MATHUR CHAIRPERSON

HON;BLE M.L. NAIDU, ADMINISTRATIVE MEMBER

ORDER

Dated: 27th November ,2012

The petitioner by this petition has prayed for setting aside /quash para 6 of ACP Scheme dated 17.08.2003 issued by Ministry of Defence and order dated 17.07.2009 of AFCAO and re-fix the payment of the applicant at upper scale to his juniors who are drawing more payment in comparison to applicant with effect from the date of promotion.

2. The petitioner was enrolled in the cadre as NC (E) Trade Lascar on 02.09.1983 in Indian Air Force. He was promoted to the rank of NCT (Non

Combatant Tindal) on 11.12.2002 and his position was shown as per the ACP scheme in the Pay Band of Rs.7880/-, Grade Pay 1800/-, NCA, GCB + Class pay Rs.1000/-, DA, TPT Allowance Rs.4356/- HRA+ L/Fee+ DA 2320/- FLY/PJI Allce Rs.150/-, GAL Awards Rs.266/- and the total credits were Rs.18,014/-. It is stated by the petitioner that the persons junior to him are getting more payment and gave example of R.K.Singh who was enrolled on 06.10.1983 as trade Lascar and was promoted on 01.01.2004 to the rank of Tindal and his pay scale has been shown in the Pay Band of Rs.8180/-. Grade Pay Rs,1800/- NCA, GCB+ class pay Rs.1000/- DA, TPT allowance Rs.4491/- HRA+ L/Fee + DA Rs.2320/- Comp Allowances Rs.2994/- FLY/PJI Allce Rs.150/- LRA Rs.266/- Mic. Creditsd Rs.5066 and total credits Rs.26267/- He has given one more name of Mr. Laxmi Kant Rao, who has been promoted subsequently and is drawing more pay than the petitioner.

3. The grievance of the petitioner is that persons who have been recruited after him are getting higher pay than him and he has placed two pay slips, one of the petitioner himself and that of Mr. R.K. Singh and it appears that there is a difference in the Pay Band in ACP-II Rs.7880/- and Rs.8180/-. In that connection he made a representation which was supported by Air Force Record Office requesting Government to do away with the anomaly but the same was rejected by the Government and referred to clause 6 of the ACP Scheme which reads as under:

“6. The financial up gradation under the ACP Scheme shall be purely personal to the service personnel and shall have no relevance to his seniority, position or rank. As such there shall be no additional financial up gradation for the senior personnel on the ground that the junior personnel in the rank has got higher pay scale under ACP Scheme.”

4. We have heard the learned counsel for parties and have perused the records.

5. It is true that the anomaly is writ at large. The petitioner though was promoted before the ACP scheme came in to force as Lascar Tindal. Therefore, he could not get the benefit of ten years 1st ACP but he got the benefit of twenty years 2nd ACP. Whereas Mr. R.K. Singh who was recruited on 06.10.1983 could not be promoted before the ACP Scheme. Therefore, he got one benefit of ten years and another of twenty years. But meanwhile he was also promoted to the rank of Tindal on 01.01.2004. Therefore, he got both the ACPs because he could not be promoted after ten years or twenty years term and thereafter promoted to the rank of Lascar Tindal. Therefore, he is drawing higher pay than that of the petitioner though he is junior to the petitioner. As per scheme, it appears that the action has been correctly taken but unfortunately so far as petitioner is concerned, the scheme has created a great discrimination as his junior is drawing higher salary. In this connection our attention was invited to Scheme that which clearly states that financial up gradation under the ACP Scheme shall be purely personal to the service personnel and shall have no relevance to his seniority, position or rank. But it does create bad feeling specially the organization like Army where a hierarchical set up is there where the rank makes lot of difference. In the present case, the petitioner was promoted on 01.12.2002 and Mr. R.K.Singh was promoted on 01.01.2004. Still petitioner is getting lesser pay, it is bound to create heart burning. However, looking into the nature of the scheme, which has larger application and it affects large number of persons, it will not be conducive to interfere with the Scheme. The Rule 22 of the FR may be invoked in the present case but the reply came from the

Ministry of Defence after consulting Ministry of Finance that Rule 22 of the FR is not applicable to such cases. Be that it may, the fact remains that there is a definite discrimination in operation between two persons ie petitioner and Mr.R.K.Singh that one person who is junior getting higher pay grade than the senior. Therefore, we direct the Government to consider such hardship cases and do justice so that heart burning is avoided and it may not cause disaffection in Armed Forces. We hope and trust that the Government will look into the matter and take appropriate action for this kind of discrimination, as this is one case and there may be more cases which can arise. Therefore, it is a high time Government should interfere in the matter and take some action so that this kind of discrimination is avoided. Consequently we dispose of the petition with the direction that the Government will look into the matter and remove the hardship as far as possible. The petition is accordingly disposed of.

(A.K.MATHUR)
Chair Person

(M.L.NAIDU)
Member

New Delhi

Dated: 27th November,2012