

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
08.

O.A. No. 546 of 2010

Lt Col Harpal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Petitioner in person.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
20.01.2012

1. Petitioner by this petition has prayed that a direction may be given to the Respondents to struck down the unconstitutional disparity in fixation of Retiring Pension to rank of Lt. Col. (Time Scale) and Lt. Col. (Selection) and his pension may be determined without any distinction.

2. Petitioner was recruited in the Indian Army on 24th December 1972 and rose to the rank of Lt. Col. (TS) on 24th December 1991 and superannuated on 30th April 1998. His grievance is that a distinction has been made for determination of pension that Lt. Col. (TS) gets the weightage of 5 years and Lt. Col.(S) gets 7 years. This distinction made by the Respondents in their impugned order dated 21st May 2009 may be quashed. The note appended to this order reads as under:

“1. While the qualifying service indicated in the Table-1 above is the actual qualifying service, the amount of pension indicated is inclusive of the rank weightage as admissible in terms of Para 5.1(b)(ii) of

the Ministry's letter No. 1(6)95/D (Pen/Sers) dt. 3.2.1998.

2. The difference in the amount of pension for the same qualifying service of Lt. Col. (TS) and Lt. Col. (S) is due to different rank weightage admissible to Lt. Col.(S) in terms of Para 5.1 of MOD letter No. 1(6)/98/D(Pension/Services) dated 3.2.1998.”

This table has been prepared on the recommendations of the 6th Pay Commission and the rates of pension for Lt.Col. (TS) and Lt. Col. (S) have been drawn out on this table on the basis of 33 years service. But so far as question of 33 years service is concerned, that has been already struck down by us in the case of **Wing Commander (Retd.) V.S. Tomar v. Union of India & Ors. (O.A. 106 of 2009 decided on 7th December 2011)**. But the question in the present case is with regard to different weightage given to the Lt. Col.(TS) and Lt. Col. (S) i.e. 5 years and 7 years respectively. This weightage has been sought to be challenged by the Petitioner in this petition.

3. A reply has been filed by the Respondents and the Respondents have taken the position that this distinction has been kept in view of the fact that prior to 2004, Lt. Col.(S) and Lt. Col. (TS) were having a separate benefit of weightage i.e. Lt. Col.(TS) for 5 years and Lt. Col.(S) for 7 years. The persons who used to get time scale after completion of 21 years of service whereas person in Selection Scale could be selected after 16 years of service after undergoing a selection process. Therefore the distinction was made on the basis of the selection process and that distinction has been kept intact. It is only in 2004 on recommendations of A.V. Singh Committee that has been

now dispensed with. But persons who have already retired prior to 2004 that distinction has been still maintained in 6th Pay Commission. Therefore, we cannot say that the so-called distinction which was maintained prior to 2004 was in any way bad or arbitrary. More so, in the present case, the question will be of not much relevance if the decision given by this Tribunal in the case of **Wing Commander (Retd.) V.S. Tomar v. Union of India & Ors. (O.A. 106 of 2009 decided on 7th December 2011)** against which an SLP is stated to have been filed in the Hon'ble Supreme Court, is maintained by the Hon'ble Supreme Court. Then in that case Petitioner will be able to get benefit irrespective of so-called distinction. However, so far as the question of distinction between the weightage of Time Scale and Selection Scale is concerned, we do not find any illegality in that. Since we have already held that the condition of 33 years is arbitrary and we have struck down the same, therefore the case of the Petitioner may be processed on the basis of the decision given by this Tribunal in the case of **Wing Commander (Retd.) V.S. Tomar v. Union of India & Ors.**

4. With these observations, the petition is disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 20, 2012
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