

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

T. A. No. 442 of 2010

Writ Petition (Civil) No. 4848 of 2001

Wg. Cdr. V.S. Tomar (Retd.)

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With

T.A. Nos. 453/10, 722/09 & 733/09

For petitioner: Petitioner in person (TA 442/10)
Mr. V.S. Tomar, Advocate (TA Nos. 453/10, 722/09 &
723/09)

For respondents: Mr. Ankur Chhibber, Advocate

CORAM:

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

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

ORDER

21.05.2012

1. All these petitions have common question of law to be decided. However, for convenient disposal of these petition the facts given in **Wg. Cdr. V.S. Tomar (Retd.) v. Union of India & Ors. (T.A. No. 442 of 2010)** are taken into consideration.

2. Petitioner by this petition has prayed for the implementation of the two impugned orders of the Government of India, Ministry of Defence dated 14th January 2000 and 29th February 2000 with effect from 1st January 1996 i.e. from the date of implementation of the Vth Pay Commission and subsequently fix the basic pay of the Petitioner in the 14th year of service at Rs.14,100/- per

month (Rs.12,900 + Rs.1,200 Rank Pay) and recalculate his basic pay on 1st January 1996 which comes to Rs.13,550/- per month + Rs.1,200/- per month as Rank Pay as per the calculations of the Petitioner. It is further said that the basic pay of the Petitioner comes to Rs.14,200 + Rs.1,200 per month rank pay on 1st June 1997 and the Respondents may be directed to recalculate his pension, commutation etc. on Rs.15,400/- as the last basic pay of the Petitioner drawn from 1st June 1997 to 31st December 1997.

3. The Petitioner was commissioned in the Indian Air Force on 16th June 1976 in the Logistics Branch and was promoted to the rank of Substantive Flight Lieutenant on 16th June 1982 on merits. The MoD reduced the length of Commission Service required for rank of Substantive Sqdn. Ldr (Maj. and equivalents) from 13 years to 11 years in order to accelerate promotion for service officers in 1985. The IVth Pay Commission recommended integrated pay scale from Pilot Officer and equivalents to Air Commodore and equivalents from Rs.2300-100-3900-150-4200-EB-150-5100 (+ Rank Pay). The Petitioner was promoted to the rank of Substantive Sqdn. Ldr on 16th June 1987. The Petitioner crossed Efficient Bar in 1995 and was drawing a basic of Rs.4,950/- per month (Rs4,350 + Rs.600/- Rank Pay). The Petitioner had his basic pay as Rs.5250 (Rs4,600 + Rs600 Rank Pay) in June 1997. The Petitioner proceeded on voluntary retirement in March 1997 which was accepted by the Government. The recommendation of the Vth Pay Commission was accepted by the Government on 19th December 1997 in which the Sqdn. Ldr was given the pay scale of Rs.11,600-325-14,850 (+ with Rs.1200/- as Rank Pay). Because of certain anomalies in the implementation of the Vth Pay Commission, Government of India appointed a Committee on

24th December 1997 headed by Defence Secretary. The Committee headed by the Defence Secretary had discussed the range of recommendations and then under the directions of the Prime Minister a High Level Committee of Group of Officers was constituted in May 1995 to give its recommendations to the Committee headed by the Defence Secretary. Then the recommendation was given in July 1999. Para 48 and 49 of the recommendations read as under:

"48. Placement of Majors and equivalent in the Armed Forces in the higher scale of pay of Rs.14,300-18,300 will disturb not merely the existing relativities with the Organized Group 'A' Services but also the vertical relativities within the Services themselves. This may not, therefore, be desirable. However, there is merit in the demand of the Services for near parity in the 14th year of service with the Indian Police Service counterparts in the Non-Functional Selection Grade (for short NFSG).

49. The Group accordingly recommends that the pay of Officers of the three Services on promotion to the ranks of Major and equivalent (Lieutenant and Squadron Leader) in a substantive capacity may, therefore, be fixed initially at the stage of Rs.12,250/- in the pay scale of Rs.11,6000-14,850. In the event, however, of FCPC recommendation that the eligibility period for substantive promotion to the ranks of Major and equivalent may be reduced from 11 to 10 years being accepted by the Government, the pay on substantive promotion may be fixed only at the stage of Rs.11,925. The Officers concerned will also be eligible to draw the Rank pay in addition. The special dispensation will be applicable prospectively from the

date of issue of the relevant orders. Further, in order to maintain the existing relativities between personnel in the CPMFs, Coast Guard and Navy, the FCPC recommendation relating to the introduction of the rank of Second-in-Command in the latter organization may be implemented immediately."

4. The report of the Group of Officers was accepted by the Ministry of Defence by the order dated 29th February 2000 and in pursuance of that an order was issued which reads as under:

"No. 1(26)/97/II/D(Pay/Services)
Government of India
Ministry of Defence,
New Delhi-110011,
dated the 29th February, 2000.

To,
The Chief of the Army Staff, New Delhi
The Chief of the Air Staff, New Delhi
The Chief of the Naval Staff, New Delhi

Subject: Removal of anomalies arising from the implementation of the revised pay scales and allowances consequent to the V CPC recommendations-implementation of pay scales of major and equivalent.

Sir,

I am directed to refer to Instructions No. SAI, SNI and SAFI No. 2/S/98 dated 19-12-1997 and Ministry of Defence letter No. I(5)/97/D(Pay/Services) dated 21st November, 1997 providing special dispensation for pay scales of major and equivalent; and No. 14(1)/98/D(AG) dated 14-1-2000 on the

reduction of eligibility period for substantive promotion to the rank of major and equivalent and to state that the issues regarding certain anomalies arising from the implementation of revised pay scales and allowances consequent to Fifth CPC award for the Defence Service personnel has since been considered by the Government in the light of the recommendations of a Committee specially constituted on the above subject and it has been decided that the pay of officers of three Services on promotions to the rank of Major and equivalent in a substantive capacity will be fixed initially at the stage of Rs.11925/- in the pay scale of Rs.11,600-325-14,850, in addition to rank pay.

2. The relevant Rules in Pay and Allowances Regulations for Army, Air Force and Navy will be suitably amended.

3. This will take effect from date of issue of this letter.

4. This issues with the concurrence of Ministry of Defence (Finance) vide their U.O. No. 1/77/99-PA, dated 23-2-2000."

5. The grievance of the Petitioner is that this order is illegal to the extent that it has become effective from the date of issue, meaning thereby the benefit which normally should have accrued to the persons was denied to them. The second submission of learned counsel was that as per paras 48 & 49 of the recommendations, Petitioner should have been fixed up at the stage from Rs14200 + Rs.1200.

6. This petition has been opposed by the Respondents and the Respondents have submitted that so far as giving prospective effect to the order dated 29th February 2000 is not only in case of the Petitioner but in all services this has been made prospectively. So far as fixation of the Petitioner at Rs.11,925/- is concerned, it is submitted that as per the recommendations of the Committee it has been rightly fixed and therefore no re-fixation is required.

7. We have heard learned counsel for the parties and perused the record.

8. So far as first submission of learned counsel for the Petitioner is concerned, it appears to be just and proper. Once the recommendation of Pay Commission has been accepted with effect from 1st January 1996 and if there is anomaly in the Pay Commission which is being sought to be rectified then in that case the anomaly should relate back from the date when the Pay Commission recommendation has been brought into effect. If that is not done then the very purpose of rectifying the anomaly will be futile. It appears that when the Government appointed a Committee to go into the anomalies that means the Government accepted that there was anomaly with regard to these officers and, therefore, a Committee was appointed and the Committee after considering all the contentions of the parties came to the conclusion that there is a real anomaly in the recommendation and that has to be rectified and they accordingly so recommended which was accepted by the Government and that means it should relate back from the date when the recommendation of the Vth Pay Commission came into the force. In somewhat identical situation, in the case of **Gurmail Singh Dahdli & Ors. V. Union of India & Ors. (Civil**

Writ Petition No. 6223 of 2007 decided on 26th May 2008) came before the Hon'ble Punjab & Haryana High Court, the Division bench has observed that "once the anomaly in the pay scale is found and is sought to be removed then this has to be removed from the implementation of the Pay Commission i.e. 1st January 1996". This matter was taken up by the Union of India before the Hon'ble Apex Court and this SLP was dismissed by the Hon'ble Apex Court on 21st November 2008. Therefore the contention of the Petitioner appears to be justified that once this anomaly has been found and that has been sought to be corrected then it should relate back from 1st January 1996. Accordingly, we accept this submission of learned counsel for the Petitioner and direct that the order dated 29th February 2000 should be deemed to have been come into force with effect from 1st January 1996 and all the benefits flowing therefrom should be worked out and paid to the Petitioner.

9. Now coming to the second question about fixation, the recommendation of the Committee is very clear. The recommendation of the Committee in para 49 is very clear though the period has been reduced for promotion for Sqdn. Ldr. from 11 years to 10 years but they have clearly mentioned that pay on substantive promotion be fixed only at the stage of Rs.11,925/- and this has been accepted by the Government. Therefore, we do not think that further re-fixation is warranted in this matter. Therefore the second contention of learned counsel for Petitioner cannot be accepted. As a result of the above discussion, we allow this petition in part to the effect that the order dated 29th February 2000 shall be deemed to have been come into force from 1st January 1996 and all the benefits flowing therefrom should be worked out and paid to the Petitioner.

10. In light of the aforesaid discussion, T.A. Nos. 453 of 2010, 722 of 2009 and 733 of 2009 are disposed of accordingly with no order as to costs.

A.K. MATHUR
(Chairperson)

New Delhi
May 21, 2012
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S.S. DHILLON
(Member)