

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

22.

OA 253/2014

Wg Cdr (Retd) VS Tomar

.....Petitioner

Versus

UOI & Ors

.....Respondents

For petitioner : In person

For respondents : Mr Ajay Bhalla, Advocate
Dr BK Singh, JCDA

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
12.12.2014

Heard the petitioner, who appeared in person, and the learned counsel for the respondents, assisted by the officer, Dr. BK Singh, JCDA.

2. The petitioner, though voluntarily retired as a Wing Commander (TS), submits that he is entitled to pension by calculating his emoluments in the rank of Squadron Leader in view of paragraph 5(a)(iv) of Air Force Instructions No. AFI/2S/1998, read with Note appended to paragraph 6.1 of Govt. of India/Ministry of Defence, letter No.1(6)/98 D(Pension/Services) dated 3rd February, 1998. The respondents have contested the petitioner's claim on the basis of the calculation sheet submitted along with the reply filed as Annexure R-1. Hence the petitioner has approached this Tribunal by filing this OA.

3. According to the petitioner, he 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 and substantive Squadron Leader on 16th June, 1987 i.e. prior to the cut off date of 1st January, 1996. The petitioner was promoted to the rank of Wing Commander (Time Scale) on 16th June, 1997 on completion of 21 years of service after crossing the Efficiency Bar. The petitioner sought premature retirement with effect from 31st December, 1997, and consequentially discharged from service prematurely w.e.f. 31st December, 1997.

4. The Air Force Instructions (AFI/2S/98) were issued regarding initial pay fixation and pay fixation. As per paragraph 5(a)(iv) of the Air Force Instructions 2S/1998, as a one time measure, those officers who became substantive Squadron Leaders prior to 1st January, 1996, became entitled to the scale of pay of Wing Commander on completion of 21 years of commissioned service with rank pay of Rs.1200/- after 1st January, 1996. According to the petitioner, the pay scale of Wing Commander, as recommended by the 5th CPC and approved by the Government, was Rs.13500-400-17100 with rank pay of Rs.1600/-. To give benefit to certain categories of officers, Govt. of India, Ministry of Defence, issued the letter No.1(6)/98 D(Pension/Services) dated 3rd February, 1998, by which certain pensionary benefits were

protected. As per para 6.1(c) of the said letter dated 3rd February, 1998, the pension of Wing Commander (TS)/Air Cmde/AVM and equivalent officers cannot be less than that of the Squadron Leader/Group Captain/Air Cmde and their equivalents. According to the petitioner, the petitioner was entitled to the pay scale of Wing Commander immediately after completion of 21 years of service in the rank of Squadron Leader and upon entering in 22nd years of service.

5. According to the petitioner, though he was promoted in the rank of Wing Commander (TS) on 16th June, 1997 on completion of 21 years of service and retired in the rank of Wing Commander (TS), but in view of the 5th CPC recommendations read with Note to para 6.1(c) of the Govt. of India letter dated 3rd February, 1998, he could not have been given pension less than the pension admissible to the rank of Squadron Leader, who has completed 21 years of service and entered into 22nd years of service in the rank of Squadron Leader.

6. The learned counsel for the Union of India, Mr. Ajay Bhalla, assisted by the officer, Dr. BK Singh, JCDA, has submitted that the petitioner's pension case was considered and the calculation has been given at page 3 of the counter-affidavit, which clearly indicates that if the petitioner is given the benefit of pay scale of Wing Commander and is given weightage of five years, which is

the weightage for the rank of Wing Commander, then the average of last ten months' pay of the petitioner would be Rs.14,880/-. When this average pay is fixed in the formula for calculation of pension, the petitioner will get the pension of Rs.5,975/- p.m. If the petitioner's pension is calculated in the rank of Sqn. Ldr., then he is entitled to the weightage of 8 years with average of last ten months' pay of Rs.14,653/-. If this average pay component of Rs.14,653/- is put in the formula for calculating the pension, then his pension will come to Rs.6,550/-. This second calculation is beneficial to the petitioner; therefore, the petitioner has been given pension as per the second calculation, which was done rightly.

7. The learned counsel for the Union of India also submitted that if the persons, like the petitioner, who are not regularly selected Wing Commanders and are Wing Commanders (TS), are given pay scale of Wing Commander and weightage of 8, then they will get more advantage than regularly selected Wing Commanders because of the reason that regular Wing Commanders are entitled to the weightage of seven years only and that will create an anomaly, which also can be resolved by accepting the calculation as given by the respondents.

8. It is not in dispute that the second calculation given by the respondents is not the petitioner's actual last ten months' average pay and is only a notional pay. The actual average pay of

last ten months, in fact, given to the petitioner is Rs.14,880/-, which unit is taken in first calculation.

9. The officer assisting the learned counsel for the Union of India, tried to submit that if the petitioner got the promotion after 21 years of service, and therefore, he is entitled to the pension of the rank of Wing Commander (TS) and not as per the scale of Squadron Leader.

10. We have considered the submissions of the learned counsel for the parties and perused the relevant clauses referred above. The relevant clause (iv) of paragraph 5(a) of Air Force Instructions 2S/1998 regarding the revised pay for officers is reproduced below:-

5.....(a).....(iv) "As a one time measure, those who became substantive Sqn. Ldr. before 1.1.96, will be granted the scale of Wg. Cdr. on completion of 21 years of commissioned service, i.e. in their 22nd year with the rank pay of Sqn. Ldr."

11. The note appended to paragraph 6.1 is also reproduced below:-

"Note: The retiring pension of an officer of the rank of Lt. Col (TS), Brigadier or Major General and equivalent, shall not be less than the pension which would have been admissible to him/her as a Major, Colonel or a Brigadier and equivalent as the case may be, had he/she not been promoted to the higher rank."

12. It is not disputed that the petitioner became substantive Squadron Leader before 1st January, 1996. He also completed 21

years of commissioned service and entered into 22nd year of service in the rank and pay of Squadron Leader. Therefore, the petitioner was entitled to the scale of pay of Wing Commander in view of para 5(a)(iv) quoted above. The petitioner was accordingly given the pay scale of Wing Commander.

13. For the purpose of calculating pension upon retirement of the petitioner, which took place on 31st December, 1997, the petitioner's actual pay which is in the scale of pay of Wing Commander alone can be taken into account and not that of the scale of pay of Squadron Leader as per para 5(a)(iv) quoted above.

14. Para 5(a)(iv) *ibid* gives the pay scale of Wing Commander to officers who can continue to be in service in the rank of Squadron Leader. The note appended below para 6.1 (quoted above) provides that the retiring pension of an officer is required to be calculated by assuming that he has not been promoted to the higher rank. Therefore, in view of the note appended below para 6.1 *ibid*, the petitioner, though promoted, shall be deemed to have not been promoted to the rank of Wing Commander for the purpose of computation of pension. Meaning thereby, that the petitioner's pay scale in the rank of Wing Commander may be taken since he is deemed to be entitled to the scale in the rank of Squadron Leader and in view of para 6.1 *ibid*, benefit of weightage of 8 is to be the

relevant factor for the purpose of calculating the pension. The Note below para 6.1 quoted above applies to the officers who, in fact, have been promoted, and therefore, the petitioner's case is fully covered under para 6.1 ibid as he was promoted to the rank of Wing Commander (TS). A conjoint reading of para 5(a)(iv) with the Note below para 6.1 quoted above, makes the things clear that for computing the pension of the petitioner, his pay scale will be that of Wing Commander (a one-time measure), and weightage will be that of Squadron Leader. The respondents' first calculation, though took the pay scale of Wing Commander, but treated him as promoted in the rank of Wing Commander for giving him the weightage, which is in violation of para 6.1 ibid, and therefore, wrongly gave weightage of five years. In the second calculation, the petitioner's pay was taken in the rank of Squadron Leader, which could not have been taken into consideration in view of para 5(a)(iv) ibid because of the reason that the petitioner admittedly became entitled to the actual pay scale of Wing Commander immediately after completion of 21 years of commissioned service (as a one-time measure). Therefore, in the second calculation, the respondents have wrongly taken Rs.14,653/- as the average pay of last ten months, and in the first calculation, the respondents have wrongly given weightage of five years to the petitioner. The respondents should have taken into

account the actual pay of Rs.14,880/- of the petitioner and should have given weightage of 8 years. The respondents thus committed the error by taking into account the notional average pay of last ten months as Rs.14,653/- whereas it should have been Rs.14,880/-, (the actual pay).

15. We do not find any anomaly from the record, if the above formula is adopted, which formula is given in para 5(a)(iv) read with the Note below para 6.1 *ibid*. The anomaly may not be because of the reason that the Squadron Leaders have opportunity to get promotion to the rank of Wing Commander well before completion of 21 years. Para 5(a)(iv) and the note appended to para 6.1 are clear and they are required to be given effect to. Para 5(a)(iv) has been provided after examining all situations and also as a one time measure only, and therefore, it is to be presumed that a conscious decision was taken to meet with a peculiar situation. The above provision has been made so that the promoted officer may not get less pension than the non-promoted Squadron Leader who completed 21 years of commissioned service.

16. Hence the OA is allowed. The petitioner's pension may be recalculated by taking average of his last ten months' pay of Rs.14,880/- and giving the weightage of 8 years. We are making it clear that if there is any change or enhancement of benefits beyond

what we have granted, that may also be calculated by the respondents and the same may be given to the petitioner within a period of three months from the date of receipt of a copy of this order. The petitioner will also be entitled to interest @ 12% per annum over the last three years prior to the date of filing of this OA, which was filed on 13th May, 2014.

17. The learned counsel for the Union of India prayed for grant of leave to appeal before the Hon'ble Supreme Court to challenge this judgment. Leave to appeal before the Hon'ble Supreme Court to challenge this judgment. We are of the considered opinion that no question of law of public importance is involved in this matter and hence the prayer of the respondents is rejected.

**(PRAKASH TATIA)
CHAIRPERSON**

**(SANJIV LANGER)
MEMBER**

Dated the 12th Dec., 2014
dph