

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

A..

OA 1011/2019 with MA 1683/2019

Lt Cdr JP Chadda (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ajai Bhalla, Advocate

For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

08.12.2023

Vide our detailed order of even date, we have allowed the OA 1011/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN C.P. MOHANTY)  
MEMBER (A)

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**ORDER**

**MA 1683/2019**

This is an application filed under Section 222) of the Armed forces Tribunal Act, 2007 seeking condonation of delay of **7555** days in filing the present OA. in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs. Tarsem Singh 2009(1) AISLJ 371** and in **Ex Sep Chain Singh Vs. Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned, the MA 1683/2019 is allowed despite opposition on behalf of the respondents and the delay of **7555** days in filing the OA 1011/2019 is thus condoned. The MA is disposed of accordingly.

**OA 1011/2019**

The applicant, a retired officer from the Indian Navy, vide this petition has prayed for the following :

***(a) Implement the impugned letters wef 01 Jan 1996 by granting the Applicant the rank of Commander on completion of twenty years of service; and***

***(b) Refix the basic pay as Commander, and accordingly, fix the pension of the Applicant wef 01 Aug 1997; and***

***(c) Grant arrears of pension from the date of retirement as a Commander with 9% interest; and***

***(d) Grant any other further relief as deemed appropriate in the facts and circumstances of the case.***

2. The applicant was commissioned in the Indian Navy on 01.10.1976, later promoted to the rank of Lt Cdr on 01.10.1987, and subsequently retired on 31.07.1997 after rendering 20 years 10 months of service .

3. It is the case of the applicant that the Govt. of India vide MOD letter No. 14(1)/98 DCAG dated 14.01.2000 based on the recommendations of 5th CPC issued directions / orders related to the grant of substantive rank to the officers in the Army, Air Force and the Navy regarding Time Scale Promotions to the rank of Commander and its equivalent ranks in the other two services, on completion of 20 years of service.

4. Ld. Counsel submits that the 5th CPC recommendations were implemented w.e.f. 01.01.1996. Thus, the directions contained in the letter dated 14.01.2000 were also required to be implemented we.f. 01.01.1996. But the applicant was not accorded the benefits for which he became entitled w.e.f. 01.10.1997 (i.e. the date for time scale promotion to the rank of commander).

5. Elaborating further, Ld. Counsel submits that since the revised norms for grant of such promotions were a sequel to the award / implementation of 5th CPC recommendations (Para 147.21), the recommendations should have been made effective from 01.01.1996 so that all officers who were in service as on 01.01.1996 were treated at par. The respondent's policy has, therefore, created a hostile discrimination between officers who retired after 01.01.1996 and those who continued in service till the date of issue of Govt. letter dated 14.01.2000 though both the categories of officers were similarly situated i.e. both were in service as on 01.01.1996.

6. Relying on the judgment of Punjab and Haryana High Court in CWP No. 15400/06, Sh Jai Narayan Jakhar Ex CPO v. UoI & Ors. and the judgment of this Tribunal in OA 138/2013 Lt. Cdr. B.R. Sharma & Ors. v. UoI & Ors. as upheld by the Hon'ble

Supreme Court, Ld. Counsel submits that both the judgments squarely apply in this case.

7. Per Contra, it is submitted by the Respondents that the applicant has prayed for relief which is contrary to settled law in as much as the cut-off date of implementation of an expert body like the Pay Commission is within the exclusive domain of the executive.

8. It is further submitted on behalf of the respondents that the Pay Commission is constituted for examination and analysis of various issues including matters relating to structure of emoluments, allowances and condition of service of employees. After a detailed consideration of various issues, the 5th CPC submitted its recommendations and some of the recommendations were accepted by the Govt. Resolution dated 13.10.1997.

9. Elaborating further, Ld. Counsel submits that the respondents implemented the recommendations of the Pay Commission making them effective either from 01.01.1996 or on various subsequent dates for different recommendations. The recommendations regarding time scale promotions were not implemented w.e.f. 01.01.1996 as it involved detailed deliberations. The Govt. letter implementing 5th CPC

recommendations at para 147.21 regarding time scale promotions could be issued only on 14.01.2000 after obtaining the approval of the competent authority.

10. It is submitted by the Ld. Counsel for the respondents that the date of implementation of the recommendations of Pay Commission is within the exclusive domain of the executive. The applicants are trying to invoke jurisdiction of the Hon'ble Tribunal in the sphere of policy which is the duty of the executive.

11. We have heard the learned counsel at length and perused all relevant documents. We find that the issue is no longer *res integra* post the judgment dated 29.05.2015 of this Tribunal in ***Lt. Cdr. B.R. Sharma & Ors. v. UoI & Ors*** in OA 138/2013; as upheld by the Hon'ble Supreme Court, in Civil Appeal Dairy No. 5112/2016, which has been followed by this Tribunal in ***Maj S.Y. Kaluskar (Retd.) v. Union of India & Ors.*** in OA 1046 of 2016 (decided on 11.09.2017) and ***Maj K. Ramesh v. UOI & Ors.*** in OA 795/2016 ( decided on 12.10.2017).

12. In view of the settled position, we direct that the applicant is deemed to have been promoted to the rank of Time Scale Commander w.e.f. date of his completion of 20 years of service, with all consequential benefits as per the provisions of

Govt. of India letter dated 14.01.2000, to be paid within two months from the date of the pronouncement of this order.

13. Pending miscellaneous application(s), if any, stand disposed of.

14. No order as to costs.

Pronounced in the open Court on 27 day of December, 2023.

**(LT GEN C.P. MOHANTY)**  
**MEMBER (A)**

**(JUSTICE ANU MALHOTRA)**  
**MEMBER (J)**

*Ps*