

**COURT NO. 1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA 1034/2022 WITH MA 1375/2022**

**Sqn Ldr (Retd) Harsh Handa**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. V.S. Tomar, Advocate

**For Respondents** : Mr. Rajesh Kumar Das, Sr. CGSC

**CORAM :**

**HON'BLE JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P M HARIZ, MEMBER (A)**

**ORDER**

**MA 1375/2022**

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in **Union Of India & Others** Vs **Tarsem Singh** [(2008) 8 SCC 648], the MA is allowed condoning the delay of **6935** days in filing the OA.

**OA 1034/2022**

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a ret'd Sqn Ldr of the Air Force, who is aggrieved by the action of the respondents in not giving effect to the MoD

letter no. 14(1)/98/D(AG) dated 14.01.2000 w.e.f. 01.01.1996 and thereby not granting him the rank of Wg Cdr (TS). He has made the following prayers:

- (a) Grant the rank of Wg Cdr (TS) to the applicant w.e.f. 10.06.1997 on completion of 20 years of commissioned service and amend their records accordingly; and
- (b) Grant arrears of pension of Wg Cdr (TS) w.e.f. 11.06.1997 with 9% interest ; and
- (c) Direct the PCDA (Pensions) to issue amended PPO in the rank of Wg Cdr (TS) for the applicant; and
- (d) Award exemplary costs; and
- (e) Grant any other further relief as deemed appropriate in the facts and circumstances of the case.

### **Brief Facts of the Case**

2. The applicant was commissioned in the Indian Air Force on 10.06.1977 in the Logistics Branch and was promoted to the rank of Sqn Ldr w.e.f. 10.06.1988. The applicant eventually took voluntary retirement on 31.01.1998 after completion of 20 years 07 months and 21 days of service. The MoD issued letter No. 14(1)/98/D(AG) dated 14.01.2000 for 'Implementation of Vth

Pay Commission Recommendations Para 147.21 Conditions Regarding Grant of Substantive Rank of Officers of Army, Air force and Navy'. The letter dated 14.01.2000 pertains to revised service required for promotion to substantive ranks, wherein the sanction of promotion to the substantive rank of Lt Col (TS) and equivalent is upon completion of 20 years of commissioned service. Notably, the letter did not specify an effective date. Consequently, since the applicant took voluntary retirement on 31.01.1998, prior to the issuance of the aforementioned letter, he was not granted the benefits outlined therein. Hence, the OA.

### **Arguments by the Counsel for the Applicant**

3. The counsel for the applicant emphasized that in 1985, the Government of India, Ministry of Defence (GoI, MoD) reduced the Commission Service requirement for promotion to the rank of Wing Commander from 24 years to 21 years. Furthermore, on 19.12.1997, the GoI accepted the recommendations of the Vth Pay Commission and issued two letters to implement the Group of Officers report. The GoI, MoD letter dated 14.01.2000 reduced the length of service for promotion to the rank of Lt. Col (TS) & Equivalent from 21 years to 20 years. The counsel stated that the applicant had surpassed efficiency bars within the IVth Central Pay

Commission's running pay-scale from 01.01.1986 to 31.12.1995 and further stated that the matter has been previously adjudicated and is no longer open to debate and therefore personal applications to the IAF/GoI were deemed unnecessary.

4. The counsel further contended that the respondents should have, of their own accord, granted the applicant pension at the rank of Wg Cdr (TS). The counsel relying on the judgment of the Hon'ble Supreme Court in **Union of India & Ors Vs D S Nakara & Ors** [AIR 1983 SC 130] stated that all pensioners constitute a single class, and any relaxation in the pension calculation formula must be applied uniformly to all pensioners from the date of such relaxation.

5. The counsel further placed reliance on the following orders of the Tribunal:

- (a) **Lt Cdr BR Sharma (Retd.) & Ors Vs. UOI & Ors** (OA 138/2013) decided on 29.05.2015;
- (b) **Maj S Y Kaluskar Vs. UOI & Ors** (OA 1046/2016) decided on 11.09.2017;
- (c) **Maj Ajit Singh Rathi (Retd) Vs. UOI & Ors** (O.A. No. 707 of 2016) decided on 12.10.2017 and;

(d) **Sqn Ldr Ram Ethindra** Vs. **UOI & Ors** (OA No. 955/2018)

decided on 11.12.2018.

**Arguments by the Counsel for the Respondents**

6. The counsel for the Respondents emphasized that the main contention pertains to the implementation date of MoD letter dated 14.01.2000. The counsel emphasized that in the absence of any specific mention of a date from when the letter would be applicable, it is to be implemented from the date of issue. He then emphasized that since the applicant had taken voluntary retirement on 31.01.1998, prior to the issue of this letter, he was not eligible to be promoted to the rank of Wg Cdr (TS) on 10.06.1997.

7. The counsel further elaborated that many other officers have sought similar relief and have made representations to the Directorate of Air Veterans. He then stated that promotions were authorized based on policies issued by MoD in AFT 3/87 and subsequent letters which have since been included in the HRP. The counsel further stated that the case for granting promotion to the rank of Wg Cdr (TS) on completion of 20 years of service under the provisions of letter dated 14.01.2000 has been under consideration of the MoD and Ministry of Finance and that a decision

was still awaited. He then concluded that based on the existing policies and the interpretations, the applicant here was not entitled to be promoted to Wg Cdr (TGS) w.e.f. 10.06.1997 as he had retired on 31.01.1998, well before the issue of this letter dated 14.01.2000.

### **Consideration**

8. Having heard both sides and examined all relevant documents, the sole issue before us is whether the provision of MoD letter dated 14.01.2000, as a consequence of the 5th CPC recommendations, should be retrospectively applied from 01.01.1996, or is it to be effective only from the date of issuance of the letter.

9. Based on the presented facts, it is apparent that this case does not pertain to a situation where the recommendations of the 5<sup>th</sup> CPC have been rejected by the GoI and reconsideration is sought. Nor does it involve the provision of additional benefits by the Govt at a later stage, beyond the recommendations made by the 5<sup>th</sup> CPC. Para 147.20 and 147.21, relevant to this case are reproduced below:

*"Qualifying Service for Substantive Promotion*

*147.20 In order to mitigate the difficulties of slow career progression, deficiency of officers in junior ranks and to reduce stagnation, substantial reductions in the qualifying period for time based / time scale promotions have been suggested by the Services. We have considered the issue and understand*

that the provisions available with regard to acting promotions ensure much faster promotion specially up to the rank of Major. We have also been informed that the existing qualifying periods for substantive promotion have been laid down for a graded progression in service career and reduction would not reduce actual deficiency in junior ranks. However, we have analyzed the issue in the context of the Armed Forces suggestion to grant provisional commission in the training academy during the last one year of training.

Our Recommendations:

147.21 In view of our proposal to abolish the rank of Second Lieutenant and considering all relevant factors, we feel that only a one year reduction in qualifying service can be justified and accordingly recommend reduction of one year in periods specified for substantive promotions. In our opinion, any further reduction may compromise on the experience requirements for each rank. The following revised qualifying periods for substantive promotions are, therefore, suggested.

Corps	Lt. & Equiv.	Capt. & Equiv. (Yrs)	Major & Equiv. (Yrs)	Lt Col (TS) & Equiv. (Yrs)
i) Officers of 3 services other than AMC, MNS, RVC, Dental, MF, SL Officers, SD list Officers (Navy) & Br Commission Officers (AF)	On Completion of Trg	4	10	20
(ii) to (x)	xxxxxx	xxxx	Xxxx	xxxx

10. Since the 5<sup>th</sup> CPC is to be effective from 01.01.1996, pay anomalies or implementation of recommendation applicable to the 5<sup>th</sup> CPC becomes effective and applicable from 01.01.1996. Failing to do so would render the purpose of rectifying an anomaly or making a positive recommendation futile. The GoI Acceptance order regarding the recommendation of the 5<sup>th</sup> CPC clearly reflects the spirit. Relevant extracts are reproduced below:

*" 50(1)/IC/97.- The Fifth Central Pay Commission was set up by the Government of India by Resolution No. 5(12)/E.III/93 dated 9<sup>th</sup> April, 1994 as amended by Resolution No. 5(12)/E.III/93 dated 12<sup>th</sup> January, 1996, No. 5(12)/E.III/93 dated 17<sup>th</sup> July, 1996, No. 5(12)/E.III/93 dated 24<sup>th</sup> October, 1996, 1996 and No. 5(12)/E.III/93 dated 19<sup>th</sup> November, 1996. The Commission submitted on the 30<sup>th</sup> January, 1997, its Report relating to structure of emoluments, allowances, conditions of service and retirement benefits of Central Government employees including Union Territories, members of All India Services and personnel belonging to the Armed Forces. The Commission also submitted its Supplementary Report No.1 on improving the Motivation Level and Supplementary Report No.2 on Cabinet Secretariat on 28<sup>th</sup> February, 1997. The Government have given careful consideration to the recommendations of the Commission in respect of civilian employees of the Central Government in Groups 'A', 'B', 'C' and 'D', as also those in the All India Services and have decided that the recommendations of the Commission in respect of these categories of Central Government employees and All India Services shall be accepted broadly subject to the modifications mentioned below:-*

*Xxxx*

*xxx*

*xxx*

*8. Department specific recommendations which are not included in this Resolution shall be processed by the concerned Department/ Ministry and approvals of the Government obtained in consultation with the Ministry of Finance and/or Department of Personnel and Training,*

10. The other recommendations of general nature made by the Commission which are not included in the Annexure are being examined by the Government and decisions thereon will be notified separately.

Xxxxxxxx”

11. MoD Letter dated 14.01.2000 is the acceptance and implementation instruction of the recommendations at Para 147.21. Thus it distinctly and specifically addresses the subject "Implementation of Vth Pay Commission Recommendations Para 147.21 Conditions Regarding Grant of Substantive Rank of Officers of Army Air force and Navy". The letter is reproduced below:

No.14(1)/98/D(AG)  
Government of India  
Ministry of Defence  
New Delhi, 14<sup>th</sup> January, 2000

To  
Chief of the Army Staff  
Chief of the Naval Staff  
Chief of the Air Staff

**Subject: Implementation of Vth Pay Commission Recommendations – Para 147.21 Conditions regarding grant of substantive rank to officers of Army, Air Force and Navy.**

Sir,

In supersession of the existing orders on the grant of substantive promotion to officers of Army, Air Force and Navy, the President is pleased to sanction the following revised years of service required for promotion to substantive cadres of the following services/Corps:

Arms/Service/Corps	Lt & Equiv	Capt & Equiv (Years)	Major & Equiv (Years)	Lt Col (TS) & Equiv

(i) Officers of Services other than AMC, ADC, MNS, RVC, SCO, MF, SL, SD List Officers (Navy) & RCO Officers	On completion of training	4	10	20
(ii) RVC	Date of Joining	1	7	17
(iii) MF	On completion of training	5	12	23
(iv) SL Officerfs	-do-	5	12	20
(v) RCOs	-do-	3	-	-
(vi) Special Commission ed officers (SCOs)	-do	4	10	20
(vii) Army Medical Corps	Date of Joining			
(a) AFMC		1	5	14
(b) Direct Entry	Date of Joining		4	13
(viii) ARMY DENTAL		Yrs M	Yrs M	Yrs M

<i>CORPS</i>					
<i>(a) Without internship</i>	<i>Date of Joining</i>	<i>1 6</i>	<i>5 6</i>	<i>14 6</i>	
<i>(b) With Internship</i>	<i>-do-</i>	<i>0 6</i>	<i>4 6</i>	<i>13 6</i>	
<i>MNS</i>	<i>On completion of training</i>	<i>5 -</i>	<i>12 -</i>	<i>20 -</i>	
<i>(ix) Navy</i>	<i>On completion of initial training</i>	<i>3 -</i>	<i>7 years as substantive lieutenant</i>	<i>20 years commissioned service</i>	
<i>(a) General List Officers</i>					
<i>(b) SD List Officers</i>	<i>On commission</i>	<i>3 -</i>	<i>10 years commissioned service</i>	<i>-do-</i>	
<i>(x) Air Force</i>	<i>On completion of training</i>	<i>4 -</i>	<i>10</i>	<i>20 years of Commissioned Service</i>	
<i>(a) Permanent Commissioned officers</i>					
<i>(b) Branch Commissioned officers</i>	<i>-do</i>	<i>5 -</i>	<i>1 11</i>	<i>--</i>	

This letter stipulates that the revised service required for promotion to the substantive rank of Lt Col (TS) and equivalent is now 20 years of commissioned service; a reduction of one year from the earlier stipulation of 21 years.

12. There are a catena of judgments which hold that anomalies in a particular pay commission once rectified, such rectification will be effective from the date of implementation of the particular Pay Commission. The Hon'ble Punjab & Haryana High Court in the case of **Gurmail Singh Dahli & Ors. V. Union of India & Ors.** (Civil Writ Petition No. 6223 of 2007) decided on 26.05.2008, 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. 1 January 1996".*

13. Further in the case of **Jai Narayan Takkar V. UOI** Division Bench of the Hon'ble High Court of Punjab and Haryana (WP 15400/2006) had held:

*"It was during the implementation of 5th CPC it was found by the respondents that there is anomaly in the pay scales Once the anomaly in the pay scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 01.01.1996. There is no explanation as to why the said anomaly is sought to be removed from 10.10.1997. In the absence of any explanation of removal of anomaly from 10.10.1997, we do not find the action of the respondents fixing such dates as justified."*

14. AFT (PB) in its order dated 12.10.2017 in the case of **Maj Ajit Singh Rathi (Retd) V. UoI** (O.A. No. 707 of 2016) had adjudicated on the same matter and had held that the letter dated 14.01.2000 will be effective from 01.01.1996. Relevant positions of the order are reproduced below:

" 11. The next issue relates to the grant of time scale rank of Lieutenant Colonel to those who were serving during the effective period of the 5<sup>th</sup> CPC. Undoubtedly, the changed years of service have been intimated vide GOI, MoD letter No.14(1)/98/D-AG) of 14.01.2000. Herein, the total years of service for Lieutenant Colonel and equivalent (TS) of officers of the Services, other than specific branches listed below, has been specified as 20 years.

12. The instant O.A concerns an applicant who is covered by the provisions of this letter in service for 20 years. In context to this, the counsel for the respondents has stated that this Government letter was issued on 14.01.2000 and as such, it will be operative from that date onwards, and officers who retired prior to this date cannot claim benefit of this particular circular for grant of Lieutenant Colonel Time Scale rank.

13. Counsel for the applicant, however, has brought to our notice the order of this Tribunal, in the case Lt. Cdr. B.R. Sharma and others Vs, Union of India and others in O.A No. 138 of 2013 decided on 29.05.2015. Learned counsel, bringing to our notice the Tribunal's order, stated that the decision of the Bench given in Paragraphs 16 to 19 of that order clearly makes it applicable for the period of 5<sup>th</sup> CPC. The Tribunal held that the effective date for the operation of the Government order of 14.01.2000 will be 31.01.1997, this being the date of the Gazette notification. The counsel thereafter stated that this particular order which was challenged by the respondents, Union of India, was taken up to the Hon'ble Supreme Court, wherein the Union of India had sought an appeal against this order, and such appeal was dismissed on 01.03.2016 by Hon'ble Supreme Court stating that there was no substantial question of law of general public importance in the matter. Thus having now attained finality, the counsel claimed, would ensure that the date of 14.01.2000. Being claimed by the counsel for the respondents was no longer relevant and all time scale promotion in the revised years of service based on the letter of 14.01.2000 would be effective from 31.01.1997.

14. In the case Lt. Cdr. B.R Sharma (supra), it has been held that the only issue for consideration was, whether the provisions of the Government of India letter dated 14.01.2000, as a consequence of the 5<sup>th</sup> CPC, should apply from 31.01.1997 or should it apply to all officers only with effect from the date of issue of that letter i.e. 14.01.2000. In consideration and final adjudication on this issue, it was held that in fact, all promotions to Time Scale Rank will be with effect from 31.01.1997. This order was taken up in appeal before the Hon'ble Supreme Court and that came to be dismissed on 01.03.2016. Consequently, this issue also related to grant of Time Scale Rank of Lieutenant Colonel or equivalent, is also settled by the Tribunal and given finality by the judgment of the Hon'ble Supreme Court."

However the Tribunal, in the case **Lt. Cdr. B.R. Sharma** (Supra) had held that the effective date for the operation of the Government order of 14.01.2000 was to be 31.01.1997, i.e. the date when the applicants had become eligible for timescale promotion to the rank of commander and not because it was the date of the gazette notification as mentioned in Para 13 of the Tribunal's order in case of **Maj Ajit Singh Rathi** (Supra).

15. It is also pertinent to place on record that even in the 6th CPC, where certain recommendations were initially promulgated from a particular date and made admissible from that date, was subsequently amended to be applicable from 01.01.2006. The order in respect of Modified Assured Career Progression (MACP) is reproduced as under:

*No.14(1)/99-D(AG)*

*Government of India  
Ministry of Defence*

*New Delhi, the 25 July, 2019*

*To*

*The Chief of the Army Staff  
New Delhi*

*Subject: Modified Assured Career Progression Scheme (MACPS) for PBOR of Army*

*Sir,*

*Consequent upon the judgment of Hon'ble Supreme Court dated 08.12.2017, in the matter of Civil Appeal Diary No. 3744 of 2010 (UOI Vs. Shri Balbir Singh Turn & Anr), I am directed to refer to the Ministry's letter No.14(1)/99-D(AG) dated 30 May 2011 on the above subject and to state that*

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*the President is pleased to make the following amendment in para 5 of the aforesaid letter:*

*FOR: "The scheme would be operational w.e.f. 01 Sep 2008"*

*READ: "The scheme would be operational w.e.f. 01 Jan 2006"*

*2. The other terms and conditions (including eligibility), as mentioned in the MoD letter No. 14(1)/99-D(AG) dated 30 May 2011 would continue to remain the same.*

*3. This issues with the concurrence of the Ministry of Defence (Finance) vide their Dy. No.1270/Addl.FA(AN).JS dated 27.06.2018.*

*Xxxxxxx*

16. In view of the above consideration, we conclude that the letter dated 14.01.2000 pertains to the implementation of a recommendation made by the 5<sup>th</sup> CPC and was so accepted. Moreover, as this is not a pay anomaly and is the implementation of a positive recommendation, it affects the pay and allowances, as an officer is now entitled to be promoted to the rank of Lt Col (TS) equivalent, a year earlier than before. Thus since it is a matter of pay and allowance, it has to be implemented from the date when 5<sup>th</sup> CPC became effective, which is 01.01.1996. Therefore, since the applicant was in service on 01.01.1996, and completed 20 years of service on 10.06.1997, he is eligible for promotion to the substantive rank of Wg Cdr (TS) from 10.06.1997. Furthermore, the reduction of the required years of service from 21 to 20 years would constitute a benevolent legislation, and the denial of such benefits to the applicant would amount to a grave injustice and therefore we dispose of the OA with the following directions:

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*Sqn Ldr (Retd) Harsh Handa*

(i) Subject to verification the applicant is entitled to be promoted to the rank of Wg Cdr (TS) with effect from the date of his completion of 20 years of service i.e 10.06.1997, provided he fulfills the other necessary criterias for the rank of Wg Cdr (TS), with all consequential benefits of pay and pension.

(ii) The respondents shall ensure all actions in this regard are completed within four months from the date of receipt of this order, failing which interest @ 6% will be paid to the applicant on all arrears till the date of actual payment.

17. No order as to costs.

Pronounced in open Court on this 10<sup>th</sup> day of May, 2024.

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

**(LT GEN P.M. HARIZ)  
MEMBER (A)**