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

OA 2391/2019 WITH MA 3278/2019

Lt Cdr Anil K Kant (Retd) & Ors. ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Ajai Bhalla, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 3278/2019

This is an application filed under Section 5 of the Limitation Act, 1961 seeking condonation of delay of 5944 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***Union of India and others*** *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 3278/2019 is allowed despite opposition on behalf of the respondents and the delay of 5944 days in filing the OA

2391/2019 is thus condoned. The MA is disposed of accordingly.

OA 2391/2019

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

> ***"(a) To grant pension of Commander (T.S) and equivalent ranks in other two services in terms of Govt. Of India letter dated 21.11.1997, read with Govt. of India letters dated 07.06.1999 and 09.02.2001 (granting modified parity) and 14.01.2000, on the basis of pay scale of Cdr (TS) and equivalent ranks and pension fixed accordingly w.e.f. the dates they become due for promotion to the said ranks with 09% interest.***
>
> ***(b) The applicant be granted promotion to rank of the Commander (Time Scale) and equivalent ranks in other two services on completion of 20 years commissioned service i.e. w.e.f. their due dates with consequential benefits in pursuance of implementation of 5th CPC recommendations (Para 147.21), as approved vide Govt. of India letter dated 21.11.1997 read with 14.01.2000, as the case may be, by quashing respondents impugned communications at Annexure-A-1 (Colly);***
>
> ***(c) Any other relief(s) which this Hon'ble Tribunal may deem fit appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the petitioner."***

3. The applicant was commissioned into the Indian Navy on 01.01.1979 and retired on 01.04.1999 in the rank of Lt Cdr. He served for a period of 20 years 03 months and 10 days of service.

4. It is the case of the applicant before us that he is entitled to be promoted to the rank of Cdr (Time Sale) on

completing 20 years of service w.e.f 01.04.1999 in light of the provisions contained in the Govt. of India vide MOD letter No. 14(1)/98 DCAG dated 14.01.2000 based on the recommendations of 5th CPC for 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.

5. The applicant sent representation dated 06.11.2018 and when nothing had been done, the applicant has invoked the jurisdiction of this Tribunal. It is the case of the applicant that the Integrated HQ of MoD (Navy) vide letter No RS/8421/C. Case/O&R-II dated 07.12.2018 conveyed that the case for grant of Cdr (TS) rank to similarly placed officers like the applicant has been initiated by the office to the appropriate authority but been though time has elapsed nothing has been done and therefore the applicant has invoked the jurisdiction of this Tribunal.

6. Learned Counsel for the applicant 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 w.e.f. 14.01.1996 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).

7. Elaborating further, Learned Counsel for the applicant 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.

8. 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, Learned Counsel submits that both the judgments squarely apply in this case.

9. Per Contra, it is submitted by the Respondents that the applicant has prayed for relief which is contrary to settled law as much as the cut-off date of implementation of an expert body like Pay Commission is within the exclusive domain of the executive. 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. Some of the recommendations were accepted by the Govt. Resolution dated 13.10.1997.

10. Elaborating further, learned 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.

11. We have heard the learned counsel at length and perused all relevant documents. We find that the issue is no longer res integra as it has been settled by the Hon'ble Supreme Court in ***Suchet Singh Yadav v. Union of India*** [2018 SCC OnLine SC 230], wherein vide Para 34, the Hon'ble Supreme Court has observed to the effect:

> ***"34. There cannot be any dispute to propositions laid down in above mentioned cases of this Court where this Court has laid down that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut off date for extension of benefits especially pensionary benefits, there has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. As noted above, present is not a case where there is any discrimination in pensionary benefits of pre 01.01.1996 and post 01.01.1996 retirees. The applicants, base their claims on the order of the Government of India dated 21.11.1997 and we have already held that those who were not in service on 01.01.1996 could not claim any benefit of the order dated 21.11.1997 Thus, present is not a case of any kind of discrimination and differentiation in pensionary benefits of pre and post 01.01.1996 retirees. We have already noticed above that order dated 21.11.1997 was issued in reference to pay and allowances of Armed Forces Officers, which pre-supposes that these officers were in the establishment on 01.01.1996. We thus are of the view that applicants were clearly not entitled for grant of benefit of higher pay scale under the order dated 21.11.1997. The orders of the Armed Forces Tribunal extending the said benefit to those applicants who had already retired before 01.01.1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that Armed Forces Officers, who have retired before 01.01.1996 are not entitled for pensionary benefits are upheld. Consequently, the appeals filed by the Union of India, i.e Civil Appeal***

(arising out of Civil Appeal Diary No. 25429 of 2017) - Union of India v. Lt. Cdr. C.M Mittal; Civil Appeal (arising out of Civil Appeal Diary No. 7231 of 2016) - Union of India v. Lt. Cdr. Bhisham Kumar (Retd.) and Civil Appeal (arising out of Civil Appeal Diary No. 22257 of 2017) - Union of India v. Sqn. Ldr. Jai Kumar are allowed and those of the applicants i.e Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016) - Suchet Singh Yadav v. Union of India, Civil Appeal No. 7989 of 2015-Lt. Cdr. Gurmukh Singh v. Union of India; and Civil Appeal No. 7917 of 2016-V.K Mehta v. Union of India, are dismissed."

12. Noting the fact that the applicant in the instant case has retired after 01.01.1996, in view of the settled position laid down by ***Suchet Singh Yadav (supra)***, we direct that the applicant be 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 off.

14. No order as to costs.

Pronounced in the open Court on 13th day of May 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

akc/-

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

MA 2978/2024
in
OA 2391/2019

Lt Cdr Anil K Kant (Retd.) & Ors. ..... **Applicant**
Versus
Union of India and Ors. ..... **Respondents**

For Applicant : Mr. Ajai Bhalla, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

This is an application filed by the applicants under Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008, seeking modification of the order passed in OA No.2391/2019 on 13.05.2024.

2. Vide order dated 13.05.2024, the OA No.2391/2019 was allowed. However, it is the contention of learned counsel for the applicant that in the aforesaid order only the particulars of Lt Cdr Anil Kumar Kant (Retd) have been referred and inadventently names of the other two applicants, namely, Lt Cdr K.P Sampath (Retd) and Lt Cdr JM Valsan (Retd) and their particulars in the said order have been missed out; as a result of which the respondents are under the

impresseion that relief has only been granted to Lt Cdr Anil Kumar Kant (Retd) and the remaining applicants are not entitled to the relief prayed for.

3. In view of the above, we clarify that applicants No.2 and 3, namely, Lt Cdr K.P Sampath (Retd) and Lt Cdr JM Valsan (Retd) respectively are also entitled to the same relief as granted to Lt Cdr Anil Kumar Kant (Retd) vide order dated 13.05.2024 in OA No.2391/2019. The applicants Lt Cdr K.P Sampath (01986N) (Retd) and Lt Cdr JM Valsan (01979Y) (Retd) are thus directed to be deemed to have been promoted to the rank of Commander (Time Scale) w.e.f. the date of completion of 20 years of service, with all consequential benefits as per the provisions contained in the Govt. of India, MoD letter dated 14.01.2000 to be paid to them within two months from the date of pronouncement of this order. The service particulars of the applicants mentioned in this MA and as affirmed to be correct on behalf of the respondents are as under:

S.No	**Particulars of Applicants**	**Date of Commission**	**Date of Retirement**	**Total Service Rendered**
(a)	Lt Cdr Anil K Kant (01983F) (Retd)	01 Jan 79	01 Apr 99	20 Years 03 Months 01 Day
(b)	Lt Cdr KP Sampath (01986N) (Retd)	01 Jan 79	01 May 99	20 Years 04 Months 01 Day

(c)	Lt Cdr JM Valsan (01979Y) (Retd)	01 Jan 79	15 May 99	20 Years 04 Months 15 Days

4. The order dated 13.05.2024 is further modified, as prayed for in Para 5 of this MA, to the extent that the total length of service of applicant No.1, namely, Lt Cdr Anil Kumar Kant shall be read as 20 years 03 months and 01 day in place of 20 years 03 months and 10 days as mentioned in Para 3 of the order dated 13.05.2024.

5. Rest of the order remains the same. This order shall be read in conjunction with the order passed on 13.05.2024.

6. No order as to costs.

Pronounced in open Court on this 18th day of November, 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Neha