

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 297 of 2018

with

M.A. No. 195 of 2018

In the matter of :

Ex-Sub Dhoomi Ram Yogi

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri A.K. Trivedi, Advocate

**For Respondents : Shri Anil Gautam, Sr. CGSC with
Capt Abhishek Kumar, OIC, Legal Cell**

CORAM:

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

M.A. No. 195 of 2018

Vide this application, the applicant seeks condonation of delay of 542 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

Accordingly, MA stands disposed of.

O.A. No. 297 of 2018 :

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

“(a) Direct the respondents to pay the revised rate of the pay and pension and other allowances with effect from 01.01.1996 in the pay scale of Rs. 6600-9329/- in ‘Y’ Group, consequently pension of the applicant be fixed at Rs. 4660/- wef 1.1.1996 and the applicant may be entitled for his arrears along with interest of 18% per annum.

(b) Issue such further appropriate order/direction as this Hon’ble Tribunal may deem fit and proper in facts and circumstances of the case.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 31.10.1968 and retired from service on 31.10.1996 in the rank of Sub. The recommendations of the 5th Central Pay

Commission were accepted by the Govt. w.e.f. 01.01.1996 and it was made applicable to all Armed Forces personnel and the pay and allowances were fixed according to the ranks and trade structures. Thereafter, vide Special Army Instruction No. 1/S/97 dated 12.12.1997, the pay scales of JCOs (Including Hony Comm Officers), NCOs, ORs of the DSC, APS and TA were revised w.e.f. 01.01.1996, and new revised pay scales were introduced and new trade groups were named Groups 'X', 'Y' and 'Z'. The contention of the applicant is that as the applicant was recruited in Group 'B', he was placed in new revised pay scale into higher group as Group 'Y'. However, the new revised pay scales have been given effect to w.e.f. 10.10.1997 by the Govt. and the benefit of this new revised pay scale was not given to pre-10.10.1997 retirees, and that the applicant falls in the group of retirees from 01.01.1996 to 10.10.1997. Thereafter, for implementation of the Pay Commission award, the GoI (MoD) issued letter dated 07.06.1999 revising the pension of pre-1996 pensioners as per 5th CPC in respect of Commissioned Officers and PBORs.

3. As the 5th CPC was implemented w.e.f. 01.01.1996, the armed forces personnel discharged between 01.01.1996 and 10.10.1997 were denied the benefits of the revision effected from 10.10.1997 on rationalisation of the trade groups and categorisation i.e. 'X', 'Y' and 'Z'. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of **Jai Narayan Jakhar Vs. Union of India and another [CWP No. 15400 of 2006]** decided on 14.01.2008, wherein the issue with regard to the anomalies in the pay revision was adjudicated by the High Court. In that case, the petitioner had retired between 01.01.1996 and 10.10.1997, and it was held that the petitioner was entitled to the revised pay scales and consequent pension, as implemented from 10.10.1997, as the committee was constituted for removal of anomalies arising on 01.01.1996 and the anomalies sought to be removed had to be removed from the date they occurred. The special leave petition filed by the Union of India against the aforesaid judgment of the Hon'ble Punjab and Haryana High Court was dismissed by the Hon'ble Supreme Court

vide its order dated 21.11.2008. The learned counsel also placed reliance on the orders of the AFT, RB at Chandigarh in ***Ashok Kumar and another Vs. Union of India and others [O.A. No. 778 of 2015 decided on 06.01.2023]*** and in ***Parkash Chand and others Vs. Union of India and others [O.A. No. 389 of 2012 decided on 15.12.2014]*** wherein the similarly situated applicants were granted the reliefs by the Tribunal.

4. It is contended by the applicant that GoI, MoD Department of Ex Servicemen Welfare vide letter dated 03.08.2009 issued directions to other departments that the proposal of the Ministry of Defence to grant new revised pay scale to pre-10.10.1997 retirees has already been agreed to by the Committee set up under the Chairmanship of Cabinet Secretary and the same were accepted by the Govt. which were to be implemented prospectively with no arrears. It is contended that the applicant is entitled to the revised new pay scale in Group 'Y' and pensionary benefits with effect from the date of his retirement.

5. The applicant filed a representation dated 07.08.2015 seeking revision of pay and allowances as per revised 'Y'

Group in the pay scale of Rs. 6600-9320/- w.e.f. 01.01.1996 along with arrears, and when no reply was received from the respondents in this regard, the applicant filed the present OA seeking the reliefs as prayed for.

6. *Per contra*, the respondents submitted that the applicant's pension has been revised to Rs. 9,324/- w.e.f. 01.01.2006 and Rs. 11,970/- w.e.f. 01.07.2009 and thereafter, the pensionary benefits to the applicant have been revised on implementation of the 6th CPC vide Corrigendum PPO No. S/Corr/6th CPC/210860/2011 dated 24.08.2012. The respondents further submitted that the applicant is not entitled to revised pension based on the rationalisation of pay groups as the applicant was discharged from service on 31.10.1996 and the revised new pay groups of 'X', 'Y' and 'Z' were introduced w.e.f. 10.10.1997 based on SAI 1/S/97. The respondents, therefore, prayed that the OA may be dismissed.

ANALYSIS

7. We have heard the learned counsel for the parties and have gone through the records produced before us.

8. Having heard the submissions made by the parties, we hold that the argument of the respondents that the applicant is not entitled to the benefit of the revised new pay scale as he was discharged from service before 10.10.1997 and the revised pay and allowances were made effective on or after 10.10.1997, is wholly unjustified. It was during the implementation of 5th CPC report, that it was found by the respondents that there is anomaly in the pay scales. As per the SAI 1/S/97, the benefit of revised pay scales and allowances is available to those also who were in service as on 01.01.1996 as the said benefit were to be effected w.e.f. 01.01.1996 and in the instant case, the applicant was discharged on 31.10.1996 and thus he was on the effective strength of the Army on 01.01.1996 and the applicant was entitled to the benefit of the revised pay scales and allowances.

9. The applicant was recruited in Group 'B' and was discharged in the rank of Sub on 31.10.1996. Based on the recommendation of the Inter Service Committee, the trade groups known as 'A', 'B', 'C', 'D' and 'E' were merged into three groups which resulted in enhancement of pay structure

to the lower group as group 'E' was merged into higher group which was known as Group 'Z' and similarly Groups 'B', 'C' and 'D' were merged into higher group as Group 'Y' and Group 'A' was merged into higher group as Group 'X'. The revised trades groups in the Army, Air Force and Navy were re-named as Groups 'X', 'Y' and 'Z'. However, the said benefit of merger into the new groups was made effective from 10.10.1997 by the Govt. and the benefit of this revised pay scale was not given to Pre-10.10.1997 retirees.

10. The issue involved in the present matter is no more *res integra* as the law on this point has already been settled by the Hon'ble High Court of Punjab and Haryana in the case of ***Jai Narayan Jakhar Vs. Union of India and another [CWP No. 15400 of 2006]*** decided on 14.01.2008, which has been followed in numerous orders of the AFT (PB) and by the Regional Benches of the Tribunal for grant of the benefit of revision of pay scales w.e.f. 01.01.1996 and setting aside the revision of trades groups w.e.f. 10.10.1997. In that case, the Hon'ble High Court observed as under :

"The petitioner has claimed a writ of mandamus directing the respondents to release the retiral benefits of the petitioner in the pay scale of 5620-

140-8140/-. The petitioner was appointed on 07-09-1974 as Navy Boy. He attained the age of superannuation on 31-05-1996 as Chief Petty Officer. On the date of superannuation his pay scale was 4650-125-6900/-. The Department found that there is anomaly in the implementation of the recommendations of the 5th Pay Commission and consequently vide circular Annexure P1, Chief Petty Officers were given pay scale of 5620-140-8140/-. However, it was pointed out that such revised pay scales shall be given effect from 10-10-1997. Subsequently, on 16-12-1997 vide Annexure P2, it was pointed out that the subsequent enhancement in scales as approved by the Government of India, Ministry of Defence on 21-11-1997 will be effective from 10-10-1997. The provisions of such instructions are applied to all the categories of personnel, who were on the effective strength of the Navy as on 01-01-1996 or who join the Navy service thereafter. The benefit of such revised pay scale on account of removal of anomaly was not extended to the petitioner for the reason that he has attained the age of superannuation on 31-12-1996 i.e. prior to issuance of circular Annexures P1 and P2 as the said anomaly was sought to be removed effective from 10-10-1997. It is contended by the petitioner that once the anomaly in the pay revision is sought to be removed, it shall be applicable to the petitioner, who has retired after the implementation of recommendation of the 5th Pay Commission w.e.f. 01-01-1996 and thereafter the artificial date fixed as 10-10-1997 is wholly unjustified and irrational. In reply, it has been pointed out that the implementation of 5th Pay Commission recommendation the pay scales were introduced in two phases i.e. firstly, from 01-01-1996 to 09-10-

1997 and secondly from 10-10-1997 onwards. The introduction of second revision of pay scales w.e.f. 10-10-1997 was an outcome of trade rationalization in the Armed Forces based on the recommendations of the report of Ajit Kumar Committee constituted by the Ministry of Defence. Since the pay scales were revised in two phases and the petitioner was not in service as on 10-10-1997, the petitioner is not entitled to revision in retiral benefits.

Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, 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 date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale. In view of the above, we allow the present writ petition and direct the respondents to recalculate the amount of pension on the basis of revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. The exercise be completed within a period of three months from today. The writ petition stands disposed of in above terms."

11. Challenging the aforesaid judgment dated 14.01.2008 of the Hon'ble Punjab and Haryana High Court, the Union of India filed a Special Leave Petition, viz. in SLP (Civil) No. 15128 of 2008 titled **Union of India Vs. Jai Narayan Jakhhar** before the Hon'ble Supreme Court, which was dismissed by the Hon'ble Supreme Court vide its judgment dated 21.11.2008 and thus the judgment under challenge stood affirmed and attained finality.

12. The applicant is thus held entitled to the revised pay scale of 'Y' group in the rank of Sub i.e. Rs. 6600-170-9320 w.e.f. 01.01.1996, and consequently is also entitled to the pensionary/retiral benefits on the said pay scale.

CONCLUSION

13. In view of the above, OA 297 of 2018 is allowed. The respondents are directed to grant the benefit of fixation of the applicant's pay in the revised new pay scale of Group 'Y' in the rank of Sub i.e. Rs. 6600-170-9320 with effect from 01.01.1996 and all pensionary benefits of the applicant be also revised.

14. Consequently, the respondents are directed to calculate, sanction and issue the necessary order/PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

15. There is no order as to costs.

Pronounced in open Court on this 12th day of December, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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