

**COURT NO. 2**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 1096/2016**

**Maj Bikram Singh (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. Ajit Kakkar, Advocate  
**For Respondents** : Mr. K K Tyagi, Sr. CGSC

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

The applicant Maj Bikram Singh (Retd) vide the present OA makes the following prayers:-

*"(a) To direct the Respondents to grant the rank of Lt Col with effect from 02.03.1989 on completion of 21 years of service as per the letter dated 21.11.1997.*

*(b) To direct the respondent to grant service pension of Lt Col from 09.03.1989 as per the letter dated 21.11.1997.*

*(c) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper."*

2. The applicant was commissioned in the Indian Army on 02.03.1968 and superannuated after completing 21 years

and 06 days of qualified service. At the time of retirement, he held the rank of substantive Major and had superannuated from service after completing 21 years of service.

3. It is the avowed contention of the applicant that he is entitled to receive pension of the rank of Lt Col and not of Major, as per the GoI policy letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 which policy states that *those who became substantive major or equivalent before 01.01.1996, will be granted scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service i.e in their 22<sup>nd</sup> year with rank pay of major.*

4. The claim of the applicant is based on the recommendations of the V<sup>th</sup> CPC and the letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 with reliance having been placed on behalf of the applicant on the order dated 19.12.2012 of this Tribunal in **Maj K. G. Thomas vs Union of India and Ors** in OA 256/2011 against which Civil Appeal Dy no 12209/2014 was dismissed vide order dated 06.02.2015 by the Hon'ble Supreme Court.

5. The applicant submits that in terms of the recommendations of the V<sup>th</sup> CPC, officers who have become substantive Major on or after 01.01.1996 have been granted the scale of Lt Col or equivalent and that the GoI MoD letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 provided that as a one-time measure for those officers who become substantive Lt Cdr or equivalent before 01.01.1996, they would be granted the scale of Cdr or equivalent on completion of 21 years of commissioned service.

6. The applicant thus seeks that he be granted the rank of Lt Col with effect from 02.03.1989 on completion of 21 years of service in terms of the letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 as well as the service pension of Lt Col from 09.03.1989 in terms of the said letter.

7. The respondents have opposed the claim of the applicant and have submitted to the effect that the provisions of the recommendation of the V<sup>th</sup> CPC as promulgated vide SAI 2/S/98 and Govt letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997, these provisions were applicable to personnel who were in service as on **01.01.1996**.

8. The respondents further submitted that dispensation at Para 5(1)(iv) of SAI 2/S/98 and the Govt letter dated 21.11.1997 is for improvement in Pay of those serving as on 01.01.1996 on completion of 21 years qualifying service and submit that this is evident from Para 1 of SAI 2/S/98 that it applies to "all officers who are on the effective strength of the Army as on 01.01.1996 and those who joined the Army thereafter.

9. The respondents submit that the applicant had neither 21 years service for promotion/placement nor he was in service as on 01.01.1996 and thus the applicant was not eligible for the pay scale / pension of Lt Col(TS) and seek that the OA be dismissed.

10. *Inter alia*, the respondents have submitted to the effect that the order of this Tribunal in **Maj K. G. Thomas** (supra) was passed on the facts of that case, and the same is made expressly clear vide order dated 06.02.2015 of the Hon'ble Supreme Court qua the same.

## **ANALYSIS**

11. It is essential to advert to the GoI MoD letter dated 21.11.1997 which reads to the effect:-

"NO. 1(5)/97/D(Pay/ Services)  
GOVERNMENT OF INDIA,  
MINISTRY OF DEFENCE,  
NEW DELHI, 21st November 1997.

To.  
The Chief of the Army staff  
The Chief of the Naval staff  
The Chief of Air staff

**Sub.:—Pay and Allowances of Armed Forces Officers.**

Sir,

In continuation of this Ministry's Resolution No. 1(3)/97/D(Pay/ Services) dated 13<sup>th</sup> October 1997 notified in the Gazette of India dated 16<sup>th</sup> October 1997 regarding implementation of pay and allowances, etc. of the Armed Forces Officers as a result of the recommendations of the Fifth Central Pay Commission, I am directed to convey the sanction of the President for the following improvement of the pay scales of the officers with effect from 1-1-1996:

(a) **Majors and equivalent**

Officers who become Substantive Majors or equivalent on or after 1-1-1996 will be granted the scale of Lt. Colonel or equivalent on their stagnation for one year in the revised scale of Major or equivalent. Such officers will, however, continue to draw the rank pay for Majors or equivalent.

As a one-time measure, however, those who become substantive Majors or equivalent before 1-1-1996, will be granted the scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Major.

(b) **Officers under training**

The existing stipend of Rs. 8,000/- given to officer trainees may be converted to "Pay" for all purposes on successful completion of training. However, the period of training will not be treated as commissioned service.

2. This issues with the concurrence of the Ministry of Defence (Finance) vide their U.O. No. 1151PA Gp, dated 21-11-1997.

Yours faithfully,  
Sd/- xxx  
(M.S. SOKHANDA)  
Joint Secretary to the Government of India."

12. The observations of the Hon'ble Supreme Court in **Suchet Singh Yadav and Ors vs Union of India and Ors** (MANU/SC/0189/2018) Civil Appeal Nos 770-771 of 2018 decided on 21.02.2018, to which the attention of the learned counsel for either side was drawn by the Tribunal during the course of hearing on 07.11.2024 vide paras 18, 19, 20, 21, 22 and 23 read as under:-

*"18. A perusal of the above order indicates that what was conveyed by the said order was sanction of the President for the improvement of the pay scales of the Officers, w.e.f. 01.01.1996. The word used in the order is "pay scales" of the officers with effect from 01.01.1996, which pre-supposes that improvement of the pay-scales of the Officers has been made, who are still in the establishment. Clause (a) of the order is the basis of the claim of the applicants. Clause (a) consists of two separate provisions, (the first part of clause (a) states "Officers who become substantive Majors or equivalent on or after 01.01.1996 will be granted the scale of Lt. Colonel or equivalent....., the above clause specifically refers to those Officers who became substantive Majors or equivalent on or after 01.01.1996. This clause is clearly inapplicable with regard to present applicants. The second part of clause (a), which is relied, is "As a one time measure, however, those who became substantive Majors or equivalent before 01.01.1996 will be granted the scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service i.e. in their 22nd year*

years of commissioned service i.e. in their 22nd year with the rank pay of Major". The above quoted portion refers to grant of scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service, i.e., in the 22nd year with the rank pay of Major. In the Government order dated 21.11.1997, the grant of pay-scale of Lt. Col. or equivalent is contemplated. The second part of the clause (a) also refers to grant of pay-scale of Lt. Colonel or equivalent to Armed Forces Personnel. The grant of pay-scale in next cadre is generally in reference to existing officers.

19. Our above view is fortified by subsequent order dated 07.06.1999 issued by the Government, which was with regard to "implementation of Government's decision on the recommendations of the Vth CPC relating to pensionery benefits in respect of commissioned officers and personnel below officer rank". The opening paragraph of the Government Order provides :-

"Consequent on issue of Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' welfare OM No. 45/10/98- P&PW (A) dated 17.12.1998 regarding modified provisions on grant of pension / family pension in respect of civilians, the undersigned is directed to say that the President is pleased to decide that w.e.f. 1.1.96 pension of all Armed Forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.96 of the rank, and rank Group (in case of PBOR) all held by the pensioner....."

20. The above order provides that with effect from 01.01.1996 pension of all Armed Forces Pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996 of the rank, and rank Group (in case of PBOR) held by the pensioners. The fixation of pension thus clearly is of all retirees prior to 01.01.1996 is with regard to the **rank, which was held by the pensioner**, in event, it was intended that the benefit of Government Order dated 21.11.1997 of giving one scale higher to the rank, which was held by retiring officers at the time of retirement, the said prescription ought to have been

the prescription and requirement in the order dated 07.06.1999 run counter to the interpretation put by the applicant on the order dated 21.11.1997. Para 2.1 relates to the commissioned officers of both post and pre 1996 cases, which is as follows:-

## **"2.1 COMMISSIONED OFFICERS**

### **POST & PRE - 1.1.96 CASES**

(a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1275/- p.m. and a maximum of upto 50% of the highest pay applicable to Armed Forces personnel but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank last held by the commission officer at the time of his / her retirement. However such pension shall be reduced pro-rata, where the pensioner has less than the maximum required service for full pension."

**21. The above provision also clearly indicates that 50% of the minimum of the revised pay scale was introduced w.e.f. 01.01.1996 for the rank last held by the commissioned officers at the time of his/her retirement. The above provision does not bring any concept of giving a higher scale of pay to one, which was held by the commissioned officers at the time of his retirement. Thus, a plain reading of the order dated 07.06.1999 clearly indicates that the order dated 07.06.1999 was issued relating to "pensionary benefits in respect of commissioned officers" while order dated 21.11.1997 was issued with respect to "pay and allowances of Armed Force officers." Thus, the subject matters of both the orders were different, which is clear by the reading of both the orders. The order dated 21.11.1997 was not issued with regard to commissioned officers, who had retired prior to 01.01.1996, nor it provides for stepping up of the pay-scale of such retiree officers, to a higher rank, i.e. from rank of substantive Majors or equivalent to the scale of Lt. Colonel or equivalent.**

22. The order dated 14.01.2000, on which also reliance has been placed by the applicants to support

their contention that earlier prescription of 21 years has been reduced to 20 years also needs a comment. The order dated 14.01.2000 issued by the Ministry of Defence was to the following effect:-

"No. 14(1)/98/D(AG)  
Government of India,  
Ministry of Defence,  
New Delhi, the 14th 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. &	Major &	Lt Col (TS) &
		Equiv (Years)	Equiv (Years)	Equiv (Years)
(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

**23. A reading of the aforesaid order indicates that revised years of service required for promotion of substantive cadres were provided for. The promotion to substantive cadres, which was specifically referred to in the Government**

*for. The promotion to substantive cadres, which was specifically referred to in the Government order was clearly with regard to officers, who were in service on 01.01.1996, which was the date for implementation of Vth Pay Commission recommendations. The said order dated 14.01.2000 was not issued for giving any benefit to those who retired prior to 01.01.1996.”*

*(emphasis supplied)*

13. It is apparent vide the letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 that the applicability of the letter dated 21.11.1997 only related to those who were in service on 01.01.1996 and not to those who were not in service on 01.01.1996.

14. The recommendations of the V<sup>th</sup> CPC in relation to letter no. 14(1)/98/D(AG) dated 14.01.2000, also relate only to the grant of the benefit there under to those officers who were in service on 01.01.1996 and not those who retired prior to 01.01.1996.

15. The Hon'ble Supreme Court in **Suchet Singh Yadav and Ors** (supra) vide paras 24, 25, 26, 27, 28 and 29 thereof has categorically observed to the effect:-

*“24. Much reliance has been placed by the appellant on the orders passed by the Armed Forces Tribunal in **Maj. K.G. Thomas Vs. Union of India & Ors.**, O.A. No. 256 of 2011, against which order, the appeal was also dismissed by this Court. Maj. K.G. Thomas was*

also an officer, who was holding the rank of substantive Major at the time of retirement on 31.05.1988. O.A. No. 256 of 2011 was filed by him claiming the grant of pay-scale of Lt. Colonel (Time Scale) in pursuance of the order dated 21.11.1997. The Tribunal vide its judgment dated 19.12.2012 allowed the claim. Para 3, 4 and 5 of the judgment, which are relevant, are quoted as below:-

"3. Therefore, the grievance of the petitioner is that, either he may be given the rank of Lt Col (TS) or in the alternative he should be given monetary benefit as he has put in more than 21 years of service as a substantive major. It appears that so far as first relief is concerned, the same is not possible. The alternative relief for grant of pay scale of Lt Col (TS) without giving him the rank of Lt Col has been acceded to by the respondents in their reply. As per para 4.12 and para 5.8. In para 4.12 they have stated that "as per MoD letter dated 21 Nov 1997, officers holding the rank of substantive Major before 01 Jan 1996 are to be granted the scale (but not the rank) of Lt Col with rank pay of Major on completion of 21 years of commissioned service". Similarly, in para 5.8, they have admitted the same position that the petitioner is eligible for grant of scale (not rank) of Lt Col (TS) with grade pay of Major on completion of 22 years of service after accounting 01 year of forfeiture of service in terms of guidelines given in the MoD letter dated 21.11.1997.

4. Therefore, there is no difficulty in granting this relief to the petitioner. Learned counsel for the respondents very fairly conceded that he deserves this benefit. However, he submitted that the petitioner has approached this Tribunal belatedly and has filed the present OA on 06.07.2011. Therefore, relief may be restricted to three years only.

5. This objection of learned counsel for the respondents is upheld. The petitioner is held entitled to the arrears of benefit from the three years preceding the date of filing of the petition (26.07.2011). The respondents are directed to calculate the amount of arrears of the petitioner and same shall be paid to him within three

25. A perusal of the above judgment indicates that the said judgment was based on the concession, which was specially recorded in Para 4. After the said judgment, the Union of India has immediately filed a review. In the review, it was pleaded by the Union of India that benefit of the upgradation as per the letter of the Government of India, Ministry of Defence dated 21.11.1997, was only to be given to those officers in the rank of Major, who were in service on 01.01.1996. The review application was dismissed on 09.10.2013 by Armed Forces Tribunal.

26. Taking the view that none of the contentions were raised when O.A. No. 256 of 2011 was decided, the Tribunal held that pleas taken by the Union of India do not fall in the scope of review. The review was rejected by making following observations in Para 7 of the Order :-

“7. We are of the considered opinion that the Tribunal has decided OA 256/2011 according to the very specific admissions by the UOI in the counter affidavit and the scope of the review is limited that that is whether there is an error apparent on the face of the record or not. None of the contentions which have been raised before us today in the review were raised before the Tribunal when OA 256/2011 was decided and nor those documents were produced and therefore, we are of considered opinion that the pleas taken by the applicant UOI do not fall in the scope of the review of the order 19.12.2012. Order can be reviewed only when error is apparent on the face of the record and can be found without deep analysis of legal debatable issue. Hence, the review application No.25/2013 is dismissed. No order as to costs.”

27. Union of India filed an appeal against the aforesaid two orders, which appeal was dismissed on ground of delay and also on merits by order dated 06.02.2015. It is useful to extract the entire order passed by this Court on 06.02.2015, which is to the following effect:-

“IN THE SUPREME COURT OF INDIA CIVIL  
APPELLATE JURISDICTION

CIVIL APPEAL NO.... OF 2015

(D. NO. 12209 OF 2014)

UNION OF INDIA & ORS. Appellant (s)

VERSUS

K.G. THOMAS Respondent(s)

O R D E R

Heard learned counsel for the parties.

Besides inordinate delay, we find no merit in the appeals.

Accordingly, the appeals are dismissed on the ground of delay as also on merits.

However, it is made clear that the order of the Armed Forces Tribunal shall be limited to the facts of the present case, since according to the appellants, full facts were not brought to the notice of the Tribunal.

It is made clear that it will be open to the appellants to bring the full facts to the notice of the Tribunal in appropriate cases.

..... J.

(KURIAN JOSEPH)

..... J.

(R.K. AGRAWAL)

New Delhi;

February 06, 2015.

28. This Court clearly had mentioned in its order dated 06.02.2015 that order of the Armed Forces Tribunal shall be limited to the facts of the said case, since according to the Union of India, full facts were not brought to the notice of the Tribunal. Further, this Court clarified that it will be open to the Union of India to bring the full facts to the notice of the Armed Forces Tribunal in appropriate cases. The order of this Court dated 06.02.2015 thus cannot be read as laying down any ratio in favour of the applicants, which can be relied by them in the present case. In the case of Sqn. Ldr. Suchet Singh Yadav and others, all materials were brought on the record including filing of counter affidavit by the Union of India. As noted above, the Armed Forces Tribunal in case of Lt.

*Cdr. Gurmukh Singh and V.K. Mehta has rejected their claim accepting the case of the Union of India.*

*29. We thus are of the opinion that order of the Armed Forces Tribunal in **Maj. K.G. Thomas** case is confined to that case alone and cannot be read as any precedent, as clarified by this Court itself in its order dated 06.02.2015. Thus, reliance by the learned counsel for the applicants on the case of **Maj. K.G. Thomas** (supra) and order of this Court dated 06.02.2015 is misplaced."*

Thus, the reliance placed on behalf of the applicant on the order of the AFT Principal Bench New Delhi in **Maj K. G. Thomas** (supra) is wholly misplaced.

16. Significantly, vide para 34 the Hon'ble Supreme Court in **Suchet Singh Yadav and Ors** (supra) observed and directed 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 pensionery 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 pensionery 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 pensionery 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 presupposes 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 & Ors. Vs. Lt. Cdr. C.M. Mittal & Ors.; Civil Appeal(arising out of Civil Appeal Diary No. 7231 of 2016) – Union of India & Ors. Vs. Lt. Cdr. Bhisham Kumar (Retd.) & Ors. and Civil Appeal(arising out of Civil Appeal Diary No. 22257 of 2017) – Union of India & Ors. Vs. Sqn. Ldr. Jai Kumar & Ors. are allowed and those of the applicants i.e. Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016) – Suchet Singh Yadav & Ors. Vs. Union of India & Ors.; Civil Appeal No. 7989 of 2015 – Lt. Cdr. Gurmukh Singh Vs. Union of India & ors.; and Civil Appeal No. 7917 of 2016 – V.K. Mehta Vs. Union of India & Ors., are dismissed.”

17. It is thus apparent that the issue involved in the present OA is no more *res integra* in view of the verdict of the Hon'ble Supreme Court and thus the applicant who had retired on 08.03.1989 much before the date 01.01.1996 cannot be granted the benefit of the letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997 nor of the recommendations of the V<sup>th</sup> CPC as relied upon on behalf of the applicant.


18. Consequentially, the prayer made by the applicant seeking that he be granted the rank of Lt Col wef 02.03.1989

after completing of 21 years of service and be granted service pension in the rank of Lt Col wef 09.03.1989 in terms of letter no. 1(5)/97/D(Pay/Services) dated 21.11.1997, cannot be granted.

**CONCLUSION**

19. In view of our above analysis, the OA 1096 / 2016 is thus dismissed.

Pronounced in the open Court on 22 day of November, 2024.

[REAR ADMIRAL  DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

AP