

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

OA 1401/2023

Rear Admiral Kapil Gupta (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

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Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant, a retired officer of the Indian Navy holding the rank of Rear Admiral, has filed the present OA and has made the following prayers:-

- a) *Call for records including policy if any based on which the Respondents have denied the Applicant his entitled stepping-up of pay after the revision of the pay scale during 6th CPC for bringing his pay/subsequent pension on par with his juniors who were getting more pay and subsequent pension than him, which was again denied vide letter dated 18.10.2019 when the Applicant had forwarded letter dated 21.05.2019 and thereafter quash such orders including*

policy if any relied by the Respondents to deny the entitled due of the Applicant.

- b) Direct the Respondents to rectify the existing pay anomaly by stepping up the pay of the Applicant in the rank of Rear Admiral on par with his juniors who were getting more pay than him at that time w.e.f. 28.11.2008 and also direct the Respondents to grant the Applicant pension and other consequential benefits w.e.f. 31.12.2014 and restore it to the same level so that it is equal and is not less than his juniors and is according to his entitlement.*
- c) Direct the Respondents to restore the Applicant's pay as well as his pension arrears that have although been due to him, but was not paid to him for the past 14 years with penal interest @ 18% per annum.*
- d) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.*

2. The applicant was commissioned in the Indian Navy on 01.01.1979 and served for 35 years, eventually being promoted to the rank of Rear Admiral before retiring on 31.12.2014. The applicant's grievance is that his pay is lower than that of officers junior to him, and he believes he is entitled to have his pay stepped up to be on par with his juniors. In support of his claim, the applicant has placed reliance on an order passed by this Hon'ble Tribunal in *Air Vice Marshal P. Subhash Babu v. UOI*, OA 2342 of 2019, dated 04.11.2020.

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3. The issue involved in the matter, according to the applicant, stands concluded by the aforesaid judgment of this Tribunal and therefore, relying upon the principles laid down in the case of *Air Vice Marshal P. Subhash Babu* (supra), the aforesaid relief is claimed for.

4. On the other hand, the learned counsel for the respondents, refuting the contentions of the applicant, argued that the applicant's pay on promotion has been fixed in accordance with the applicable pay fixation rules. The counsel further asserted that the applicant should not have any grievance in this matter, as the applicant's basic pay is higher than that of his juniors, even though the juniors may be drawing more pay due to the circular dated 02.05.2008. The counsel emphasized that merely because the juniors are entitled to MSP and their overall pay has increased as a result, the applicant cannot claim any grievance on this basis. Therefore, the learned counsel for the respondents contended that no indulgence is warranted at this stage, and the O.A. is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents on record.

6. Having considered the submissions made, we find that the issues raised before us were also considered by a Coordinate Bench of this Tribunal in the case of *Air Vice Marshal P. Subhash Babu* (supra)

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and by the Delhi High Court in the case of *AVM S. N. Chaturvedi*, 43 (1991) DLT 22. The core contention in *Air Vice Marshal P. Subhash Babu (supra)* was that the juniors were drawing more pay due to the inclusion of Military Service Pay (MSP) as a separate element. However, upon examining the applicant's basic pay, it was found that he was drawing a higher basic pay than his juniors. The same issue has been raised before us in this case.

7. After examining all these aspects, we considered the issue of juniors receiving more pay and the effect of MSP being granted to juniors and their basic pay increasing on account of adding of MSP. After taking note of all aspects of the matter in detail, it is pertinent to quote Para 11 to 14 of *Air Vice Marshal P. Subhash Babu (supra)*, which dealt with the issue in the following manner:

"11. In the case before the Delhi High Court, petitioner therein (*AVM S.N. Chaturvedi*) was also serving as Air Vice Marshal in the Indian Air Force, receiving pay of Rs.5,900/-. Two officers junior to him, who were Air Commodores, were receiving less pay prior to 01.01.1986. When the Fourth Pay Commission Report was accepted by the Government of India and it was implemented with effect from 01.01.1986 with certain modifications, in view of the pay fixation done, anomaly arose between the pay of the petitioner therein and his two junior officers and when the representation was rejected, the matter travelled to the Delhi High Court. Before the Delhi High Court, Special Instructions, namely, Special Air Force Instructions dated 26.05.1987 were taken note of and based on the aforesaid, the Delhi High Court had allowed the petition of *AVM S.N. Chaturvedi*. Clause 6(g) of the Special Air Force

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Instructions dated 26.05.1987, which is relevant, reads as under:

"6(g) Where in the fixation of pay under this paragraph the pay of an officer who, in the existing scale was drawing immediately before 01 Jan 1986 more pay than another officer junior to him in the same cadre gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior".

12. The matter has been examined by the Delhi High Court and after taking note of the aforesaid Special Instructions, in Paras 7 and 8, the issue has been discussed in the following manner:

"7. As already noted, the two officers. Air Commodore Adlakha and Air Commodore Desai as a result of fixation of their pay pursuant to the aforesaid Instruction dated 26 May, 1987, were getting more pay than the petitioner. With effect from 1st August, 1988 Air Commodore Adlakha was promoted to the rank of Air Vice Marshal. His pay was then fixed at Rs.6500.00. By invoking clause 9 of the aforesaid Instruction, the petitioner's pay was stepped up to Rs.6500.00 with effect from 1 August, 1988.

8. As would be evident from the above, the grievance of the petitioner is that between 1 January, 1986 and 1 August, 1988 he was drawing pay which was less than the officers who were junior to him. The pay of the petitioner was increased only because an officer junior to him had been promoted to hold an equal rank to that of the petitioner. In our opinion, the decision of the Government not to remove the anomaly which had resulted while fixing pay with effect from 1 January 1986 is clearly arbitrary and without any reasonable basis. It is now well accepted that there has to be equal pay for equal

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work. It is also accepted that a person discharging duties as a senior officer should not get a salary less than what his juniors get. The Instructions which have been issued, relevant portions of which have been quoted hereinabove, clearly take care of ensuring that the officers in the equal rank are not discriminated in the sense that junior officer does not get more pay than his senior but this reasoning, which is logical and valid, has not been extended to a case where the ranks of the two officers are different. We fail to understand as to why this is so. If on promotion Air Commodore Adlakha was to get the same salary as that of Air Vice Marshal Chaturvedi, the petitioner, it does not stand to reason that the petitioner should be getting a lesser salary than what Air Commodore Adlakha was getting before the latter's promotion. If on the promotion of Air Commodore Adlakha to the rank of Air Vice Marshal the salary of the petitioner could not be less than that of A.V.M. Adlakha, there is no reason as to why the salary of the petitioner should have been less when Mr. Adlakha had not been promoted from the rank of Air Commodore. If the petitioner had not been promoted as Avm before 1st January, 1986 he would have got more pay as an Air Commodore than what Air Commodore Adlakha was getting, while in the same rank of Air Commodore, and he would have continued to get more pay than what has been fixed as Air Vice Marshal with effect from 1st January 1986."

13. If the aforesaid principles and instructions are applied in the present case, we are of the considered view that the applicant is entitled to the benefit of stepping-up of pay. Clause 6(g) of the Special Air Force Instructions, as reproduced hereinabove, clearly contemplates that if the junior is drawing more pay than the senior officer, the provision of stepping-up of pay has to be invoked. There is no reason as to why the principle of stepping up of pay should not be made applicable in the case of the applicant also as held by the Delhi High Court in the aforesaid judgement.

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14. That apart, on 05.04.1991, vide Annexure A-4, certain circulars have been issued by the Government of India, Ministry of Defence, in the matter of stepping-up of pay of Major Generals and their equivalents in the Air Force and Navy and it is indicated that the question of extending benefit by Delhi High Court ie. in the case of S.N. Chaturvedi (supra), has been examined by the Government of India and similarly placed Major Generals and equivalent officers would be granted stepping up of pay if officers lower in the rank like Brigadiers are drawing more pay than the senior officers like Major Generals. In this regard, if we take note of the objections raised by the respondents, they only say that because of the inclusion of the MSP, on revision, the anomaly has arisen and if by adding the element of MSP, the anomaly had occurred, then to remove the said anomaly, there is no reason as to why stepping up of pay should be granted because the MSP was granted to the applicant also. We find that the juniors in the Accounts Branch holding the rank of Air Commodore and below continue getting their annual increments as well as MSP, whereas in the case of persons like the applicant, this was not followed even though he was granted MSP while fixing his pay on promotion as Air Vice Marshal on 01.07.2016. Merely because by adding MSP as revised, the juniors are getting higher pay, the benefit of stepping up of pay cannot be denied to the applicant. Even in the Army, the benefit of stepping-up of pay is recommended in the circular at Annexure A-4 as indicated hereinabove."

8. It is after considering all these aspects that we had quashed the action of the respondents and directed them as in the case of *Air Vice Marshal P. Subhash Babu (supra)* to step up the pay of the applicant retrospectively and bring it at par with his immediate juniors and thereafter grant all consequential benefits to him. The

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directions issued in the case of *Air Vice Marshal P. Subhash Babu (supra)* in Para-16 read as under:-

"16. Keeping in view the aforesaid, we allow this application and direct that in rejecting the Statutory Complaint of the applicant dated 17.09.2019, without considering all these aspects, the respondents have committed grave irregularities and illegalities, accordingly, impugned order dated 15.10.2019, being unsustainable, is quashed. Respondents are directed step-up the pay of the applicant retrospectively with effect from 01.07.2017, bringing it at par with his immediate juniors and thereafter grant all arrears of pay retrospectively with effect from 01.07.2017. The respondents are also directed to grant pension and other consequential benefits to the applicant with effect from 01.07.2020. The aforesaid directions be complied with within a period of three months from the date of receipt of the copy of this order, along with interest @ 6% per annum from the date due till the payment of arrears."

9. Accordingly, considering the totality of the circumstances and the grounds already considered by us in the case of *Air Vice Marshal P. Subhash Babu (supra)*, we find the objections raised by the respondents in this matter to be unsustainable. We allow this OA and direct the respondents to step up the pay of the applicant with effect from 28.11.2008, and accordingly, fix his pay, pension, and all retiral benefits as a consequence thereof with effect from 31.12.2014. The respondents are also directed to grant all benefits within a period of three months from the date of receipt of a copy of this order, along with interest at the rate of six percent per annum from the date of

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issue until payment. The applicant will also be entitled to arrears of pay and pension retrospectively with effect from 28.11.2008.

10. OA is allowed with no order as to costs.

Pronounced in open Court on this 29th day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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