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

23.

OA 476/2024 WITH MA 543/2024

Rear Admiral Devender Mohan Sudan (Retd)	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
12.02.2024

MA 543/2024

Keeping in view the averments made in the application and in the light of the decision in ***Union of India and others*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648], the delay in filing the OA is condoned.

2. The MA stands disposed of.

OA 476/2024

3. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is a retired officer of the Indian Navy and is aggrieved by the action of the respondents in not redressing his grievance in the matter of less pay being drawn by him in comparison to

an officer of the rank of Cmde, a rank junior to the applicant. He has made the following prayers:

> *"(a) To grant Notional MSP/Additional pay to the Applicant (RADM) w.e.f (01.01.2016), i.e 7th CPC while refixing his pay until his superannuation on 28.02.2019.*
> *(b) To refix the pension of the Applicant on his retirement keeping the last pay drawn (to include Notional MSP/Additional pay) into reckoning.*
> *(c) To grant arrears of Notional MSP /Additional pay w.e.f 01.01.2016 to 28.02.2019 in his pay.*
> *(d) To grant arrears of pension duly refixed w.e.f 01.03.2019 till the date of payment.*
> *(e) To grant interest @8% per annum on arrears of pay & pension*
> *(f) That Applicant be awarded cost of the litigation @ Rs 50,000/-*
> *(g) To pass any such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case."*

4. The applicant was commissioned in the Indian Navy on 01.01.1982 and having earned promotion during the period of 37 years of service career, the applicant retired from service on 28.02.2019 as a Rear Admiral. It is the grievance of the applicant that as his pay is lower than the officers junior to him; he is entitled to stepping up his pay, to be brought at par with his juniors. Consequently, his pension too is less than his junior and subordinate.

5. It is submitted by the applicant that he was promoted to the rank of Rear Admiral on 20.10.2010 and disparity in pay vis-a-viz that of his junior, a Cmde was settled by grant of notional MSP and thus the anomaly in the pay was removed at that point of time. However, post 7th CPC, i.e., w.e.f 01.01.2016 again the disparity in pay had occurred and he received less pay than that of a Cmde till his superannuation on 28.02.2019. Further, since his last drawn pay was less than the Cmde, his junior, his pension too is less than that of his junior.

6. The issue involved in the matter, according to the applicant, stands concluded by the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Anr.*** Vs. ***S P S VAINS (Retd) and Ors.*** (Civil Appeal No.5566/2008) and, therefore, relying upon the principles laid down in the said case the aforesaid relief is claimed.

7. We have heard learned counsel for the parties and perused the documents on records.

8. Having considered the submissions made, we find that all the issues canvassed before us were also canvassed before the Bench of this Tribunal which decided the case of ***Air Vice Marshal P Subhash Babu*** Vs. ***Union of India and***

Ors., (OA No.2342 of 2019 on 04.11.2020) and before the Hon'ble Delhi High Court in the case of ***AVM S.N. Chaturvedi*** Vs. ***Union of India and Ors.***, [43 (1991) DLT 22]. The core contention in the case of ***Air Vice Marshal P Subhash Babu*** (supra) was that the juniors were drawing more pay because of inclusion of MSP as a separate element. The same is the objection before us in this case.

9. Consequent to our order dated 04.11.2020 in the case of ***Air Vice Marshal P Subhash Babu*** (supra), the MoD has issued letter dated 12.06.2023 which stipulates the methodology for granting relief in similar matters. The letter is reproduced below:

No. 1(6)/2013/D(Pay/Services)
Ministry of Defence
Department of Military Affairs
D (Pay/Services)

12 Jun 2023

To

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Subject: *Pay Protection in respect of Major General/equivalent-reg.*

Sir,

This is regarding addressing the concerns of service HQs with regard to pay drawn by officers of the rank of Major General/equivalent vis-à-vis. Brig/equivalent, wherein the pay in respect of Major General has been fixed lower than a Brig, though both the Officers belong to the same Arm. This disparity in pay was created due to applicability of MSP of Rs. 6000/-P.M. in the 6th CPC and Rs. 15,500/-in the 7th CPC upto the rank of Brig only.

2. On detailed examination of the matter in consultation with Ministry of Finance that Department has observed that if

(a) The pay of the Maj. Gen. is fixed at an amount less than what he was already drawing as Brigadier (Pay plus MSP). That is, the promotion results in reduction in pay.

(b) Junior Brigadier too gets promoted at a later date and starts drawing higher pay as Maj. Gen than the senior who had already been promoted as Maj. General. That is, a senior Major Gen happens to draw less pay in the grade of Maj Gen (Level 14), as compared to a junior Major General promoted as Major general later than the senior one.

3. The above anomaly is addressed as follows:-

<u>Anomaly at Para 2 (a) above</u>. On promotion to the rank of Maj Gen / Equiv results in reduction in pay, the difference would be paid as Personal Pay subject to ceiling of Rs 80,000 (6th CPC Regime) and Rs 2 , 25,000 (7th CPC Regime). The same is explained as follows:-

Rank	*Pay*	*MSP*	*Total Pay*
Brig A	*2,05,100*	*15,500*	*2,20,600*
On promotion of Brig A to Maj Gen the pay would be fixed as 2,18,200 (Basic Pay) + 2,400 (Personal Pay)			

(a) <u>Anomaly at Para 2 (b) above</u> If the Basic Pay plus Personal Pay so fixed in respect of a Maj Gen so promoted turns out to be lower than the pay+ personal pay allowed to another Maj. Gen promoted later, then the Personal Pay of the former may be stepped up to the level of the latter, provided the Senior Maj. Gen was senior in the grade of Brigadier and had drawn higher pay than the junior in the grade of Brigadier also and both belong to the same Arm/Service. This will be subject to the condition that the ceiling of Rs. 80,000 (6th CPC) or Rs. 2, 25,000 (7th CPC), as the case may be, shall not be breached. The same is explained as follows:-

Rank	*Pay*	*MSP*	*Total Pay*
Brig B	*2,11,300*	*15,500*	*2,26,800*
On promotion of Brig B to Maj Gen the pay would be fixed as 2,18,200 (Basic Pay) + 6,800 (Personal Pay). *Further The pay of Maj Gen A will also be stepped up as 2,18,200 (Basic Pay) + 6800 (Personal Pay) from date Maj Gen B draws higher pay.*			

4. Personal pay would be subsumed in the basic pay on promotion. Personal pay would be treated as pay for all purpose.

5. The pension of Maj Gen would be protected in accordance with Note below clause 7 of MoD letter dated 12 Nov 2008.

6. This issue with the concurrence of Ministry of Finance (DoE) vide their ID. Note No. 03-05-/2016-E.III (A) dated 19.05.2023 and Ministry of Defence (Fin.) I.D. No. 01/(9)/2021/AG/PA/104-PA dated 12th Jun, 2023.

Yours faithfully,

Sd/-
(T Johnson)
Group Captain
Director (Pay/Services)

10. In the light of the directions now issued by MoD, we allow this OA and direct the respondents to step up the pay of the applicant and provide requisite relief to him under the provisions of letter dated 12.06.2023. The aforesaid direction be complied with within a period of three months from the date of receipt of a copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till payment. The applicant will also be entitled to arrears to pay.

12. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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