

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

**OA 623/2019
with
MA 1200/2019**

**Sqn Ldr Tirtha Sen (Veteran)
Versus
Union of India & Ors.**

... Applicant

... Respondents

**For Applicant
For Respondents**

**:
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**Mr. Ajai Bhalla, Advocate
Mr. Anil Gautam, Sr. CGSC**

CORAM :

**HON'BLE JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P M HARIZ, MEMBER (A)**

ORDER

MA 1200/2019

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 623/2019

2. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is a retired Sqn Ldr of the Air Force and is aggrieved by the action of the respondents in not giving effect to MoD letter No.14(1)/98/D(AG) dated 14.01.2000

and letter No.1(26)/9/II/D(Pay/Services) dated 29.02.2000 w.e.f. 01.01.1996 and thereby not granting him the rank of Wg Cdr (TS). He has made the following prayers:

- (a) Implement the impugned letters w.e.f 01.01.1996 by granting the applicant the rank of Wg Cdr on completion of twenty years of service; and
- (b) Re-fix the basic pay as a Wg Cdr and accordingly, fix the pension of the applicant w.e.f 01.01.2006; and
- (c) Grant arrears of pension from the date of retirement as a Wg Cdr with 9% interest; and
- (d) Award exemplary costs; and
- (e) Grant any other further relief as deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

3. The applicant was commissioned in the Indian Air Force on 10.06.1977 in the Accounts Branch and was promoted to the rank of Sqn Ldr w.e.f. 10.06.1988. The applicant eventually proceeded on PSS (Premature Separation from Service) w.e.f. 31.12.1997 after completion of 20 years 06 months and 22 days of service. The MoD issued letter No.14(1)/98/D/(AG) dated 14.01.2000 for 'Implementation of Vth Pay Commission

Recommendations Para 147.21 Conditions Regarding Grant of Substantive Rank of Officers of Army, Air force and Navy' and further issued letter No.1(26)/97/II/D(Pay/Services) dated 29.02.2000 for 'Removal of Anomalies arising from the implementation of the revised pay scales and allowances consequent to the 5th CPC recommendations implementation of pay scales of Major and equivalents'. The letter dated 14.01.2000 pertains to revised service required for promotion to substantive ranks, wherein promotion to the substantive rank of Lt Col (TS) and equivalent is upon completion of 20 years of commissioned service. Notably, the letter did not specify an effective date. Consequently, since the applicant retired on 31.12.1997, after completing 20 years 07 months and 22 days of service, prior to the issuance of the aforementioned letter, he was not granted the benefits outlined therein as he was denied the promotion to the rank of Wg Cdr (TS) on the grounds that he had retired prior to issue of the letter. The applicant had filed a grievance dated 18.09.2018 seeking redressal and promotion to the rank of Wg Cdr (TS) along with arrears and pay and pension, and the respondents were yet to reply to the same. Hence, the OA.

Arguments by the Counsel for the Applicant

4. The counsel gave a brief background leading to this OA and stated that GoI had reduced the length of commissioned service required for promotion to the rank of substantive Squadron Leader and equivalents from 13 years to 11 years in 1985, aiming to expedite promotions for service officers. However, due to the fixation of Squadron Leader's pay at 11600-325-14850 with a rank pay of Rs. 1200/- by the Vth CPC, discontent arose within the defence services and subsequently, the GoI, appointed a Committee in December 1997, chaired by the then Defence Secretary Shri Ajit Kumar, to address the anomalies and make recommendations for their rectification. The Ajit Kumar Committee submitted its recommendations in April 1998. Following this, a High-Level Committee of Group of Officers (GOO) was formed in May 1998 to compile and provide recommendations based on the Ajit Kumar Committee's findings. The GOO submitted its recommendations in July 1999 and the GoI accepted the recommendations of the GOO report and issued two letters dated 14.01.2000 and 29.02.2000 (Annexure A-1 Colly) to implement the said report. The letter dated 14.01.2000 set out the revised years of service required for promotion to substantive ranks. The letter dated 29.02.2000

fixed the pay of officers of three Services on promotion to the rank of Maj (equivalent) in a substantive capacity, initially at the stage of Rs.11925/- in the pay scale of Rs. 11600-325-14,850.

5. The counsel then elaborated that the revised service for various substantive ranks promulgated vide letter dated 14.01.2000, was based on the recommendation made by the 5th CPC and emphasized that since the 5th CPC was applicable from 01.01.1996, the revised service for substantive ranks including that of Lt Col (TS) and equivalent was also required to be implemented with effect from 01.01.1996. The counsel emphasized that in the case of the applicant though he took PSS on 31.12.1997, he had completed the requisite service for promotion to the rank of Wg Cdr (TS). Thus, he was entitled to be promoted to the rank of Wg Cdr (TS).

6. The counsel further placed reliance on the following orders of the Tribunal:

(a) **Lt Cdr BR Sharma (Retd.) & Ors** Vs. **Union of India & Ors** (OA No.138/2013) decided on 29.05.2015;

(b) **Wg Cdr V.S. Tomar (Retd.)** Vs. **Union of India & Ors** (TA No.442/2010) decided on 21.05.2012;

(c) **Maj K Ramesh (Retd.)** Vs. **Union of India & Ors** (OA No.795/2016) decided on 12.10.2017 and modified by the order dated 27.02.2019; and

(d) **Sqn Ldr Dipendu Ganguly (Retd.)** Vs. **Union of India & Ors**, (OA No.322/2016) decided on 12.10.2017.

Arguments by the Counsel for the Respondents

7. The counsel for the respondents briefly recapitulated the prayer of the applicant and vehemently stated that the absence of an explicitly stated effective date in the letter implies that its date of issuance, 14.01.2000, is to be considered as the effective date. Consequently, since the applicant retired on 31.12.1997, prior to the issuance of the aforementioned letter, he was ineligible for the grant of the substantive rank of Wg Cdr (TS) as per the letter relied upon.

8. The counsel further highlighted that the GoI accepted the recommendations of the 5th CPC on 13.10.1997. Though the effective date for the revision of pay scales was 01.01.1996, all allowances except Dearness Allowance (DA) were revised from 01.08.1997. Additionally, any issues or recommendations not addressed in the resolution were slated for separate examination by the GoI, implying prospective implementation thereafter.

9. The counsel emphasized that the recommendations concerning Time Scale promotions underwent comprehensive deliberations within the government, leading to the decision to make the recommendation regarding the qualifying age for Lt Col (TS) / equivalent rank effective prospectively from 14.01.2000. Furthermore, the counsel stressed that the facts of the present case were distinguishable from the order of the Tribunal in the cases of **Sqn Ldr D Ganguly and Ors** (supra) and **Maj K Ramesh** (supra), because those cases directed specific promotions and benefits, and therefore they do not establish a general principle for retrospective implementation. Additionally, the counsel emphasized that the judgment in the case of **Lt Cdr BR Sharma** (supra) was "in personem" and not "in rem" as was evident from the judgment, in that the Tribunal had directed implementation from 31.01.1997, despite different retirement dates of the three petitioners. Notably, one petitioner in the aforementioned case had retired prior to 01.01.1996; however, the judgment deemed them eligible for pension from 31.01.1997. Therefore, the counsel vehemently asserted that it was evident that the judgment pertains to specific individuals and, therefore, did not establish a broad principle for promoting all similarly affected officers of the three Services.

10. The counsel contended that the date of implementation of Pay Commission or any other advisory body recommendations lies within the exclusive domain of the GoI. The counsel further argued that policy implementation falls under the executive power of the GoI, beyond the scope of judicial review under Section 14 of the AFT Act, 2007. With regards to the grievance for redressal filed by the applicant, the counsel stated that it had been examined by the relevant authorities along with similarly placed cases and were yet to be considered by the GoI.

Consideration

11. Having heard both sides and examined all relevant documents, the sole issue before us is whether the provisions of MoD letter dated 14.01.2000, as a consequence of the 5th CPC recommendations, should be retrospectively applied from 01.01.1996, or is it to be effective only from the date of issuance of the letter.

12. Based on the presented facts, it is apparent that this case does not pertain to a situation where the recommendations of the 5th CPC have been rejected by the GoI and reconsideration is sought. Nor does it involve the provision of additional benefits by the Govt at a later stage, beyond the recommendations made by the 5th CPC.

Para 147.20 and 147.21 of the 5th CPC report, relevant to this case are reproduced below:

"Qualifying Service for Substantive Promotion

147.20 In order to mitigate the difficulties of slow career progression, deficiency of officers in junior ranks and to reduce stagnation, substantial reductions in the qualifying period for time based / time scale promotions have been suggested by the Services. We have considered the issue and understand that the provisions available with regard to acting promotions ensure much faster promotion specially up to the rank of Major. We have also been informed that the existing qualifying periods for substantive promotion have been laid down for a graded progression in service career and reduction would not reduce actual deficiency in junior ranks. However, we have analyzed the issue in the context of the Armed Forces suggestion to grant provisional commission in the training academy during the last one year of training.

Our Recommendations:

147.21 In view of our proposal to abolish the rank of Second Lieutenant and considering all relevant factors, we feel that only a one year reduction in qualifying service can be justified and accordingly recommend reduction of one year in periods specified for substantive promotions. In our opinion, any further reduction may compromise on the experience requirements for each rank. The following revised qualifying periods for substantive promotions are, therefore, suggested.

Corps	Lt. & Equiv.	Capt. & Equiv. (Yrs)	Major & Equiv. (Yrs)	Lt Col (TS) & Equiv. (Yrs)
i) Officers of 3 services other than AMC, MNS, RVC, Dental, MF, SL Officers, SD list Officers (Navy) & Br Commission Officers (AF)	On Completion of Trg	4	10	20
(ii) to (x)	xxxxxx	xxxx	xxx	xxxx

13. Since the 5th CPC is to be effective from 01.01.1996, pay anomalies or implementation of recommendation applicable to the 5th CPC becomes effective and applicable from 01.01.1996. Failing to do so would render the purpose of rectifying an anomaly or making a positive recommendation futile. The GoI Acceptance

Order regarding the recommendation of the 5th CPC clearly reflects the spirit. Relevant extracts are reproduced below:

" 50(1)/IC/97.- The Fifth Central Pay Commission was set up by the Government of India by Resolution No. 5(12)/E.III/93 dated 9th April, 1994 as amended by Resolution No. 5(12)/E.III/93 dated 12th January, 1996, No. 5(12)/E.III/93 dated 17th July, 1996, No. 5(12)/E.III/93 dated 24th October, 1996, 1996 and No. 5(12)/E.III/93 dated 19th November, 1996. The Commission submitted on the 30th January, 1997, its Report relating to structure of emoluments, allowances, conditions of service and retirement benefits of Central Government employees including Union Territories, members of All India Services and personnel belonging to the Armed Forces. The Commission also submitted its Supplementary Report No.1 on improving the Motivation Level and Supplementary Report No.2 on Cabinet Secretariat on 28th February, 1997. The Government have given careful consideration to the recommendations of the Commission in respect of civilian employees of the Central Government in Groups 'A', 'B', 'C' and 'D', as also those in the All India Services and have decided that the recommendations of the Commission in respect of these categories of Central Government employees and All India Services shall be accepted broadly subject to the modifications mentioned below:-

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8. Department specific recommendations which are not included in this Resolution shall be processed by the concerned Department/ Ministry and approvals of the Government obtained in consultation with the Ministry of Finance and/or Department of Personnel and Training,

10. The other recommendations of general nature made by the Commission which are not included in the Annexure are being examined by the Government and decisions thereon will be notified separately.

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14. MoD Letter dated 14.01.2000 is the acceptance and implementation instruction of the recommendations at Para 147.21. Thus it distinctly and specifically addresses the subject "Implementation of Vth Pay Commission Recommendations Para 147.21 Conditions Regarding Grant of Substantive Rank of Officers of Army Air force and Navy". The letter is reproduced below:

No.14(1)/98/D(AG)
Government of India
Ministry of Defence
New Delhi, 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 Equiv (Years)	& Major & Equiv (Years)	Lt Col (TS) & Equiv
(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
(ii) RVC	Date of Joining	1	7	17
(iii) MF	On completion of training	5	12	23
(iv) SL Officerfs	-do-	5	12	20
(v) RCOs	-do-	3	-	-
(vi) Special Commissioned officers (SCOs)	-do-	4	10	20
(vii) Army Medical Corps (a) AFMC	Date of Joining	1	5	14
(b) Direct Entry		Date of Joining	4	13
(viii) ARMY DENTAL CORPS		Yrs M	Yrs M	Yrs M
(a) Without internship	Date of Joining	1 6	5 6	14 6
(b) With Internship	-do-	0 6	4 6	13 6
MNS	On completion of training	5 -	12 -	20 -
(ix) Navy (a) General	On completion of initial	3 -	7 years as substantive	20 years commissioned

<i>List Officers</i>	<i>training</i>		<i>lieutenant</i>	<i>service</i>
<i>(b) SD List Officers</i>	<i>On commission</i>	3 -	10 years commissioned service	-do-
<i>(x) Air Force (a) Permanent Commissioned officers</i>	<i>On completion of training</i>	4 -	10	20 years of Commissioned Service
<i>(b) Branch Commissioned officers</i>	-do	5 -	1 11	--

This letter stipulates that the revised service required for promotion to the substantive rank of Lt Col (TS) and equivalent is now 20 years of commissioned service; a reduction of one year from the earlier stipulation of 21 years.

15. There are catena of judgments which hold that anomalies in a particular pay commission once rectified, such rectification will be effective from the date of implementation of the particular Pay Commission. The Hon'ble Punjab & Haryana High Court in the case of **Gurmail Singh Dahdli & Ors. Vs. Union of India & Ors.** (Civil Writ Petition No.6223 of 2007) decided on 26.05.2008, observed that:

"once the anomaly in the pay scale is found and is sought to be removed then this has to be removed from the implementation of the Pay Commission i.e. 1 January 1996".

16. Further in the case of **Jai Narayan Takkar Vs. Union of India,** Division Bench of the Hon'ble High Court of Punjab and Haryana (WP No.15400/2006) had held:

"It was during the implementation of 5th CPC 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 dates as justified."

17. AFT (PB) in its order dated 12.10.2017 in the case of **Maj Ajit Singh Rathi (Retd) Vs. Union of India & Ors** (OA No.707 of 2016) had adjudicated on the same matter and had held that the letter dated 14.01.2000 will be effective from 01.01.1996. Relevant positions of the order are reproduced below:

"11. The next issue relates to the grant of time scale rank of Lieutenant Colonel to those who were serving during the effective period of the 5th CPC. Undoubtedly, the changed years of service have been intimated vide GOI, MoD letter No.14(1)/98/D-AG of 14.01.2000. Herein, the total years of service for Lieutenant Colonel and equivalent (TS) of officers of the Services, other than specific branches listed below, has been specified as 20 years.

12. The instant O.A concerns an applicant who is covered by the provisions of this letter in service for 20 years. In context to this, the counsel for the respondents has stated that this Government letter was issued on 14.01.2000 and as such, it will be operative from that date onwards, and officers who retired prior to this date cannot claim benefit of this particular circular for grant of Lieutenant Colonel Time Scale rank.

13. Counsel for the applicant, however, has brought to our notice the order of this Tribunal, in the case Lt. Cdr. B.R. Sharma and others Vs, Union of India and others in O.A No. 138 of 2013 decided on 29.05.2015. Learned counsel, bringing to our notice the Tribunal's order, stated that the decision of the Bench given in Paragraphs 16 to 19 of that order clearly makes it applicable for the period of 5th CPC. The Tribunal held that the effective date for the operation of the Government order of 14.01.2000 will be 31.01.1997, this being the date of the Gazette notification. The counsel thereafter stated that this particular order which was challenged by the respondents, Union of India, was taken up to the Hon'ble Supreme Court, wherein the Union of India had sought an appeal against this order, and such appeal was dismissed on 01.03.2016 by Hon'ble Supreme Court stating that there was no substantial question of law of general public importance in the matter. Thus having now attained finality, the counsel claimed, would ensure that the date of 14.01.2000. Being claimed by the counsel for the respondents was no longer relevant and all time scale promotion in the revised years of service based on the letter of 14.01.2000 would be effective from 31.01.1997.

14. In the case Lt. Cdr. B.R Sharma (supra), it has been held that the only issue for consideration was, whether the provisions of the Government of India letter dated 14.01.2000, as a consequence of the 5th CPC, should apply from 31.01.1997 or should it apply to all officers only with effect from the date of issue of that letter i.e. 14.01.2000.

In consideration and final adjudication on this issue, it was held that in fact, all promotions to Time Scale Rank will be with effect from 31.01.1997. This order was taken up in appeal before the Hon'ble Supreme Court and that came to be dismissed on 01.03.2016. Consequently, this issue also related to grant of Time Scale Rank of Lieutenant Colonel or equivalent, is also settled by the Tribunal and given finality by the judgment of the Hon'ble Supreme Court."

However, the Tribunal in the case **Lt. Cdr. B.R. Sharma** (supra) had held that the effective date for the operation of the Government order of 14.01.2000 was to be 31.01.1997, i.e., the date when the applicants had become eligible for timescale promotion to the rank of commander and not because it was the date of the gazette notification as mentioned in Para 13 of the Tribunal's order in case of **Maj Ajit Singh Rathi** (supra).

18. It is also pertinent to place on record that even in the 6th CPC, where certain recommendations were initially promulgated from a particular date and made admissible from that date, was subsequently amended to be applicable from 01.01.2006. The order in respect of Modified Assured Career Progression (MACP) is reproduced as under:

No.14(1)/99-D(AG)

Government of India
Ministry of Defence

New Delhi, the 25 July, 2019

To

The Chief of the Army Staff
New Delhi

Subject: Modified Assured Career Progression Scheme (MACPS) for PBOR of Army

Sir,

OA 623/2019 with MA 1200/2019
Sqn Ldr Tirtha Sen (Veteran)

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Consequent upon the judgment of Hon'ble Supreme Court dated 08.12.2017, in the matter of Civil Appeal Diary No. 3744 of 2010 (UOI Vs. Shri Balbir Singh Turn & Anr), I am directed to refer to the Ministry's letter No.14(1)/99-D(AG) dated 30 May 2011 on the above subject and to state that the President is pleased to make the following amendment in para 5 of the aforesaid letter:

FOR: "The scheme would be operational w.e.f. 01 Sep 2008"

READ: "The scheme would be operational w.e.f. 01 Jan 2006"

2. The other terms and conditions (including eligibility), as mentioned in the MoD letter No. 14(1)/99-D(AG) dated 30 May 2011 would continue to remain the same.

3. This issues with the concurrence of the Ministry of Defence (Finance) vide their Dy. No.1270/Addl.FA(AN).JS dated 27.06.2018.

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19. In view of the above consideration, we conclude that the letter dated 14.01.2000 pertains to the implementation of a recommendation made by the 5th CPC and was so accepted. Moreover, though this is not a pay anomaly, since it is the implementation of a positive recommendation, it affects the pay and allowances, as an officer is now entitled to be promoted to the rank of Lt Col (TS) equivalent, a year earlier than before. Thus, since it is a matter of pay and allowance, it has to be implemented from the date when 5th CPC became effective, which is 01.01.1996. Therefore, since the applicant was in service on 01.01.1996, and completed 20 years of service on 10.06.1997, he is eligible for promotion to the substantive rank of Wg Cdr (TS) from 10.06.1997. Furthermore, the reduction of the required years of service from 21 to 20 years would constitute a benevolent legislation, and the denial

of such benefits to the applicant would amount to a grave injustice and therefore we dispose of the QA with the following directions:

(i) Subject to verification, the applicant be promoted to the rank of Wg Cdr (TS) with effect from the date of his completion of 20 years of service i.e 10.06.1997, provided he fulfills the other necessary criterias for the rank of Wg Cdr (TS), with all consequential benefits of pay and pension.

(ii) The respondents shall ensure all actions in this regard are completed within four months from the date of receipt of this order, failing which interest @ 6% will be paid to the applicant on all arrears till the date of actual payment.

20. No order as to costs.

21. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 15th day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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