

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

OA No. 2226 of 2022

Lt Cdr Ashok Carrol (Retd.)

...Applicant

Versus

Union of India & Others

.... Respondents

For Applicant:

Mr. Ajai Bhalla, Advocate

For Respondents:

Dr. Vijendra Singh Mahndiyan,
Advocate

CORAM:

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

O R D E R

MA 2995/2022

Keeping in view the averments made in the application and in the light of the decision in **Union of India and Others v. Tarsem Singh** 2008 (8) SCC 648, the delay in filing the OA is condoned. MA stands disposed of.

OA 2226/2022

1. 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 are read as under:

“(a) Implement the impugned letters wef 01 Jan 1996 by granting the Applicant the rank of Commander on completion of twenty years of service; and

(b) Refix the basic pay as a Commander and accordingly, fix the pension of the Applicant wef 02 Oct 1999; and

(c) Grant arrears of pension from the date of recruitment as a Commander with 9% interest; and

(d) Grant any other further relief as deemed appropriate in the facts and circumstances of the case.

BRIEF FACTS

2. The applicant was commissioned into the Indian Navy on 01.07.1979 and prematurely retired from service on 01.10.1999 in the rank of Lt Cdr after having served 20 years and 03 months of Naval service. It is the case of the applicant that he is entitled to be promoted to the rank of Cdr (Time Scale) on completing 20 years of service w.e.f. 02.07.1999 in the light of the provisions contained in the Government of India MOD letter No. 14(1)98 DCAG dated 14.01.2000. The applicant sent a legal notice-cum-representation dated 20.12.2018, however, till the date of filing of this OA i.e., 29.09.2022 more than 03 years have been elapsed and

nothing has been done and therefore the applicant has invoked the jurisdiction of this Tribunal. In the interest of justice, we take up this OA for consideration.

CONTENTION OF THE PARTIES

3. It is contended by the learned counsel for the applicant that based on the recommendations of the 5th Central Pay Commission (5th CPC), officers who are holding the substantive rank of Maj or equivalent on or after 01.01.1996 were held entitled to the scale of Lt Col or equivalent on account of the stagnation for one year in the revised scale of Maj or equivalent. It was stipulated in the recommendation that even though such officers will continue to hold the rank pay of Maj, the Government of India and the Ministry of Defence, by the letter dated 21.11.1997 provided that as a one-time measure, those officers who became substantive Lt Cdr or equivalent before 01.01.1996 will be granted the scale of Cdr or equivalent on completing 21 years of commissioned service i.e., in their 22nd year with the rank pay of Maj/Lt. Cdr. This period of time scale promotion to the rank of Cdr or equivalent was reduced from 22 years to 20 years vide letter dated 14.01.2000 and the 5th CPC recommendation was

implemented from 01.01.1996. It is therefore contended by the learned counsel for the applicant that the direction contained in the letter dated 14.01.2000 is also to be implemented from 01.01.1996 i.e., the date on which the recommendation of the 5th CPC was implemented.

4. Respondents have filed a counter affidavit and it is their contention that unlike pension which is a welfare measure and is accorded on the basis of total length of service to the retired employee, promotion is always granted prospectively and as grant of time scale of Cdr (TS) is a promotion to the higher rank in the absence of there being anything in the communication dated 14.01.2000 to indicate that it has retrospective effect it is the case of the respondents that no benefit can be granted to the applicant. It is stated on this ground that the promotion cannot be granted retrospectively to the applicant with effect from 01.01.1996 and the benefit is being denied to him.

5. We have heard the learned counsel for the parties at length and we have perused the material available on record.

6. Since the issue has been covered by the case of **Suchet Singh Yadav and Others v. Union of India and Others**

(2019) 11 SCC 520, Civil Appeal No. 770-771 of 2018, decided by the Hon'ble Supreme Court vide its judgment dated 21.02.2018, the applicant in this case would also be covered by the said judgment of the Hon'ble Supreme Court as the applicant prematurely retired on 01.10.1999, i.e., after 01.01.1996 and was in active service on and after 01.01.1996 and had completed more than 20 years of service, i.e., 20 years and 03 months, at the time of retirement.

7. The Hon'ble Supreme Court in the **Suchet Singh Yadav Case** (Supra) while dismissing the appeal preferred by the appellants made the following observation vide Para 37 of its judgment dated 21.02.2018. Para 37 of the said judgment states to the effect: -

"37. 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 pensionary 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 pensionary 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 pensionary 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."

8. In view of the above, the applicant would be covered under the purview of the Government of India letter dated 21.11.1997 and letter No. 1(26)/97/11/D (Pay/Services) dated 29.02.2000, being made applicable w.e.f. 01.01.1996.

9. Accordingly, we allow this application and direct the respondents to notionally promote the applicant to the rank of

Commander (Time Scale) w.e.f. the date he completed 20 years of service i.e., 01.07.1999 and grant him all the consequential benefits to which he is entitled to in accordance with the provisions of Govt of India letter dated 14.01.2000 (Annexure A-2) and the same be paid to him within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

10. The OA stands allowed and disposed off.

Pronounced in the open Court on this th29 day of July, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/PRGx/