

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

78.

OA 4101/2023 with MA 5398/2023

Major Gajjan Singh Khanna (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Eti, proxy for
Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Neeraj, Sr CGSC with
Mr. Sanjay, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
10.03.2025

The applicant vide the present OA makes the following prayers:-

- “(a) To direct the Respondents to bring all service documents of the applicant on record.*
- “(b) To grant Notional promotion to the rank of Lt. Col, to the Applicant after completion of his 21 year of reckonable commissioned service.*
- “(c) To grant pension to the rank of Lt. Col. to the Applicant along with arrears at 9% interest.*
- “(d) To direct the Respondents to issue a corrigendum PPO pertaining to the pension or/and promotion to the rank of Lt. Col. to the Applicant.*
- “(e) 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 14.12.1958 and was invalided out from the Indian Army on 23.07.1982. The applicant submits that he had filed

OA1250/2017 for grant of disability pension and pension for the grant of Lt. Col rank instead of Major qua which counsel for the applicant submits that the said OA 1250/2017 was allowed to the effect of the grant of the disability element of pension and that MA 4442/2023 had been filed by the applicant seeking that prayer at serial No. (V) of prayer clause 8 of OA 1250/2017 be separately adjudicated. Prayer clause 8 (V) of OA 1250/2017 read to the effect:-

“(v) To grant the Applicant Pension of the Rank of Lt Col with effect from 01.01.1996 with an interest of 18% there on.”

3. Vide order dated 04.12.2023 in OA 1250/2017 it had been directed to the effect that it was open to the applicant to seek redressal by filing a separate OA in relation to prayer clause 8(V) of OA1250/2017, which if filed would be dealt in accordance with law. Consequently, the present OA has been filed by the applicant on 12.12.2023, and the applicant submits that he is aggrieved by the action of the respondents for non-grant of pension for the rank of Lt. Col instead of Major.

4. The applicant has based his claim on the Government of India Policy letter No. 1(5)/97/D(Pay/Services) dated 21.11.1997 as well as on the orders of this Tribunal in *Maj KG Thomas Vs. UoI* in OA No. 256/2011, which the applicant submits were upheld by the Hon'ble Supreme Court in CA No. 12209/2014.

5. On behalf of the respondents vide the counter affidavit filed by them, the prayer made by the applicant is vehemently opposed submitting to the effect that the applicant in the instant case was invalidated out of service on 23.07.1982 prior to 01.01.1996 and consequently the benefit of the letter dated 21.11.1997 cannot be granted to the applicant.

6. The respondents have also placed on record Annexure R-4 copy of the verdict of Hon'ble Supreme Court in *Suchet Singh Yadav and Others vs. Union of India & Ors.* in CA 770-771 of 2018 dated 21.02.2018 to submit to the effect that the contents of the said letter have categorically been taken into account by the Hon'ble Supreme Court and it has been observed vide Para 34 thereof, 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 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 pre-supposes

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.”

7. Furthermore, it is essential to observe that vide the said verdict in *Suchet Singh Yadav* (supra) vide Para 24, 25, 26 and 27 thereof it has been 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 months with 12% interest. The petition is allowed in part. No order as to costs.”

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:-

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."

to observe categorically to the effect that the orders of the Hon'ble Supreme Court in the CA filed vide Diary No. 12209/2014 in the case of *UoI and Ors. Vs. KG Thomas* wherein in the said CA was dismissed made it clear that the order of the Armed Forces Tribunal in the said case was to be limited to the facts of that case. Apparently, in view of the verdict of the Hon'ble Supreme Court in *Suchet Singh Yadav* (supra) and observations in Para 34 thereof, the applicant in the instant case who was not in the service of the Armed Forces on 01.01.1996 having retired on 23.07.1992 can get no benefit of the Government of India Letter dated 21.11.1997 and contents thereof.

9. The OA is thus dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)