

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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TA 150 of 2012 (arising out of CWP 8388 of 2000)

Gurbachan Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr GS Ghuman, Advocate and Mr.SK Saini, Advocate.
For the Respondent(s) :	Ms. Renu Bala Sharma, CGC.

**Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**ORDER
20.02.2014**

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1. The Civil Writ Petition No. 8388 of 2000 filed in the Hon'ble High Court of Punjab and Haryana at Chandigarh and on transfer to this Tribunal registered as TA No. 150 of 2012 is taken up under Section 14 of the Armed Forces Tribunal Act, 2007.

2. By this petition the petitioner prays for a direction to the respondents to quash order dated 30.06.1997 (P-4), remove anomaly in the fixation of his pension and to fix and pay correct pension as per entitlement for 27 years and 1 month service wef 1972 onwards.

3. As per the averments of the petitioner, he was enrolled in the Army in the Corps of Electrical and Mechanical Engineering (EME) on 5th December, 1942 as Armed Fighting Vehicle Fitter in pay group "B" and was to retire on 04.12.1963, however, due to declaration of national emergency on 26.01.1962 he was retained in service and finally retired on 04.01.1970 after rendering 27 years and 1 month service with a pension of Rs 61/- pm plus Rs.17.50 P ad hoc increment against Rs.56 for 21 years terms of a Havlidar.

4. Thereafter in 1972 new Army Instruction was published based on the recommendations of Third Pay Commission by which the pension of the petitioner was fixed at Rs.85 per month by CDA(Pension) Allahabad. The grievance of the petitioner is that his pension was fixed

for 21 years terms of a Havlidar ignoring the fact that he had served for 27 years one month for which the pension was to be fixed @ Rs.109/- per month.

5. Also with effect from 1.1.1986 he was entitled to onetime increase (OTI) of Rs.285/- per month in terms of Govt of India, MoD, letter No. 1(3)/93/D (pension/Services) dated 25 Feb 1994 (vide Table 48) as applicable to the petitioner being rendering 27 years 1 month service, however he was paid Rs 220/- pm as OTI for 21 years service (vide Table 5). Further, with the implementation of 5th Pay Commission wef 01.01.1996 the basic pension of the petitioner has been fixed at Rs 1766/- for 21 years of service instead of Rs 2320/- for 27 years and 1 month of service amounting to a difference of Rs.584/- in the basic pension.

6. The petitioner took up the case with the authorities concerned many times but with no relief and been informed that his pension has been rightly fixed for 21 years service (P-2). Finding negative response to his legal notice dated 15th May, 1997 vide letter dated 30.06.1997, the petitioner preferred civil writ petition on 06.07.2000.

7. A preliminary objection has been raised in the written statement filed by the respondents that this petition suffers from delay and laches as it has been filed after a delay of 30 years and is liable to be dismissed on this score in view of the law laid down by Hon'ble Supreme Court in **State of Madhya Pradesh v. S.S.Rathore AIR 1990 SC 10**.

8. It is further averred that the petitioner was enrolled in the Army on 5.11.1942 and was discharged from service on 4.1.1970. He was not discharged soon after his completion of term due to National Emergency which was lifted on 9.1.1968, therefore the petitioner's service for pension works out to 25 years and 36 days from 5.12.1942 to 9.1.1968 and not 27 years and one month as stated. Therefore, the petitioner was granted service pension which was admissible under the rules. For the aforesaid qualifying service, he was entitled to service

pension @ Rs.56/- only as per Govt. of India, MoD letter No. 1./(II)/60/521-S/D(Pen/Service) dated 5.7.1965 but the petitioner was sanctioned service pension @ Rs.61/- per month with *ad hoc* increase of Rs.17.50 per month under SAI 25.S/68 for the maximum service of rank i.e. 21 years of Hav. 'B' Group as the same was more beneficial at that time.

9. In reply to paras 5 to 7, 8 to 11 of the TA- (Writ) it was submitted that the matter had been already clarified by the DA(P) vide its letter No G2/PR/55/GBS/IN/1 dtd 30.06.1997(P-4).

10. Further that the OTI was sanctioned to the petitioner wef 01.01.1992 and not from 01.01.1986 under GoI letter dtd 25.02.1994 which is applicable to those who retired between 26.10.1962 to 09.01.1968 and granted pension under GoI letter dtd 05.07.1965 (R-2) but the petitioner was discharged from service after the above date. Hence, grant of OTI to the petitioner under the *ibid* letter does not arise.

11. In reply to para 12 of the TA it is submitted that the petitioner was entitled to service pension under AI 25/S/68 which was subsequently amended vide AI/S/69. Accordingly the petitioner was granted service pension of Rs 85/- pm.

12. As regards to grant of pension under GoI letter dtd 05.06.1965 (R-2) for the extended period of service, it is stated that the provision of above letter was operative from 26.10.1962 to 09.01.1968 in respect of those retired upto 09.01.1968 but the petitioner was discharged from service wef 04.01.1970, after the above date. Had his pension been regulated under the above Govt letter, he would have been granted pension @ Rs 61/- pm for 27 years of service which is less than the pension sanctioned under AI 5/S/69 for 21 years of qualifying service. As such the pension notified vide PPO No S/2566/70 was most beneficial to the petitioner. It is further clarified that vide CDA(P) letter dated 22.01.1998, once a beneficial award is admitted, it cannot be reviewed subsequently on its becoming less beneficial.

13. The respondents in para 14 of the written reply admit that the petitioner had served and his period of pension works out to be 25 years and 26 days. For the service the petitioner was entitled to service pension @ Rs 65/- only as per GoI letter dtd 05.07.1965 but was sanctioned service pension @ Rs 61/- pm with ad hoc increase of Rs 17.5/-pm under 25/S/68 for 21 years of service as Hav 'B' Group as this was more beneficial to the petitioner at that time. This was further revised to Rs 85/- pm without ad hoc increase under 25/S/69.

14. In reply to sub para (ix) and (x) the written reply brings out that Table No 48 is applicable to those employees who retired from 26.10.1962 to 09.01.1968 and granted pension under GoI letter dtd 05.07.1965. But the petitioner was discharge wef 04.01.1970 as such the question of grant of pension under above letter does not arise.

15. Heard the learned counsel from the parties and examined the evidence available on file.

16. The learned counsel for the petitioner covered the events and cited SC SLP judgment in respect of State of Punjab Vs Kishan Kumar Bansal in Appeal (civil) No 24607/2010.

17. For determining the quantum of initial pension to the petitioner, we find that it is not in dispute that the petitioner was enrolled in the Army in the Corps of Electrical and Mechanical Engineering (EME) on 5th December, 1942 as Armed Fighting Vehicle Fitter in pay group "B" and was to retire on 04.12.1963, however, due to declaration of national emergency on 26.01.1962 he was retained in service and finally retired on 04.01.1970. Total actual service rendered by the petitioner works out to 27 years and one month.

18. The policy for calculation of grant of increased pension to JCOs and other ranks retained in service compulsorily on account of the national emergency beyond completion of maximum pensionary services periods has been spelt out at GoI letter No. 1(II)/60/521-S/D(PENSIONS/SERVICE) dated 5TH JULY, 1965, as under

Grant of increased pension to JCOs and or retained in Service compulsorily on account of the present emergency beyond completion of maximum pensionary services periods.

Sir,

I am directed to refer to A.1.6/S/62 and to state that the President has been pleased to decide that JCOs and OR who are retained compulsorily in service beyond the dates of completion of the following service periods and who were /are discharged from service after the 26th October, 1962, the date of declaration of emergency will be granted increase pension on the basis of their extended service rendered before and during the present emergency, at the rates shown to the Annexure to this letter.

Rank	Service periods
Subedar	28 years
Jamadar	24 years
Havildar	21 years
Naik	20 years
Sepoy	20 years

2. For the purpose of para 1 above only the service upto the date of discharge or the termination of the present emergency, whichever is earlier, will be taken into account.

3. This issues with the concurrence of the Ministry of Finance (Defence) vide their UO NO. 33 –S/PEN-B, dated the 3rd July, 1965.

Yours faithfully,

Sd/- (S.Sampath Narayanan)
Under Secy to the Government of India.

ANNEXURE TO MINISRY OF DEFNECE LETTER DATED THE 5TH JULY, 1965

Rank Completed	Rate of pension						
	Years of Group "A" Group "B", Group "C", Gr "D" Group "E", Groups FG" & H"						
1.	2	3.	4.	5.	6	7.	8
Havildar	22	56.25	48.50	46.50	45.50	42.50	44
	23	59	51	49	48	45	44
	24	61.75	53.50	51.50	50.50	47.50	46.50
	25	64.50	56	54	53	50	49
	26	67.25	58.50	56.50	55	51	49
	27	70	61	58	55	51	49
	28	72.75	62	58	55	51	49

19. Para 2 above clarifies that for purpose of calculation of pension in such cases only the service upto the date of discharge or the termination of the present emergency, whichever is earlier, will be taken into account. In the present case, as brought out by the CCDA(P) vide letter dtd 30.06.1997, the petitioner was retained in service beyond his tenure due emergency. The emergency was lifted wef 09.01.1968. Thus the service for grant of pension works out to be 25 years and 26 days. And for above service, he was entitled to service pension of Rs 56/- as per the table annexed to the policy letter.

20. As brought out in the written reply filed by the respondents and also confirmed by the CCDA(P) vide letter dtd 30.06.1997, the initial fixation of pension in respect of the petitioner was Rs 61/- pm plus Rs.17.50 P ad hoc increment under SAI 5/S/68 for the maximum service of 21 years in the rank ie Havildar Gp 'B', as the same was more beneficial to the petitioner.

21. We find that this beneficial benevolence to the petitioner was done by CCDA(P) without the knowledge of or assent by the petitioner. Further the respondents at para 12 of the written reply bring out that the pension notified vide PPO No S/2566/70 was most beneficial to the petitioner at that time and further clarified that vide CDA(P) letter dtd 22.01.1998, once a beneficial award is admitted, it cannot be reviewed subsequently on its becoming less beneficial.

22. Thus we find that having the initial fixation of pension for 21 years of service as Hav in Gp 'B', the subsequent increases were based on above base criteria, which were not in accordance with the actual entitlements.

23. The respondents have taken shifting stand with respect to the GoI letter dated 05.07.1965 in respect of the petitioner. While considering the grant of OTI, in written reply the respondents state that the OTI was authorized to the petitioner w.e.f. 1.1.1992 (not from 1.1.1986 as mentioned in para 7 of the writ petition under the Govt of India, MoD letter date 25.2.1994 which is applicable to those who retired between 26.10.1962 to 9.1.1968 and granted pension under Govt letter dated 5.7.1965 but the petitioner was discharged from service after the above date, therefore the grant of OTI to the petitioner does not arise.

24. This is also evident in reply to sub para (ix) and (x) the written reply which brings out that Table No 48 is applicable to those employees who retired from 26.10.1962 to 09.01.1968 and granted pension under GoI letter dated 05.07.1965. But the petitioner was

discharge wef 04.01.1970 as such the question of grant of pension under above letter does not arise.

25. The Apex Court in the judgment cited by the learned counsel for the petitioner in SLP(Civil) **State of Punjab Vs Kishan Kumar Bansal** in Appeal (Civil) No 24607/2010 (supra) held that the respondents were responsible for incorrect fixation of pay and the petitioner cannot be held responsible for their mistake.

26. In the light of above we find that the petitioner is entitled to grant of pension for service of 25 years and 26 days in the rank of Hav Gp 'B'. The initial fixation of pension vide PPO No S/2566/70 was done without his knowledge or approval, hence incorrect and needs to be corrected as per his entitlement.

27. The petition is partially allowed. The petitioner is held entitled for pension for service of 25 years and 26 days in the rank of Havildar Gp 'B' from date of his retirement. The respondents shall work out the correct pension and issue PPO within 3 months from the date of receipt of this order, failing which the petitioner will be entitled to get interest @ 10% per annum from today till the date of actual payment. Since the petition was filed on 05.07.2000, the arrears are restricted to commence from 01.07.1997. Parties to bear their own cost.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

20.2.2014

raghav

Whether the judgment for reference is to be put on internet? Yes.