

RESERVED

COURT NO. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 15 of 2014

Wednesday this the 3rd day of February, 2016

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

1. No. JC-055507 Hony Capt Ram Chandra Singh, s/o Shri Sarju Singh, aged about 77 years, r/o Vill : Sheo Rajpur, Teh: Jagleson Ganj, Dist : Pratapgarh (UP)
2. No. JC-155277 Hony Capt Amar Singh, s/o Shri Vijay Singh, aged about 62 years, r/o 19-A, Viman Nagar, Teh: Kanpur, Dist : Kanpur (UP)
3. No. JC-185744 Hony Capt Raj Kumar Singh Shishodia, s/o Shri Mangat Singh, aged about 62 years, r/o 67, Saraswati Vihar, Phase-I, Rahta Road, Meerut (UP)- 250001
4. No. JC-204365 Hony Capt Narendra Singh, s/o Shri Madho Singh, aged about 59 years, r/o Vill ; Nagla Surjan, Teh: Farrukhabad, Dist : Farrukhabad (UP)
5. No. JC-214165 Hony Capt Ram Bali Chaubey, s/o Shri Bhim Sen Chaubey, aged about 60 years, r/o Vill ; Surhaon, Teh: Jamaniya, Dist : Ghazipur (UP)-232333
6. No. JC-118785 Hony Capt Ram Autar Singh, s/o Late Shri Ram Din Singh, aged about 63 years, r/o Vill ; Chaturi Khera, Post : Harchand Khera, Teh: Narwal, Dist : Kanpur (UP) – 209401

7. No. JC-087777 Hony Capt KC Solanki s/o Late Shri Nand Lal aged about 72 years, r/o House No.476, Bhoj Marg, Vill & Post : MHOW, Tehsil : MHOW, Dist : Indore (MP) – 453441

.....Applicants

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi-110011
2. Chief of Army Staff, Integrated Head Quarter,
Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge Records, Army Educational Corps Records,
Panchmarhi (MP) – 464881 **(For Applicant No. 1)**
4. Officer-in-Charge Records, The Rajput Reegiment Centre,
Fatehgarh (UP) **(For applicant No.2, 3 & 6)**
5. Officer-in-Charge Records, The Mahar Regimental Centre,
Saugor (MP) **(For Applicant No. 4)**
6. Officer-in-Charge Records, Adm Battalion (PAOR) AOC Centre,
Secunderabad (AP) – 500 015 **(For Applicant No. 5)**
7. OIC Records, Signals Records, Jabalpur (MP) **(For Applicant No. 7)**
8. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (UP) -211014

.....Respondents

Ld. Counsel appeared for the Applicant - Shri Shailendra Kumar Singh, Advocate

Ld. Counsel appeared for the Respondent - Mrs. Deepti Prasad Bajpai
Central Govt. Counsel

ORDER**“Per Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

1. This Original Application has been preferred by the applicants seeking identical reliefs of implementing the Government instructions for release of entitled pension with arrears from 01.01.2006 instead of 24.09.2012. All the applicants were conferred honorary (Hony) ranks of Captains (Cpts) before their retirement from service. Factual matrix of the case is that all the applicants were enrolled in the Indian Army on respective dates and they retired from Army on completion of their terms and conditions on different dates. They all were bestowed Hony rank of Cpts on active list. Common grouse of all the applicants is that they were not paid the pension and pensionary benefits concomitant with the rank of Hony Cpts as per the recommendations made by the 6th Pay Commission with effect from 01.01.2006, notwithstanding several representations having been made by them to the Competent Authorities citing several orders and judgments passed by the Armed Forces Tribunals, and noded in approval by Hon’ble The Apex Court.

2. Learned Counsel for the applicants submitted that notwithstanding recommendations of the 6th Pay Commission for grant of pension for all Hony Cpts having been accepted as contained in Policy letter dated 08.03.2010 by the Govt. of India, Ministry of Defence (Department of Ex Servicemen Welfare), and consequent Circular No. 430 dated 10.03.2010 issued by the PCDA (P), Allahabad, revised pension has not yet been issued. He further submitted that Circular No 501 dated 17.01.2013 was issued in pursuance of Govt of India, Ministry of Defence (Department of Ex-servicemen welfare) letter No. 1(13)/2012/D (Pen/Policy) dated 17 Jan 2013 on the recommendation made by 6th Central Pay Commission regarding improvement in pension of JCO/OR retired/discharged/invalided out of

service prior to 01.01.1996 wherein pension of Hony Capts has been fixed @ Rs. 16145.00 per month w.e.f. 24.09.2012 arbitrarily. He also submitted that in a similar case, Central Administrative Tribunal (PB) vide their order dated 01.11.2011 in Original Application No 655 of 2010 & others directed respondents to re-fix the pension of all pre-2006 retirees w.e.f. 01.01.2006. The said order was challenged in the Hon'ble High Court of Delhi, wherein Hon'ble High Court vide their order dated 29.04.2013 in W.P. (C) 1535 of 2012 & others upheld the decision of the Full Bench of Central Administrative Tribunal (PB). Subsequently, Union of India filed SLP (Civil) No. 23055 of 2013 in the Hon'ble Supreme Court of India against the order dated 29.04.2013 passed by Delhi High Court. The said SLP came up for hearing before the Apex Court on 29.07.2013 and was dismissed on the same day. Hence, in the light of the above judgments passed by Hon'ble The Apex Court, applicants are entitled for their re-fixation of pension in the rank of Hony Capts w.e.f 01.01.2006 and not w.e.f 01.07.2009 or 24.09.2012 in parity.

3. Learned Counsel for the respondents submitted that the applicants are Hony Capts of Indian Army who retired prior to 01.01.2006. Hony Capts, who retired before implementation of the 6th Central Pay Commission are entitled for revised pension Rs 13850/- per month w.e.f 01.01.2006 as per Annexure III as referred at Para 16.3 of the GOI MOD Letter No 17 (4) /2008(1)/D (Pen/Pol) dated 11 Nov.08 and PCDA (P) Allahabad Circular No. 397 dated 18 Nov 2008. The PCDA (P) Allahabad issued a Circular no 501 dated 17 Jan 2013 for revision of pension in respect of Pre-2006 retirees which came into effect from 24 Sep 2012. He further contended that the applicants filed OA No 15 of 2014 before the Armed Forces Tribunal at Lucknow praying for release of pension w.e.f. 01.01.2006 in terms of the originally accepted recommendations of the 6th Central Pay Commission and accepted the concept of Modified Parity. He further contended that the case of the applicant is squarely covered by the judgment passed in the OA No 50 of 2011 Hardev Singh and others vs Union of India and others passed by Armed Forces Tribunal at Chandigarh on May 31,2011. He further contended that the pension in respect of pre-2006 retirees Hony Capts has been revised to Rs 16145/- per month w.e.f. 24 Sep.2012 as per GOI MoD Letter dated

17th Jan 2013 and PCDA Circular No 501 dated 17 Jan 2013. The cut-off date for fixation of pension has been given by the Govt as per the recommendation of Committee of Secretaries 2012 on the subject matter. He further submitted that in accordance with latest policy on the subject issued vide Government of India, Ministry of Defence letter dated 03.09.2015, pre 01.01.2006 Hony Capts granted on active list are now entitled for revised pension benefits w.e.f. 01.01.2006. In this connection letter of Records of The Rajput Regiment dated 14.11.2015 and the letter of Army Educational Corps Centre Records dated 15.10.2015 were produced.

4. The main issue is as to whether the personnel who have been granted rank of Hony Capts on active list pre 01.01.2006 are entitled for revised pension benefits w.e.f. 01.01.2006 or not?

5. In the matter of benefits whether to be extended to the applicants who were granted rank of Hony Capts prior to 01.01.2006, the Learned Counsel for the applicants relied upon the judgment and order rendered in OA 655 of 2010 rendered by Full Bench of the Central Administrative Tribunal (Principal Bench) New Delhi in a similar case, wherein the respondents were directed to re-fix the pension of all pre-2006 retirees w.e.f 01.01.2006 and pay the arrears thereof within a period of three months from the date of receipt of certified copy of the order. The said order was taken in challenge by the Union of India before the Delhi High Court by filing Writ Petition (C) 1535 of 2012. The judgment of the Principal Bench of Central Administrative Tribunal was upheld by the Delhi High Court vide order dated 29.04.2013. The relevant portion of Full Bench decision of the Central Administrative Tribunal (PB) is quoted below:

“25. From the above extracted portion it is clear that the principle of modified parity, as recommended by the V Central Pay Commission and accepted by the VI Central Pay Commission and accepted by the Central Government provides that revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale from which the pensioner had retired. According to us, as already stated above, in the garb of clarification, respondents

interpreted minimum of pay in the pay band as minimum of the pay band. This interpretation is apparently erroneous, for the reasons:

a) *If the interpretation of the Government is accepted, it would mean that pre-2005 retirees in S-29 grade retired in December, 2005 will get his pension fixed at Rs 23700/- and another officer who retired in January 2006 at the minimum of the pay will get his pension fixed at Rs 27350/-. This hits the very principle of the modified parity, which was never intended by the Pay Commission or by the Central Government;*

b) *The Central Government improved upon many pay scales recommended by the VI CPC. The pay scale in S-29 category was improved from Rs 39200-67000/- plus Grade Pay of Rs 9,000/- with minimum pay of Rs 43280/- to Rs 37,400-67000 with grade pay of Rs 10,000/- with minimum pay of Rs 44,700/- (page 142 of the paper book). If the interpretation of the Department of Pension is accepted this will result in reduction of pension by Rs 4,00/- per month. The Central Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade.*

c) *If the erroneous interpretation of the Department of Pension is accepted, it would mean that a Director level officer retiring after putting in merely 2 years of service in their pay band (S-24) would draw more pension than a S-29 grade officer retiring before 1.1.2006 and that no S-29 grade officer, whether existing or holding post in future will be fixed at minimum of the pay band i.e. Rs 37,400/-. Therefore, fixation of pay at Rs 37,400/- by terming it as minimum of the pay in the pay band is erroneous and ill conceived; and*

d) *That even the Minister of State for Finance and Minister of State (PP) taking note of the resultant injustice done to the pre-11.2006 pensioners (pages 169-170) had sent formal proposal to the Department of Expenditure seeking rectification but the said proposal was turned down by the officer of the Department of Expenditure on the ground of financial implications. Once the Central Government has accepted the principle of modified parity, the benefit cannot be*

denied on the ground of financial constraints and cannot be said to be a valid reason.

30. *In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.”*

6. Relevant portion of the decision of Delhi High Court in Writ Petition (C) 1535 of 2012, which was in complete agreement with the Division Bench judgment of Punjab & Haryana High Court on similar issue, is quoted below:

“2. The only issue therefore which survives is with respect of paragraph 9, of the office memorandum afore-noted which make it applicable with respect to September 24, 2012 and thereby denying arrears to be paid to the Petitioners with effect from January 01,2006.

3. In short, the Government of India has tacitly admitted that it was in the wrong and that the Tribunal is correct.

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8. We are in complete agreement with the reasoning of the Division Bench of the Punjab & Haryana High Court and adopt the same and do not burden ourselves any further. We conclude by noting that as regards the substance of the view taken by the Tribunal, even the Central Government accepts its correctness, but insists to make the same applicable prospectively.

9. The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs.”

7. It is stated across the bar by the Learned Counsel for the applicants that the SLP against the aforesaid decision of the Punjab and Haryana High Court was also dismissed by Hon’ble The Apex Court on 29.07.2013 vide SLP

(Civil) 23055/2013 filed by Union of India. The order of Hon'ble The Apex Court as contained in Annexure A-4 (B) of OA is quoted below.

“We are not inclined to interfere with the order passed by the High Court. Consequently, the Special Leave Petitions are dismissed. However, the petitioners are at liberty to raise all points before the Tribunal as and when the appeal.”

8. Keeping in view what has been stated above, the question involved in the petitions stands resolved wherein personnel granted Hony ranks of Capt on active list pre 01.01.2006 are now entitled for the enhanced service pension benefits w.e.f. 01.01.2006.

9. In the result, the Original Application No.15 of 2014 succeeds and is allowed to the extent that the applicants shall be entitled to the pension of rank of Hony Capts with effect from 01.01.2006. The applicants shall also be entitled to arrears for the period from 01.01.2006 to 23.09.2012. The Respondents are directed to comply with the order within 4 months from the date the certified copy of the judgment and order is produced before the authority concerned. In case, the Respondents fail to comply with the order within the stipulated period, the amount payable shall start earning interest @ 9% per annum from the date of order.

10. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

Dated : Feb 2016.

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(Justice Virendra Kumar DIXIT)
Judicial Member