

**RESERVED**

**COURT NO. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

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**Wednesday, this the 3<sup>rd</sup> day of February, 2016**

**Corum**

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member**

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

**1. O.A. No. 16 of 2014 - No. 213844 Hony Flt Lt Ram Deo Upadhyaya s/o Late Shri Jagmohan Upadhyaya, aged about 76 years, r/o Vill : Dahilamau, Tehsil: Pratapgarh, Dist: Pratapgarh (UP)**

(a) No. 221378 Hony Flt Lt Desh Raj Sharma s/o Late Shri Ram Saran Dass Sharma, aged about 73 years, r/o 568, Shiv Mandir Gali, Visharma Nagar, Teh: Kairana, Dist: Muzaffar Nagar (UP)

(b) No. 224206 Hony Flt Lt Shiv Raj Singh s/o Late Shri Madan Mohan Singh aged about 75 years, r/o Vill: Hindupur, Tehsil: Purwa, Dist: Unnao (UP)

(c) No. 224531 Hony Flt Lt Amar Singh s/o Late Shri Pratap Bahadur Singh, aged about 73 years, r/o Gayatri Nagar, Civil Lines, Teh : Pratapgarh, Dist : Pratapgarh (UP)

(d) No. 229156 Hony Flt Lt Yash Pal Yadav s/o Shri Harpal Yadav, aged about 72 years, r/o 41/1 Vill: Bhajjapurwa, Teh : Kanpur Dist : Kanpur (UP)

(e) No. 231007 Hony Flt Lt Suresh Chandra Shukla s/o Late Shri Brij Mohan Shukla, aged about 69 years, r/o Vill : Dool, Teh : Kanpur, Dist: Kanpur (UP)

(f) No. 231358 Hony Flt Lt Ram Dutt Singh s/o Shri V Rukshpal Singh, aged about 70 years, r/o 16 B (I), Adarsh Vihar, Bypass Road The : Kanpur City Sadar, Dist : Kanpur (UP)

(g) No. 232470 Hony Flt Lt Om Prakash Shukla s/o Late Shri Jalpa Prasad Shukla, aged about 68 years, r/o 59, Block 'C' C Shyam Nagar, The: Kanpur, Dist : Kanpur (UP)

(h) No. 241828 Hony Flt Lt Ram Asray Kushwaha s/o Shri Surju Prasad Kushwaha, aged about 66 years, r/o 222 C-1 Saran Estate, Vill : Ahirwan, Teh: Kanpur Dist: Kanpur (UP)

(j) No. 253010 Hony Flt Lt Chandra Kant Bajpai s/o Late Shri Raghuber Dayal Bajpai, aged about 68 years, r/o 321-A, Mangla Vihar II, Post : New PAC Line, The : Kanpur Dist : Kanpur (UP)

(k) No. 258083 Hony Flt Lt Bachcha Lal Ram s/o Shri Ram Dayal, aged about 68 years, r/o 62-K, Gayatri Nagar, Sanigwan Road, The : Kanpur Dist : Kanpur (UP)

(l) No. 296903 Hony Flt Lt Balak Ram s/o Late Shri Ganga Prasad, aged about 64 years, r/o 331-A/3-B, Naubasta, Hamirpur Road, Teh: Kanpur Dist : Kanpur (UP)

**.....Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi – 110011
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi – 110010
3. Directorate Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010
4. PCDA (Pension), Draupadi Ghat, New Cantt, Allahabad (UP) - 211014

**.... Respondents**

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

Ld. Counsel appeared for the Respondent-Shri Shyam Singh  
Central Govt Counsel

**(2) O.A. No. 09 of 2014 No. 231276 Hony Flt Lt Ram Autar**

**Kushwaha** s/o Late Shri Ram Asre Kushwaha, aged about 70 years, r/o 35-A, Sadanand Nagar, Post : Harjinder Nagar, Kanpur (UP)- 208007

(a) No. 232892 Hony Flt Lt Bishnu Pada Saha s/o Late Shri Bijay Gobinda Saha, aged about 72 years, r/o House No. 769, Sector K, Ashiyana Colony, Teh : Lucknow Sadar, Dist : Lucknow (UP) – 226012

(b) No. 250899 Hony Flt Lt Vidya Sagar Tripathi s/o Late Shri Surya Prasad Tripathi aged about 69 years, r/o House No. 480-B, Patel Nagar, Post : Harjinder Nagar, Kanpur (UP)-208007

(c) No. 262728 Hony Flt Lt Ramesh Prasad Bajpai s/o Late Shri Garud Shankar Bajpai aged about 69 years, r/o House No. 49, Saraswati Vihar, Ganga Nagar, Post : New PAL Lines, Dist : Kanpur (UP) – 208015

(d) No. 291595 Hony Flt Lt Bhagwati Singh s/o Late Shri Raghu Nanden Singh, aged about 65 years, r/o Plot No. 8, Shivpuram, New Azad Nagar, Kanpur, Teh : Kanpur Nagar Dist : Kanur (UP) **.....Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi – 110011
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi – 110010
3. Directorate Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010
4. PCDA (Pension), Draupadi Ghat, New Cantt, Allahabad (UP) - 211014

**.... Respondents**

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

Ld. Counsel appeared for the Respondent - Shri Amit Jaiswal,  
Central Govt Counsel

**(3) O.A. No. 394 of 2012 No. 236371-B Hony Flt Lt Girish  
Chandra Rdo Tech s/o Shri (Late) Manna Lal Katiyar r/o 62/1,  
Gayatri Nagar, Sanigawan Road, Kanpur (UP) - 208021**

**.....Applicants**

Versus

1. Union of India through the Secretary, Ministry of Defence,  
New Delhi – 110011
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New  
Delhi – 110010
3. Air Officer Commanding, Air Force Record Office, Subroto  
Park, New Delhi – 110 010
4. Air Officer Commanding, Air Force Central Accounts Office,  
Subroto Park, New Delhi – 110 010
5. Principal Controller of Defence Accounts (Pension), Draupadi  
Ghat, New Cantt, Allahabad (UP) - 211014

**.... Respondents**

Ld. Counsel appeared for the Applicant - Shri V.A. Singh holding  
brief of Shri V.P. Pandey  
Advocate

Ld. Counsel appeared for the Respondent- Shri Yogesh  
Kesarwani  
Central Govt Counsel

ORDER

**“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

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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 Flight Lts before their retirement from service. The summary of necessary facts is that all the applicants were enrolled in the Indian Air Force on respective dates and they retired from Air Force on completion of their terms and conditions on different dates. They were bestowed Hony ranks 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 Flight Lts as per the recommendations made by the 6<sup>th</sup> Pay Commission with effect from 01.01.2006, notwithstanding several representations having been made by them to the Competent Authorities padded with several orders and judgments passed by the Armed Forces Tribunals, and nodded in approval by Hon’ble The Apex Court.

2. Precise submissions made on behalf of the applicants are that notwithstanding recommendations of the 6<sup>th</sup> Pay Commission for grant of pension for all Hony Flight Lts 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 6<sup>th</sup> 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 Flight Lts has been fixed @ Rs. 16145/- per month respectively w.e.f. 24.09.2012 arbitrarily. He also submitted that 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) in a similar case. 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 Flight Lts w.e.f 01.01.2006 and not w.e.f 01.07.2009 or 24.09.2012 in parity.

3. **Per contra**, the submissions of Learned Counsel for the respondents are that the applicants are Hony Flight Lts of Indian Air Force who retired prior to 01.01.2006 i.e. before implementation of the 6<sup>th</sup> Central Pay Commission recommendations. In terms of 6<sup>th</sup> Central Pay Commission recommendations, the Hony Flight Lts of Indian Air Force 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.08. The PCDA (P) Allahabad issued a most important 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 O.A. No. 9 of 2014, O.A. No. 16 of 2014 and O.A. No. 394 of 2012 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 6<sup>th</sup> 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 Flight Lts has been revised to Rs 16145/- per month w.e.f. 24 Sep.2012 as per GOI MoD Letter dated 17<sup>th</sup> Jan 13 and PCDA Circular No 501 dated 17 Jan 13. 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 Flight Lts 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 Flight Lts 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 conferred honorary rank of Flight Lts 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 similar matters 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 24.07.2013 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. In view of what has been stated above, the question involved in the petitions stands resolved wherein personnel granted Hony ranks of Flight Lts 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 Applications as aforesaid are allowed to the extent that the applicants shall be entitled to the pension of rank of Hony Flight Lts with effect from 01.01.2006. The applicants shall also be entitled to arrears for the period from 01.01.2006 to 01.09.2012. 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.

11. Let a copy of the judgment and order of date be placed on all connected Original Applications.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

Dated : February, ,2016.

MH/-