

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1

O.A. No. 208 of 2013

Thursday, this the 20th day of Jan, 2016

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

**No. 632391S Ex- AC Shyam Preet Yadav, aged about 58 years,
son of Late Shri Bhagouti Yadav, resident of Vilalge Bistara,
Post Tahar Bazidpur, Tehsil: Phoolpur Distt Azamgarh (UP)-
276141.....Applicant**

Versus

1. Union of India, Ministry of Defence, New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi - 110011
3. Air Force Records Office, Subroto Park, New Delhi-110010.
4. Joint CDA (AF) (P1), C/O AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (Pensions) Draupadi Ghat, Allahabad (UP)-211014.

...Respondents

Ld. Counsel appeared for the Applicant	-	Shri Shailendra K. Singh, Advocate
Ld. Counsel appeared for the Respondents	-	Shri D.K.Pandey, Addl Central Govt Standing Counsel

ORDER**"Per Se Hon'ble Virendra Kumar Dixit, Judicial Member"**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

"A. To issue order or directions to the respondents for correct fixation of pension of the applicant for the period from 01.07.2009 to 24.09.2012.

B. To issue order or directions to the respondents to pay the arrears of pension to the applicant for the period from 01.07.2009 to 24.09.2012 with suitable interest over it.

C. To issue order or direction to the respondents for fixation of pension with effect from 01.01.2006, in terms of CAT (PB) order dated 01 Nov 2011, if agreed by this Hon'ble Tribunal.

D. Any other relief as considered/deemed just and proper by the Hon'ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.

E. Cost of the application be awarded to the applicant"

2. Shortly stated, the facts of the case are that the Applicant was enrolled in the India Air Force as an Airman on 17.11.1973 and was discharged on 30.11.1988 in the rank of Aircraftsmen after rendering 15 years and 14 days of service.

3. We have heard Learned Counsel for the Applicant as also Learned Counsel for the Respondents. We have also gone through the records in material aspects.

4. It all began with issuance of Circular being Circular No 430 dated 10.3.2010 issued for improvement in pension to bridge the gap in pension of pre-01.01.2006 and post-01.01.2006. It was mentioned in the said circular that the revision of pension as per the above Govt Order is to take effect from 01.07.2009 and payment is to be made in a time bound manner at the earliest in any case within 2 to 3 months.

It was postulated that the pension is to be revised of all personnel without calling or waiting for any application from the affected pensioners. It was further postulated that no arrears on account of revision of pension will be admissible for the period prior to 01.07.2009. It is this postulate in the circular aforesaid which aggrieved the Applicant. Pursuant thereto, the Applicant preferred a representation which was forwarded to PCDA (P) for clarification. Be that as it may, on 17.1.2013 the respondent no.5 issued another circular being Circular No 501 dated 17.1.2013 which circular, it is stated by the Applicant vide his averments made in para 4.9 of the Original Application, redressed the grievance of the Applicant with the only exception that fixation of pension has been made effective w.e.f. 24.09.2012 which according to the Applicant was arbitrary.

5. It would thus transpire that the only grievance that survives for consideration is that the arrears of pension so re-fixed in Circular No. 501 dated 17.01.2013 should be made applicable w.e.f 01.01.2006 in terms of the judgments and orders rendered on OA No. 655, 3079, 306 and 507 of 2010 dated Nov 1, 2011, which were nodded in approval by the decision of the Delhi High Court rendered in Writ Petition no 1535 of 2012 **Union of India and another vs Central Govt. SAG & Ors** and other allied petitions.

6. The Learned Counsel for the Respondents, on the other hand, contended that the Applicant was sanctioned service pension at the rate of 375/- per month w.e.f 01.12.1988 attended with further contention that the original service pension sanctioned to the Applicant was correct as per the existing policy. He also contended that the Applicant is entitled for revised pension @ Rs 3883.- per month w.e.f 01.07.2009. He further contended that as per Table No.17 annexed to

circular no 501 dated 17.01.2013, the Applicant is entitled for revised basic pension @ Rs 5102/- w.e.f 24.09.2012. He also contended that the revision of service pension for Armed Forces Personnel is carried out by the Government and the office of the PCDA (P) Allahabad issues circular for revision of pension as per the recommendation. He clarified that the PCDA (P) Allahabad has issued circular No 430 dated 10.3.2010 in accordance with the Government of India, Ministry of Defence Letter dated 08.03.2010. Lastly, he submitted that the O.A deserves to be dismissed.

7. We have gone through the relevant portion of the Full Bench judgment of the Central Administrative Tribunal. From a scrutiny of the judgment of the Central Administrative Tribunal, it would transpire that the Full Bench of the Tribunal have thoroughly gone through the pros and cons of the vexed points and ultimately converged to the conclusions that the petitions succeed and mandamus is issued to the respondents to re-fix the pension of the Petitioners with effect from 01.01.2006. The Applicants before the Full Bench of the Tribunal were pre 2006 retirees and had claimed pension at par with post-2006 retirees based on the recommendations of the VI Central Pay Commission which became effective from 1.1.2006. The grievance set out by the Applicants in the OAs were that the employees who retired prior to 1.1.2006 and those who retired thereafter form one class of pensioners. The relevant portion of the said judgment 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."

8. What is decisive in the judgment of the Full Bench decision is the observation made in para 3 which is to the effect that "In short, the Government of India has tacitly admitted that it was in the wrong and that the Tribunal is correct." Paras 2 and 3 being relevant are excerpted below.

"2. The only issue therefore which survives is, with respect to paragraph 9, of the office memorandum afore noted which makes it applicable with effect from September 24,2012 and thereby denying arrears to be paid to the pensioners with effect from January 01,2008.

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

9. The Learned counsel for the Applicant also referred to the decision of the Delhi High Court in Writ Petition (C) 1535 of 2012, **Union of India and another Vs Central Govt Sag and Ors** and allied petitions where the Full Bench decision of Tribunal was taken in challenge. The Delhi High Court relying on the decision of a Division Bench of the Punjab & Haryana High Court deciding W.P. (c) No 19641 of 2009 R.K.Aggarwal & Ors Vs State of Haryana & Ors, observed as under:

"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."*

10. 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) 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."

11. We have given our anxious consideration to the submissions made across the bar and also the decisions cited above and we are in complete agreement with the view taken by the Full Bench of the

Tribunal as also the decisions rendered by the Delhi High Court as well as by the Punjab and Haryana High Court. It would suffice to say that since vexed points have already been dealt with at considerable length by the Full Bench of the Tribunal as well as by the Delhi High Court as also by the Punjab and Haryana High Court referred to above, we converge to the view that the Applicant is entitled to payment of arrears w.e.f 01.01.2006 in terms of fixation of pension as contained in Circular No 501 dated 17.01.2013.

12. In the above conspectus, the Original Application is allowed in terms of relief No (C) and it is ordered that the revised pension as contained in Circular No. 501 dated 17.01.2013 would be payable to the Applicant with effect from 01.01.2006. The Respondents are directed to pay arrears of pension with effect from 01.01.2006 within three months. In case the arrears are not paid within a period of three months, it will carry interest @9%. There shall be no order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Date: Jan 2016

MH/-