

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 596 of 2017**Tuesday, this the 7th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Maj. Pushkar Bharti (Retd), IC-17437K
 S/o Sri Ram Das Bharti
 Permanent R/o Vill – Pakari Chhpar Pathkauli, PO – Pathar Deva,
 P/S – Tarkulwa, Tehsil – Sadar, Distt – Deoria (UP) – 274404
 Presently residing at C/o Col. SM Bharti,
 Flat No. 104, IRS Apartments, Prag Narayan Road,
 Lucknow (UP) – 226001

..... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Addl Dte Gen of Manpower (Policy & Planning/MP 5(b), Adjutant General's Branch, Integrated HQ of MoD (Army), Wing No. 3, Ground Floor, West Block-III, R.K. Puram, New Delhi-110066.
3. PCDA (O), Golibar Maidan, Pune-441001.
4. PCDA (P), Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,
Central Govt Counsel.**ORDER**

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

- “(i) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to revise the pension of the applicant

to the rank of Lt. Col. w.e.f. 06.08.1988 with all consequential benefits and provide the interest on the aforesaid delayed amount of pension with 18% p.a. since due date to actual date of payment.

- (ii) That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs. 2,20,000/- (Rs. two lac twenty thousand) to the applicant against the opposite parties.
- (iii) Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents."

2. Brief facts of the case are that applicant was enrolled in the Army on 24.07.1958 as Sepoy and served for 8 years and 154 days and thereafter, applicant was commissioned in the Army on 31.12.1996 (PRC) and retired prematurely from service on 06.08.1988 (AN) after rendering 21 years, 07 months and 11 days of commissioned service in the rank of Major. After retirement, applicant by means of present O.A. has prayed for grant of pension in the rank of Lt Col w.e.f. 06.08.1988 quoting MoD letter dated 24.09.2012 which has been denied by the respondents as per rules. The present Original Application has been filed by the applicant for grant of pension of the rank of Lt Col.

3. Learned counsel for the applicant submitted that applicant retired from service after rendering about 30 years of service in the rank of Major and getting service pension accordingly. As per Govt. of India, Ministry of Defence letter dated 03.02.2016, 17.01.2013 and 24.09.2012, officers having substantive rank of Major before 01.01.1996 will be granted the scale of Lt Col on completion of 21

years of commissioned service but respondents are not paying the same to the applicant. On the directions issued by Ministry of Defence, PCDA (P) has issued circulars dated 04.02.2016, 17.01.2013 and 02.01.2013 but not complying with the said circulars in an arbitrarily manner. The applicant sent several applications and representations from the year 2013 to 2016 to the respondents to revise pension for the post of Lt Col w.e.f. 06.08.1988 but the same has not been granted to the applicant till date. It is violation of Article 14 and 16 of the Constitution of India and pleaded that applicant be granted revised pension of the rank of Lt Col.

4. Learned counsel for the applicant placed reliance on the judgment of AFT ((PB), New Delhi in OA No. 256 of 2011, **Maj K.G. Thomas vs. Union of India & Ors**, decided on 19.12.2012. He submitted that as per PCDA (P) Circular No. 14 dated 02.01.2013, wherein as a onetime measure to those who become substantive Major before 01.01.1996 were granted scale of Lt Col on completion of 21 years of commissioned service i.e. in their 22nd year with rank pay of Major. The applicant is also fulfilling the entire criteria for the same but the respondents are not providing the pension for the post of Lt Col. He pleaded for grant of pension to the applicant for the post of Lt Col.

5. On the other hand, learned counsel for the respondents submitted that applicant has retired from service on 06.08.1988 in the rank of Major and praying for pension of the rank of Lt Col, as per MoD letter dated 24.09.2012 which is not applicable to him. Para 2 of said letter stipulates "The undersigned is directed to convey that post

1.1.1996 but pre-1.1.2006 retiree substantive Majors and equivalent ranks in Navy and Air Force and completed 21 years of commissioned service who were drawing pay scale of Lt Col or equivalent officers in Navy and Air Force at the time of their retirement in terms of provisions contained in para 5(a)(iii) and para 5(a)(iv) of SAI 2/S/1998 or corresponding instructions for Navy and Air Force, shall be eligible for minimum guaranteed pension/family pension with reference to pay band – 4 (i.e. Rs 37400- Rs. 67000) with grade pay of Rs. 8000/- and MSP of Rs. 6000/- under this Ministry's letter dated 21.05.2009 and also under this Ministry letter No. 17(4)/2008(i)/D (Pen/Legal)/Vol-V dated 15.02.2011". It is, thus, clear that for grant of pension of Lt Col rank, the applicant must be in receipt of pay scale of Lt Col and should have retired between 01.01.1996 to 31.12.2005. As such, the applicant is not governed as per letter dated 24.09.2012 and therefore, he is not entitled for pension of Lt Col. He pleaded for dismissal of O.A. being devoid of merits.

6. Heard learned counsel for the parties and perused the material on record.

7. We have perused the records and analysed the submissions of both the counsels and find that applicant has retired in the rank of Major and was not in receipt of pay scale of Lt Col, therefore, applicant's prayer is not covered as per MoD letter dated 24.09.2012. Hence, his prayer has no force and therefore, applicant is not entitled for pension of the rank of Lt Col.

8. It is also made clear that applicant relied upon the case of **Maj KG Thomas** (supra) wherein AFT (PB), New Delhi allowed the application by granting pension in the rank of Lt Col (TS) restricting arrears for three years. Review Application filed by the Deptt was also dismissed by AFT (PB), New Delhi vide order dated 09.10.2013. The case was subsequently dismissed by the Hon'ble Supreme Court vide order dated 06.02.2015. The Hon'ble Supreme Court while dismissing Civil Appeal has clearly ordered that "*It is made clear that 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 out 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.*" Thus, the applicant cannot take the benefit of the judgment of **Maj KG Thomas** (supra) case, since facts of the present case are not similar in nature.

9. In view of above, Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated: 7th Sept., 2021

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