

Reserved

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No 240 OF 2014**

Tuesday, this the 29<sup>th</sup> day of January, 2019

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Mahender Singh No. JC-182289M, (Ex Sub DVR MT) son of Sri Namver Singh, resident of House No. 63A/153A, Defence Colony, Prataap Pura, Sadar Bazar, Agra Cantt, UP-282001.

.....Applicant

Ld. Counsel for the Applicant: **Shri V.K.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. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP) 211014.
3. The Officer-in-Charge, The Records Signals, Jabalpur (MP) PIN 908770, c/o 56 APO.

...Respondents

Ld. Counsel for the Respondents: **Dr Shailendra Sharma Atal,**  
Central Government Counsel

**(ORDER)**

**Per Hon'ble Mr Justice SVS Rathore, Member (J)**

1. By means of the instant O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- (i) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to revise the service pension with arrears w.e.f. 01.01.1996 in terms of re-grouping of certain trades i.e. Subedar/JCO, Group 'Y' and release the entitled pension to the applicant as Subedar (Group 'Y') within a period of one month from the date of orders of*

*this Hon'ble Tribunal, failing which a simple interest @ 18% p.a. from the date of the order till the date of actual and final payment of the amount due is paid, be also granted to the applicant and against the respondents.*

- (ii) *Cost of application, counsel fees and ancillary expenses to the tune of Rs. 10,000/- be awarded to the applicant against the respondents.*
- (iii) *Any other beneficial relief which the Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.*

2. Facts necessary for disposal of the present O.A. couched in brevity are that the applicant was enrolled in the Army on 21.08.1968 and after serving the Indian Army for a period of about 28 years and odd, was discharged from service on 31.08.1996 under Rule 13 (3) III (i) of the Army Rules, 1954 after completing the terms of engagement. During his service tenure, the character of the applicant was assessed as exemplary. The claim of the applicant is that he had sent several representations to the respondents from time to time, but no action was taken by the respondents to provide service pension of the rank of Subedar with effect from 01.01.1996 to which the applicant was entitled in view of the recommendations of the V Central Pay Commission. Admittedly, the applicant is getting said service pension w.e.f. 31.10.1996, therefore, at present the dispute in the present case is only with regard to entitlement of the revised pension from 01.01.1996 to 31.10.1996.

3. In the counter affidavit, it has been pleaded by the respondents that the applicant (Driver MT) was discharged after completion of his term of engagement prior to 10<sup>th</sup> October 1997 and was granted service pension as applicable to him in his group i.e. Group 'E' and rank at the time of retirement. It is further averred that the applicant is claiming revised rate of service pension in Group 'Y' as applicable to those who have been discharged from service in Group 'Y' on or after 10<sup>th</sup> October 1997 with effect of 01.06.2009 which the applicant was not entitled being in

Group 'E' of Subedar rank at the time of retirement. After rationalization of trades, the case of the applicant was taken up with the PCDA (P) Allahabad vide Signals Records Letter No.JC-192289/SP/NER/T-T dated 18<sup>th</sup> January 2013. Subsequently, the PCDA (P) Allahabad issued Circular No. 517 dated 8<sup>th</sup> November 2013 advising all Pension Disbursing Authorities to revise service pension of Driver MT Category from Group 'E' to 'Y'. Accordingly, case of the applicant was again taken up with the Central Pension Processing Centre. Based on trade rationalization, the existing trade groups/pay group structure of Junior Commissioned Officers, Non Commissioned Officers and other ranks including Defence Security Corps, Army Postal Service and Territorial Army were re-categorized keeping in view their entry educational qualification in relation to trade, combat and leadership skills. In view of Defence Letter dated 21<sup>st</sup> November 1997, JCOs/ORs who were in service on 10<sup>th</sup> October 1997 were placed in the new pay groups 'X', 'Y' and 'Z'. The revised pay scales are restricted to these three groups are applicable to those JCOs/ORs who were in service on 10<sup>th</sup> October 1997. Since the applicant was discharged prior to 10<sup>th</sup> October 1997, as such, he is not entitled to the revised pension as prayed for by him.

4. Learned counsel for the applicant has argued that the case of the applicant is fully covered by the decision of the Armed Forces Tribunal, Regional Bench, Chandigarh in O.A. No. 389 of 2012 *Parkash Chand & ors vs. Union of India & ors* decided on 15.12.2014 as well as by the decision of the Hon'ble Punjab & Haryana High Court delivered in Civil Writ Petition No. 15400 of 2016 *Jai Narayan Jakhar vs. Union of India & ors* decided on 14.01.2008 which was upheld by Hon'ble Apex Court vide judgment and order dated 21.11.2008 rendered in SLP (Civil) No.

15128 of 2008, *Union of India vs. Jai Narayan Jakhan*. The claim of the applicant is that the three groups i.e Group 'X', 'Y' and 'Z' were amalgamated and, therefore, the applicant was entitled to the benefit of the same with effect from 01.01.1996 and he has wrongly been denied said benefit by the respondents.

5. No doubt, the respondents have denied the claim of the applicant, on the ground that applicant was discharged before the cut off date i.e. 10.10.1997 but learned counsel for the respondents could not bring to our notice any case law wherein a contrary view has been taken on the issue involved in the instant case. A perusal of averments made in the counter affidavit show that the only ground for denial of the benefit as claimed by the applicant was that he retired prior to 10<sup>th</sup> October 1997, i.e. on 31<sup>st</sup> August, 1996. This point has been considered by the Regional Bench of Armed Forces Tribunal, Chandigarh in the case of *Parkash Chand & ors* (supra) wherein the Regional Bench, Chandigarh has also quoted relevant paras of the judgment of the Punjab & Haryana High Court in the case of *Jai Narain Jakhar* (supra). Paras 8, 9 and 10 of decision in the case of *Parkash Chand* (supra), relevant to the controversy before us, may be reproduced as under:

8. *The only ground on which the benefit of para 7.3 of Government of India, Ministry of Defence letter No.1(3) 197/D(Pay and Services) dated 21.11.1997 has been denied to the petitioners is that the petitioners retired before 10.10.1997 i.e. on 30.9.1997, 1.9.1997, 1.1.1997, 31.1.1997, 31.7.1996, 01.11.1996, 30.09.1996 and 31.08.1996 respectively. In this connection the judgment of Punjab and Haryana High Court in CWP No. 15400 of 2006 (Jai Narain Jakhar vs Union of India and others) dated 14-01-2008 may be referred in which the following has been observed:*

*“The petitioner has claimed a writ of mandamus directing the respondents to release the retiral benefits of the petitioner in the pay scale of 5620-140-8140/-. The petitioner was appointed on 07-09-1974 as Navy Boy. He attained the age of superannuation on 31-05-1996 as Chief Petty Officer. On the date of superannuation his pay scale was 4650-125-6900/-. The Department found that there is anomaly in the implementation of the recommendations of the 5th Pay Commission and*

consequently vide circular Annexure P1, Chief Petty Officers were given pay scale of 5620-140-8140/-. However, it was pointed out that such revised pay scales shall be given effect from 10-10-1997. Subsequently, on 16-12-1997 vide Annexure P2, it was pointed out that the subsequent enhancement in scales as approved by the Government of India, Ministry of Defence on 21-11-1997 will be effective from 10-10-1997. The provisions of such instructions are applied to all the categories of personnel, who were on the effective strength of the Navy as on 01-01-1996 or who join the Navy service thereafter. The benefit of such revised pay scale on account of removal of anomaly was not extended to the petitioner for the reason that he has attained the age of superannuation on 31-12-1996 i.e. prior to issuance of circular Annexures P1 and P2 as the said anomaly was sought to be removed effective from 10-10-1997. It is contended by the petitioner that once the anomaly in the pay revision is sought to be removed, it shall be applicable to the petitioner, who has retired after the implementation of recommendation of the 5th Pay Commission w.e.f. 01-01-1996 and thereafter the artificial date fixed as 10-10-1997 is wholly unjustified and irrational. In reply, it has been pointed out that the implementation of 5th Pay Commission recommendation the pay scales were introduced in two phases i.e. firstly, from 01-01-1996 to 09-10-1997 and secondly from 10-10-1997 onwards. The introduction of second revision of pay scales w.e.f. 10-10-1997 was an outcome of trade rationalization in the Armed Forces based on the recommendations of the report of Ajit Kumar Committee constituted by the Ministry of Defence. Since the pay scales were revised in two phases and the petitioner was not in service as on 10-10-1997, the petitioner is not entitled to revision in retiral benefits.

Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, it was found by the respondents that there is anomaly in the Pay Scales. Once the anomaly in the Pay Scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 01-01-1996. There is no explanation as to why the said anomaly is sought to be removed from 10-10-1997. In the absence of any explanation of removal of anomaly from 10-10-1997, we do not find the action of the respondents fixing such date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale. In view of the above, we allow the present writ petition and direct the respondents to recalculate the amount of pension on the basis of revised pay scale of 5620-140-8140/- w.e.f. 01-01-1996. The exercise be completed within a period of three months from today. The writ petition stands disposed of in above terms.

(HEMANT GUPTA) JUDGE  
(MOHINDER PAL ) JUDGE  
(January 14, 2008)''

9. The above decision dated 14-01-2008 of Punjab and Haryana High Court rendered in **CWP No. 15400 of 2006 (Jai Narain Jakhar vs Union of India and others)** was affirmed by the Hon'ble Apex Court vide judgment dated 21-11-2008 rendered in **SLP (Civil) No. 15128 of 2008 (Union of India vs. Jai Narayan Jakhar)**.

*10. The petition is disposed of with a direction to the respondents to allow all the benefits of para 7.3 to the petitioners as these benefits are allowed to those PBORs who were discharged on or after 10.10.1997. The petitioners will be entitled to all these benefits w.e.f. 01.01.1996.”*

6. On behalf of the respondents no case law wherein a contrary view has been taken could be brought to our notice. Hence we are of considered opinion that the O.A. deserves to be allowed as the applicant is entitled to the benefit of the case law relied upon by him.

7. O.A. is accordingly **allowed**. The applicant is entitled to the benefits of revised pay and all associated benefits with effect from 01.01.1996. The respondents are directed to calculate the arrears and pay the amount of arrears to the applicant within four months from the date of presentation of a certified copy of this order failing which the applicant shall be entitled to an interest @ 9% per annum from the date it became due till the date of actual payment.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : January 29, 2019.  
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