

RESERVED

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 590 of 2017

Sqn Ldr (Retd) DH Prasad & Ors
 By Legal Practitioner for the Applicants

Applicants

Versus

Union of India & Ors
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>13.09.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Judgment pronounced. O. A. No. 590 of 2017 is dismissed. For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A) <i>rathore</i></p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p>

AFR
RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 590 of 2017

Tuesday, this the 13th day of September, 2022

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”

Sqn Ldr DH Prasad, BC-20402T, Adm (Retd) S/o Sri Bhagwan,
R/o-A/8, Sainik Kunj, Nanda Nagar, P/O Kunaraghat, Gorakhpur
(UP)-273008 and Ors.

..... Applicants

Ld. Counsel for the : **Shri V.K. Pandey**, Advocate.
Applicant **Shri Girish Tiwari**, 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. Chief of Air Staff, Air Head Quarter (Vayu Bhawan) Rafi Marg, New Delhi-110106.
3. Deputy Controller of Defence Accounts (Air Force), Subrato Park, New Delhi-110010.
4. Joint CDA (Air Force), Subrato Park, New Delhi-110010.
5. Director of PP&R, Air Headquarters, West Block-60, RK Puram, New Delhi-110066.
6. PCDA (O), Golibar Maidan, Pune-441001.
7. PCDA (P), Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri Namit Sharma**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. The instant Original Application has been filed 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 quash the impugned Para-3 & 6 of the policy letter dated 07.11.2015, bearing No.12 (1)/2014/D (Pen/Pol)-Part-II, Para -3 (8) of the Circular No. 557, dated 17.03.2016 & Circular No. 555, table No. 1 dated 04.02.2016 issued by opposite party No. 1 & 4 as contained in annexure No. 1, 2 & 3 to this original application in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to revise the pension of the applicants as per the length of service and PDAs may kindly be directed to revise the pension and credit the arrears to the applicants accordingly with all consequential benefits and, provide the interest on the aforesaid amount of pension with 18% p.a. since due date to actual date of payment.*
- (iii) *That this Hon'ble Tribunal may kindly be pleased to award the cost Rs. 20,20,000/- (Rs. Twenty Lakhs & Twenty Thousand) to the applicants against the opposite parties.*
- (iv) *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 No 1 (Sqn Ldr DH Prasad) was commissioned in the Indian Air Force on 09.02.1990 in Administrative Branch. He retired from service on 31.12.2003 after completing 38 years, 10 months and 11 days service including 24 years, 11 months and 24 days pre-commissioned service. He is in receipt of pension of Sqn Ldr. Husband of applicant No 2 (Smt Shubhawati Dubey W/o Late Sqn Ldr HC Dubey) was commissioned in the Indian Air Force on 06.10.1984 in Administrative Branch. He retired from service on 31.01.2002 after completing 39 years, 03 months and 30 days service including 21 years, 11 months and 24 days pre-commissioned service. He is in receipt of pension of Sqn Ldr. Applicant No 3 (Sqn Ldr DN Gupta) was commissioned in the Indian Air Force on 16.06.1984 in Administrative Branch. He retired from service on 31.07.2001 after completing 39 years, 04 months and 19 days service including 22 years, 01 month and 29 days pre-commissioned service. He is in receipt of pension of Sqn Ldr. Applicant No 4 (Sqn Ldr RP Yadav) was commissioned in the Indian Air Force on 06.10.1984 in Administrative Branch. He retired from service on 31.01.1997 after completing 35 years, 01 month and 13 days service including 22 years, 09 months and 23 days pre-commissioned service. He is in receipt of pension of Sqn Ldr. Grievance of the applicants is that they have been deprived for grant of OROP benefits in the next rank of Sqn Ldr as are applicable to regular commissioned officers of the IAF with same length of service. In regard to this, prayer has been made to quash Paras 3 and 6 of Govt of India MoD letter dated 07.11.2015, circular No 555 dated 04.02.2016

and circular No 557 dated 17.03.2016 and its tables issued on the basis of letter dated 03.02.2016.

3. Learned counsel for the applicants submitted that the applicants served in the IAF for more than 30 years and after retirement they were granted their due service benefits as per length of service except pension. He further submitted that in regard to this several representations were submitted to the authorities to abolish the wrong fixation of pension but no heed was given despite representing time and again. It was further submitted that while implementing One Rank One Pension the Govt of India did not consider entire service rendered by the applicants for the purpose of pension and curtailed services of applicants without any reasonable ground which is violative of fundamental rights as guaranteed by our Constitution. Further submission of learned counsel for the applicants is that Short Service Commissioned (SSC) and Emergency Commissioned (EC) officers of Indian Army who have rendered only 14 years service on the same post and who are juniors to the applicants are getting more pension than the applicants which is discriminatory and unlawful. It was further submitted that the respondents have stagnated service pension of applicants and bunching made without any increase from 22 to 33 years, whereas all other commissioned ranks were granted increase proportionately to their qualifying service up to 33 years but in the instant case bunching of pay is a practice of pay commissions, if adopted in OROP, the purpose of equal rank and equal length of service, equal pension is defeated and applicants are suffering from the loss of very huge amount.

4. Learned counsel for the applicants further argued that respondents ought to restore the reduced pension to full qualifying service by allowing 3% increase for each completed years from 22 years to 33 years to avoid incongruity between the ranks. It was further submitted that pension is based on length of service but in case of the applicants their full length of service has not been taken into consideration while granting pension, instead the respondents have ignored the service rendered by the applicants in granting the same without any prescribed procedure which is not sustainable in the eyes of law. Further submission of learned counsel for the applicants is that pension is not a bounty as held in ***DS Nakara and Ors vs UOI & Ors***, 1983 1 SCC 305. It was further submitted that this aspect has been clearly held by the Hon'ble Punjab and Haryana High Court in ***KR Erry vs State of Punjab***, ILR 1967 P & H 278 in which principles relating to pension have been laid down but the same principles as applicable to the applicants have been ignored and respondents are denying pension considering full length of service. Thus, the respondents have adopted the lowest slab of service pension in the instant case and arbitrarily reduced the length of service for the purpose of pension and former service has not been counted. It was further submitted that with the aforesaid formula applicants with longer qualifying service are getting less pension than the persons having less qualifying service. The respondents ought to proportionately increase the pension of the applicants as per their length of actual qualifying service from 22 years to 33 years on the basis of same ground adopted in case of other commissioned officers. He submitted that Article 14 of the Constitution

ensures equality before law and equal protection of law to all citizens of India, therefore there should not be any injustice denying OROP benefits to the applicants. It was further submitted that in ***Maneka Gandhi vs UOI & Ors***, AIR 1978 SC 597 it was opined that depriving a person of his legal right passed without affording him an opportunity of being heard suffers from vice of arbitrariness.

5. Learned counsel for the applicant has further submitted that there is no question of restricting the pension to any period of time because if the service pension is restricted after arbitrarily decided time period, it will again create a separate class within the class under the time framed, and will bring about discrimination within a class, which is not sustainable in the eyes of law as settled by the Hon'ble Supreme Court and also violative of Article 14 of the Constitution of India. It was submitted that the respondents are bound to revise the pension and pensionary benefits as per the length of service and remove the anomaly in the rank concerned, otherwise the applicants will suffer irreparable loss and injury which cannot be compensated in any manner. It was also stated that since applicants are drawing less pension than their juniors, the Hon'ble Tribunal ought to take cognizance of it and balance the same keeping in view of length of service of the applicants.

6. Per contra, learned counsel for the respondents submitted that applicants main pleading is to quash paras 3 and 6 of GOI, MoD letter dated 07.11.2015 and table 1 of Circular No 555 dated 04.02.2016. He further submitted that all the officers i.e. applicants are Branch Commissioned Officers granted commission from ranks and only a part

of their service is commissioned service. The OROP table was prepared on the basis of data of officers retired in the year 2013 without former service i.e. on the basis of commissioned service only. It was further submitted that if these applicants had been granted direct commission, they would not have retired from the rank of Major or equivalent but from higher rank. He further submitted that salient features of OROP scheme have been incorporated in para 3 & 4 of letter dated 07.11.2015 issued on OROP wherein it has been clearly mentioned that pension of the past pensioners will be re-fixed on the basis of the average of minimum and maximum pension of personnel retired in 2013 in the same rank and category with same length of service.

7. Learned counsel for the respondents further submitted that as confirmed by office of the PCDA (Navy), the pension of officers in EC/SSC category discharged with qualifying service of 14 years is Rs 26,385/- and it was shown erroneously in the rank of Lt Cdr instead of Cdr. The same has been reviewed and effected tables of EC/SSC officers have been amended accordingly. On exclusion of data, new admissible pension at 14 years onwards to major of EC/SSC is Rs 20,155/-, hence pension of EC/SSC officers at 14 years will be less than that admissible to the applicants in the instant case. His further submission is that to increase Major's pension proportionately (stepping up of pension by 3% compounded for each completed year qualifying service) as per the length of qualifying service from 22 years to 33 years as claimed by the applicant is not covered under OROP policy.

8. Further argument advanced by learned counsel for the respondents is that petitioners are not direct commissioned officers but they got commission during the course of their service from ranks, therefore, they cannot be equated with those who are direct commissioned officers. It was further submitted that the OROP has been held valid by the Hon'ble Supreme Court vide judgment dated 16.03.2022 wherein paras 3 and 6 of policy dated 07.11.2015 have not been declared ultra vires. His further submission is that the petitioners have not put in 13 years service in the rank of Major or equivalent and as per AVSC report there should be 13 years service to claim pension of the rank of Lt Col or equivalent. It was also contended that it has been mentioned in para 2 of GOI, MoD letter dated 07.11.2015 that uniform pension is to be paid to the Defence Forces personnel retiring in the same rank with same length of service, regardless of their date of retirement, which implies bridging the gap between the rates of pension of present and past pensioners at periodic intervals. The salient features of OROP scheme has been incorporated in para 3 and 4 of GOI, MoD letter dated 07.11.2015 issued on OROP wherein it has been clearly mentioned that pension of the past pensioners will be re-fixed on the basis of the average of minimum and maximum pension of personnel retired in 2013 in the same rank and category with same length of service. Accordingly, different tables have been appended in GOI, MoD letter dated 03.02.2016 based on which circular No 555 dated 04.02.2016 has been issued accordingly. The pension of higher rank has been protected with that of lower rank for each qualifying service i.e. where the rate of pension of lower rank was higher than the rate of

pension of higher rank at same qualifying service under the same category, the pension of higher rank has been stepped up to the level of pension of lower rank with same qualifying service. Where data for any particular rank and category was not available, protection in pension has been allowed with reference to the immediate lower rank under the same category. Similarly the pension at higher qualifying service has been protected with lesser qualifying service in the same rank and category wherein live data was not available for higher qualifying service or found less than the lesser qualifying service. The pension for qualifying service of 22.5 years to 33 years and above has been protected with the pension admissible for available lower qualifying service of 22 years in the rank of Major or equivalent. Thus, the qualifying service of the applicants has not been reduced/ignored/curtailed for the purpose of pension as claimed by the applicant. Despite having even more than 30 years of service they in the ibid rank are entitled for revision of pension @ 23,815/- p.m. w.e.f. 01.07.2014 on the basis of table 1 of GOI, MoD letter dated 03.02.2016 as there is no change of pension in the rank of Major or equivalent for qualifying service of 22 years to 33 years and above. He pleaded for dismissal of O.A. on the ground that no petitioner has served in the rank of Major or equivalent till completion of 13 years of commissioned service.

9. Heard Shri VK Pandey, learned counsel for the applicants and Ms Appoli Srivastava, learned counsel for the respondents and perused the material placed on record.

10. Petitioners in this O.A. were granted Branch Commission from ranks and approx all the petitioners served from 35 to 39 years of service. The issue involved in the present case has been clarified by the PCDA (P) vide letter dated 01.08.2016 that retired substantive Majors and equivalent ranks in Navy and Air Force who have completed 21 years of commissioned service and were drawing pay scale of Lt Col or equivalent officer 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 Special Army Instruction 2/S/98 or corresponding Instruction for Navy and Air Force have been allowed minimum guaranteed pension/family pension with reference to pay band 4 with grade pay of Rs 8,000/- and MSP of Rs 6,000/- as per GOI MoD letter dated 24.09.2012 under VIth CPC revision. Previously, as per Army Order 56 of 2001 and corresponding rules for Navy and Air Force there was a provision for counting of pre-commissioned service in the ranks of the Armed Forces and civil department of Govt of India towards pension of permanent commissioned officers. Prior to 01.07.1986 only one half of such pre-commissioned service was being counted for pension. Later, the issue of counting pre-commissioned service was revised by the 4th CPPC and Govt of India issued orders for counting of full pre-commissioned service on or after 01.01.1986, vide letter dated 30.10.1987. This denotes that for the purpose of computing gratuity, encashment of leave, commutation of pension etc, their full length of service shall be counted and in the instant case for the aforesaid purpose it was counted at the time when they superannuated. This does not mean that the petitioners

would be eligible for pension for the rank of Lt Col or equivalent as none of them was in service for 13 years after getting commission.

11. OROP is a system of paying uniform pension to Armed Forces servicemen retiring at the same rank and with the same years of service, irrespective of the date of retirement. The pension of a retired serviceman is calculated as a proportion of their last drawn salary. The Government revises and typically increases salaries periodically. This meant that servicemen who retired earlier received a lower pension than those who retired later. To address this disparity the Govt of India has introduced OROP so that all men with same rank and length of service get equal pension.

12. Under 6th CPC, the rank of Lt Col or equivalent in the Navy and Air Force was initially placed in Pay Band III and due to this there was not much gap in pay/pension between the rank of Major and Lt Col, and subsequently, the Government placed the Lt Col and equivalent ranks in Navy and Air Force in pay band IV with effect from 01.01.2006. Consequently, the gap in pay as well as pension of the rank of Major and Lt Col widened. 6th CPC has prescribed a provision for minimum guaranteed pension/family pension for all pre 2006 Armed Force pensioners/family pensioners as the revised pension in no case be lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised scale from which the pensioner/deceased Armed Force Personnel had retired/discharged/died including Military Service Pay (MSP). Keeping this in view, Ministry of Defence letter dated 24.9.2012 was issued conveying that post-1.1.1996 but pre 1.1.2006 retired substantive Majors and

equivalent ranks in Navy and Air Force who have completed 21 years of commissioned service and 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 Special Army Instructions 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 - IV (i.e. Rs. 37400 - Rs. 67000) with Grade Pay of Rs. 8,000/- and MSP of Rs. 6,000/-. MoD vide letter dated 21.12.2004 liberalized the promotion scheme and thereby introduced the scheme of automatic promotion to the rank of Lt Col and equivalent ranks in Navy & Air Force on completion of 13 years of service. This provision is applicable from 16.12.2004. Those who retired prior to the introduction of the scheme were not entitled to claim the benefit as the scheme was introduced prospectively and had no retrospective application. Further, provision contained in para 5(a)(iii) and para 5(a)(iv) of SAI 2/S/1998 or corresponding instruction for Navy & Air Force, as a onetime measure, pay scale of Lt Col or equivalent was granted to substantive Major and equivalent ranks in Navy and Air Force on completion of 21 years commissioned service, are also not applicable to them as they had retired prior to 01.01.1996. They cannot be equated with Lt Col and substantive Major of post 1.1.1996 who were granted the pay scale of Lt Col and were granted scale of pay in Pay Band IV after 6th CPC. Consequently, the gap between pension of rank of Major and equivalent ranks in Navy and Air Force vis-à-vis the pension of Lt Col and equivalent ranks in Navy and Air Force widened. The wide gap in pay/pension between Major and Lt Col had already

been reduced after the issue of MoD letter dated 3.09.2015. The proposal to extend the benefits of the scale of Lt Col or equivalent to Pre-1996 Majors or equivalent was not agreed to. Further, Government order dated 21.11.1997 granted the benefit of pay scale of Lt Col or equivalent to those who became substantive Majors or equivalent before 1st January 1996, upon completion of 21 years of Commissioned service.

13. In the instant case the petitioners were not granted pay scale of a Lt Col or equivalent as they did not complete 13 years commissioned service in that rank. However, they claim that since they have completed more than 30 years service they ought to be granted revised service pension equivalent to the rank of a Lt Col. GOI MoD letter dated 07.11.2017 specifies that uniform pension to be paid to the defence forces personnel retiring in the same rank with same length of service regardless of their date of retirement, which implies bridging the gap between the rate of present and past pensioners at periodic intervals. The salient features of OROP scheme have been incorporated in para 3 and 4 of GOI, MoD letter dated 07.11.2015 wherein it has been clearly mentioned that pension of the past pensioners will be re-fixed on the basis of the average of minimum and maximum pension of personnel retired in 2013 in the same rank and category with same length of service. Accordingly, different tables have been appended in GOI, MoD letter dated 03.02.2016 based on which circular No 555 of 04.02.2016 was issued. The pension of higher rank has been protected with that of lower rank for each qualifying service i.e. where the rate of pension of lower rank was higher than the rate of

pension of higher rank at some qualifying service under the same category, the pension of higher rank has been stepped up to the level of pension of lower rank with same qualifying service. Where data for any particular rank and category was not available at all, protection in pension has been allowed with reference to the immediate lower rank under the same category. Similarly, the pension at higher qualifying service has been protected with lesser qualifying service in the same rank and category wherein live data is not available for higher qualifying service or found less than the lesser qualifying service.

14. The average pension for qualifying service of 22 years in the rank of Major or equivalent has been calculated as Rs 23,815/- p.m. from pension of 2013 retirees. Thereafter, there was no data available in 2013 in the rank of Major or equivalent for qualifying service of 22.5 years to 33 years and above. The pension for qualifying service of 22.5 years to 33 years has been protected with the pension admissible for available lower qualifying service of 22 years in the rank of Major or equivalent. The qualifying service of the applicants has not been reduced/ignored/curtailed for purpose of pension as claimed by the applicants. The petitioners have served for more than 30 years in the ibid rank are entitled for revision of pension @ 23,815/- p.m. w.e.f. 01.07.2014 on the basis of table 1 of Govt letter dated 03.02.2016 as there is no change of pension in the rank of Major or equivalent for qualifying service of 22 years to 33 years and above. Contention of the applicant that all the commissioned ranks have been granted increase in pension proportionate to qualifying service is not correct. The OROP

tables have been prepared based on actual data except for lesser qualifying service where data was not available.

15. Earlier, prior to 16.12.2004 officers of Armed Forces were granted time scale of Lt Col or equivalent on completion of 21 years of commissioned service. The AVSC report was made applicable w.e.f. 16.12.2004 vide which Majors or equivalent on completion of 13 years service were granted pay scale of a Lt Col or equivalent. In the instant case the petitioners are Branch Commissioned officers and were granted commission from ranks and only a part of their service is commissioned service. The OROP tables in respect of regular officers have been prepared from the data of pension of officers without any former service. In fact had they been granted direct commission, they may not have retired from the rank of Sqn Ldr but from higher rank. They could not be promoted to higher rank because of the part of service being commissioned and other part being served in other rank. Therefore, direct commissioned officers and the applicants are not similarly situated, though qualifying service after taking into account previous service may be the same for both the categories.

16. The qualifying service of the applicants has not been reduced/ignored/curtailed for the purpose of pension but despite having put in more than 30 years of service they are entitled to pension in the rank of Sqn Ldr @ 23,815/- p.m. w.e.f. 01.07.2014 based on table 1 of letter dated 03.02.2016 as there is no change of pension in the rank of Major or equivalent for qualifying service of 22 years to 33 years and above.

Form No. 4 **Court No 1**
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 590 of 2017 with M.A. No. 1868 of 2018

Sqn Ldr DH Prasad (Retd) & Ors
 By Legal Practitioner for the Applicants

Applicants

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri VK Pandey and Shri Girish Tiwari, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents.</p> <p style="text-align: center;"><u>M.A. No. 1868 of 2018</u></p> <p>The Original Application has been filed with delay of 01 year, 03 months and 20 days.</p> <p>Submission of learned counsel for the applicant is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>Considering that grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p style="text-align: center;"><u>O.A. No. 590 of 2017</u></p> <p style="text-align: center;">It is a fit case for adjudication.</p> <p style="text-align: center;">Heard.</p> <p style="text-align: center;">Order is reserved.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>