

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**  
**CIRCUIT BENCH AT HYDERABAD**

**(VIRTUAL HEARING)**

OA No.234 of 2018  
With  
MA No. 246 of 2018

**16.11.2022**

**45**

**CORAM :**

**HON'BLE MR.JUSTICE K.HARILAL, MEMBER (J)**

**HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

IC 19792 A

Maj KJC Wesley, aged 81 years,  
Son of Late Rev KG Zacchariah,  
136/20 Prenderghast Road,  
Secunderabad 500 003 Telangana

.. Applicant

By Legal Practitioner : Shri N.Ravi Chowdhary, Advocate

Vs

1. Union of India rep by Secretary to Govt of India,  
Ministry of Defence,  
South Block, New Delhi 110 011
2. The Chief of the Army Staff,  
Integrated HQ of MoD (Army)  
South Block, New Delhi 110 011
3. Addl Dte of Manpower (P&P) MPS (B)  
Adjutant General's Branch IHQ of MoD  
Wing No.3, Ground Floor, West Block III,  
RK Puram, New Delhi 110 066
4. The Principal Controller of Defence Accounts (Pensions)  
Draupati Ghat, Allahabad-211 014 .. Respondents

By : Shri S.Ajay Kumar, CGSC

**ORDER****MA No.246 of 2018**

This MA filed for condonation of delay in filing the OA is allowed.

**OA No.234 of 2018**

1. The Original Application has been filed by the Applicant seeking direction to the Respondents to produce the records in respect of Impugned Order IHQ of MoD (Army) Addl Dte Gen of Manpower (P&P)/MP5(B) Lr.No.12681/IC-19792/T-5/MP5(B) dated 05 Dec 2017 invoking GoI, MoD, Dept of Ex Servicemen Welfare Policy Lr. 1(13)/2009/D(Pen/Policy) dated 24.09.2012 and PCDA {P}, Allahabad Circular 14 dt.02.01.2013, dispose of Applicant's Representation dated 26.07.2018 and disburse pensionary benefits from 19.07.1971, quash the Impugned Order and direct the Respondents to grant Pension in the rank of Lt Col from 1.1.1996 with arrears and interest @ 9% p.a.

2. The Learned Counsel for the Applicant submits that the Applicant was commissioned into the Corps of Engineers in the Indian Army on 20.07.1964 as a Short Service Commissioned Officer and was granted Permanent Commission wef 4.6.1968 granted with ante date seniority for promotion and pension wef 1.7.1963. The Applicant was promoted to the rank of Major on 20.07.1976 and after completing 21 years, 11 months and 4 days of service, he was granted premature retirement on 3.6.1985. The Applicant is in receipt of Service Pension in the rank of Major. The Counsel for the Applicant submits that the Respondent No.3 rejected the Applicant's claim for enhanced benefits, quoting Para 5(a) (iii) of SAI 2/S/98 GoI, MoD Lr. 1(13)/2009/D(Pen/Policy) dated 24.09.2012 stating that only substantive Majors who were on the effective strength of the Army as on 1.1.1996 are to be granted the scale

of Lt Col on completion of 21 years of commissioned service and since the Applicant had retired from Army service wef 4.6.1985 prior to 1.1.1996 does not fall under the purview of this provision. The Applicant contends that he should have been granted Pension in the rank of Lt Col wef 1.1.1996 based on Para 5(a)(iv) of SAI 2/S/98 which provides for a one time relief measure to those Officers who became substantive Majors before 1.1.1996 for grant of the pay scale of Lt. Col on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year in the rank of Major. Based on the Governemnt Policy Letter, PCDA (P) Allahabad issued Circular 14 dated 2.1.2013. However, the Policy Letter and Circular are differential, discriminatory and ultra vires to Article 14 and 16 of the Constitution of India as pensionary benefits are being denied on the basis of cut off retirement date. The Counsel cited a catena of judgements to strengthen his claim :

(a) AFT, Chandigarh Bench judgement, *in rem*, dated 25.05.2017 in OA Nos 94, 802 and 1480 Major Tarlok Singh (Retd) and Ors Vs UoI and Ors. The Tribunal awarded pension to the Applicants who are similarly placed like the Applicant in the instant case – Majors who had completed 21 years of service and who had retired prior to 1.1.1996 in the scale of Lt Col with effect from 1.1.2006 with 8% interest.

(b) AFT. PB in its judgement in OA 256/2011 in Maj KG Thomas Vs UoI decided on 19.12.2013 wherein Maj Thomas who retired on 31.5.1988 was granted Pension of Lt Col which has been upheld by

Hon'ble Supreme Court in Civil Appeal No.12209 of 2014 dated 6.2.2015.

(c) AFT PB, in its judgement in OA 138 of 2013 in Lt Cdr BR Sharma and Ors Vs UoI, in very similar circumstances on the subject of grant of Pension to Lt Col (Cdr) after completing 20 years of service, directed that the Petitioners be deemed to have been promoted to the rank of Time Scale Commander as per provisions of GoI Letter dated 14.01.2000 and also in OA 464 of 2013 in Lt Cdr Bhisham Kumar and Ors Vs UoI, the Tribunal allowed the OA in the same line as in the case of Maj KG Thomas decided in OA 256/2011 vide Order dated 19.12.2012.

(d) Hon'ble Supreme Court, in its judgement in DS Nakara & Ors Vs UoI (1983) 1 SCC 305 ruled against arbitrary cut off date classifying a homogenous group of Pensioners into two different classes as discriminatory.

(e) Hon'ble Supreme Court, in its judgement in KJS Buttar Vs Union of India in Civil Appeal No.5591 of 2006 emphasized that there cannot be a discrimination based on 1.1.1996 cut off date in grant of revising pensionary benefits.

3. The Learned Counsel for the Respondents filed a detailed reply and the Counsel for the Respondents submits that the Applicant is not entitled to any benefits as provided under 5a(iv) of SAI 2/S/98 which stipulates 21 years of completion of commissioned service. Further as per Para 51(iii) of SAI 2/S/98 the cut off date is 1.1.1996 wherein the Applicant

was not in service and had retired in the year 1985. The benefits are meant only for Officers who are in service as on 1.1.1996. As per SAI/2/S/98 and also GoI MoD Lr dated 21.11.1997 the Applicant is not eligible for benefits, as he was not granted pension in the rank of Lt Col. The Counsel cited Hon'ble Supreme Court judgements in Civil Appeal No.517/1987 in UoI Vs PN Menon and quoted "when a revision takes place, a cut off date becomes imperative, because the benefit has to be allowed within the financial resources available with the government". The Supreme Court in 1993(4) SCC 62 (State of West Bengal Vs Ratan Behari Dey) held "the power of the state to specify a date with effect from which regulations framed, or amended as the case may be, shall come into force is unquestioned. There is no discrimination in government policy." The Counsel further submits that the factual matrix of the judgements relied by the Applicant are different from the instant case. The Counsel claimed that the Retired Majors are not entitled to benefits of GoI MoD Letter dated 21.11.1997 citing the Supreme Court judgement in Civil Appeal 770-771 of 2018 in the case of Suchet Singh Yadav Vs Union of India. Therefore, the Counsel prays for dismissal of the OA being lack of merit.

4. We have heard the Learned Counsel for the Applicant as well as the Learned Counsel for the Respondents and perused the documents placed on record. Learned Counsel for the Applicant requested for additional time of two weeks with effect from 13.10.2022 for submission of additional documents. However, no document was placed on record till date.

5. The following issues which are germane to the case are :-

(a) The Applicant served in the Army as a Commissioned Officer for more than 21 years from 20.7.1964 and retired prematurely on 03.06.1985.

(b) The Applicant is in receipt of Pension in the rank of Major vide PPO No.M/Prov/3398/85.

(c) In the majority of cases cited by the Applicant, the orders passed by the AFT have rested on the Hon'ble Supreme Court Order dated 6.2.2015 in Civil Appeal 1843-1844 of 2015 upholding the AFT, PB Order in Maj KG Thomas Vs UoI in OA No.256/2011 passed on 19.12.2012

(d) The case of the Respondents in denying the plea of the Applicants relied on MoD Letter dated 21.11.1997 and SAI 2/S/98 and relied on the SC Judgement in CA No.770-771 of 2018 in Suchet Singh Yadav Vs UoI passed on 21.02.2018.

6. We have analysed in detail the relevant judgements relating to this case which are as follows :-

(a) AFT, PB - Order dated 19.12.2012 in OA No.256 of 2011 in the case of Maj KG Thomas Vs UoI & Ors

The Tribunal granted the pay scale of Lt Col to the Applicant as he had rendered more than 21 years of commissioned service in terms of GoI Lr dt 21.11.1997 read with Letter dated 17.12.1998.

(b) AFT, RB, Chandigarh – Order dated 25.5.2017 in OA 90, 802, 1480 of 2014 in the case of Maj Tarlok Singh (Rtd) and 2 Ors Vs UoI and Ors

The Tribunal, after citing the case law in OA 256 of 2011 titled Maj KG Thomas Vs UoI decided on 19.12.2012, viewed that the Tribunal was unable to form a different opinion than to hold that as per the settled law, prescribing of an artificial date for grant of certain benefit to a homogeneous class or category is per se illegal and arbitrary besides being violative of Articles 14 and 16 of the Constitution of India. The relief prayed for by the Applicants was ordered to be made admissible to them with arrears wef 1.1.2006 after factual verification of the service period.

(c) AFT PB – Order dated 29.05.2015 OA 138 of 2013 in the case of Lt Cdr BHG Sharma Vs UoI & Ors :

The OA deals with grant of scale of Commander (equivalent to Lt Col – TS) at the minimum level post on GOI letter dated 14.1.2000 reducing the period of service for this benefit from 21 to 20 years. The Judgement dealt with 3 petitioners who had retired post commencement of the 5<sup>th</sup> CPC i.e.1.1.1996 who were to be granted by subsequent notification scale of Lt Col (Commander) on completion of 21 years of Commissioned service i.e. in their 22<sup>nd</sup> year with the rank of a Major. This period was reduced to 20 years vide GOI letter dated 14.1.2000. The Court held that this revised norms issued on 14.1.2000 were linked immediately to 5<sup>th</sup> CPC. Since the recommendations of the 5<sup>th</sup> CPC was implemented wef 1.1.1996 the directions contained in the letter dated 14.1.2000 were also applicable from 1.1.1996. Since, the GOI issued on 14.1.2000 had clearly stipulated that the subject of the order issued by the Government was related to implementation of 5<sup>th</sup> CPC recommendations, the Tribunal found no obstacle to effectively

implement order from the date that the 5<sup>th</sup> CPC, commenced on 1.1.2006 and consequently the Tribunal had given the benefit of Time Scale Commander rank benefits wef 31.1.1997 with the reduction in service as ordered by the Government linked to 5<sup>th</sup> CPC from 21 to 20 years.

(d) AFT PB – Order dated 11.09.2017 in OA 1046 of 2016 in Maj SY Kaluskar (Retd) Vs UoI & Ors

The Tribunal held that the Applicant is entitled to Pay Scale/Pension of the rank of Lt Col (TS) or equivalent rank having completed more than 21 years of commissioned service with rank pay of Major. The Pension was to be fixed wef 1.1.1996

(e) AFT PB – Order dated 12.10/2017 in OA 707 of 2016 in the case of Maj Ajit Singh Rathi (Retd) Vs UoI & Another

The Tribunal, based on the decision in Maj SY Kaluskar (Retd) Vs Union of India and Ors in OA 1046 of 2016 dt 11.09.2017, granted relief by way of granting Lt Col scale to the Applicant wef 1.1.1996

(f) AFT PB – Order dated 12.10.2017 in OA 1101 Of 2015 in the case of Maj AB Gupta (Retd) Vs UoI & Ors

The Tribunal took the same view as in the case of *Maj Ajit Singh Rathi* case and granted relief by way of granting Lt Col scale to the Applicant wef 1.1.1996

(g) Hon'ble Supreme Court judgement in KJS Buttar Vs UoI (2011) 11 SCC 429

The Hon'ble Supreme Court held that there would be violation of Article 14 of the Constitution of India if those who retired prior to 01.01.1996 were denied the benefits granted to those who retired after that date

(h) Hon'ble Supreme Court judgement in DS Nakara & Ors Vs UoI (1983) 1 SCC 305

The Hon'ble Supreme Court in Para 42 held " xxx xxx. *If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. Xxx xxx"*

7. The Supreme Court judgment passed on 06.02.2015 in the *Maj KG Thomas case* (supra) involved an Officer who was Commissioned in the Indian Army on 30.06.1963 and retired from the Army on 31.05.1988 with more than 22 years of Qualifying Service wherein the plea for grant of pay scale of Lt Col (TS) was allowed. Since the petitioner was a pre 1.1.96 retiree, a slew of petitions of similarly placed pre 1.1.96 retiree Officers was allowed by the various Benches of the AFT.

8. The Hon'ble Supreme Court Judgement in the *Suchet Singh Yadav case* (supra) passed on 21.02.2018 deals with an IAF Officer who was commissioned on 27.03.1965 and retired on 14.08.1985. The petitioner was denied benefit of the pay scale of Wg Cdr (TS) by the AFT, PB in OA No.666 of 2014 and filed a Civil Appeal in the Hon'ble Supreme Court

which was dismissed vide Order dated 21.02.2018. Para 34 of the Supreme Court judgement is extracted below :-

*34. There cannot be any dispute to propositions laid down in above mentioned cases of this Court where this Court has laid down that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut off date for extension of benefits especially pensionary benefits, there has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. As noted above, present is not a case where there is any discrimination in pensionary benefits of pre 01.01.1996 and post 01.01.1996 retirees. The applicants, base their claims on the order of the Government of India dated 21.11.1997 and we have already held that those who were not in service on 01.01.1996 could not claim any benefit of the order dated 21.11.1997. Thus, present is not a case of any kind of discrimination and differentiation in pensionary benefits of pre and post 01.01.1996 retirees. We have already noticed above that order dated 21.11.1997 was issued in reference to pay and allowances of Armed Forces Officers, which pre-supposes that these officers were in the establishment on 01.01.1996. We thus are of the view that applicants were clearly not entitled for grant of benefit of higher pay scale under the order dated 21.11.1997. The orders of the Armed Forces Tribunal extending the said benefit to those applicants who had already retired before 01.01.1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that Armed Forces Officers, who have retired before 01.01.1996 are not entitled for pensionary benefits are upheld. Consequently, the appeals filed by the Union of India, i.e. Civil Appeal (arising out of Civil Appeal Diary No. 25429 of 2017) – Union of India & Ors. Vs. Lt. Cdr. C.M. Mittal & Ors.; Civil Appeal(arising out of Civil Appeal Diary No. 7231 of 2016) – Union of India & Ors.*

*Vs. Lt. Cdr. Bhisham Kumar (Retd.) & Ors. and Civil Appeal (arising out of Civil Appeal Diary No. 22257 of 2017) – Union of India & Ors. Vs. Sqn. Ldr. Jai Kumar & Ors. are allowed and those of the applicants i.e. Civil Appeal (arising out of Civil Appeal Diary No. 26259 of 2016) – Suchet Singh Yadav & Ors. Vs. Union of India & Ors.; Civil Appeal No. 7989 of 2015 – Lt. Cdr. Gurmukh Singh Vs. Union of India & Ors.; and Civil Appeal No. 7917 of 2016 – V.K. Mehta Vs. Union of India & Ors., are dismissed.*

8. The Hon'ble Supreme Court after an indepth analysis of the SC Order in *Maj KG Thomas* and other AFT Orders settled the following contentions issues :-

(a) The Supreme Court in its Order in *Maj KG Thomas* (supra) had based its decision on the facts put forth in the case at that point of time. The Hon'ble Supreme Court ruled that the KG Thomas judgement was case specific and hence it follows that it cannot be cited as a blanket precedent.

(b) The Government of India Order dated 21.11.1997 prescribing a cut off date of 01.01.1996 cannot be treated as a case of discrimination and differentiation in pensionary benefits of pre and post 01.01.1996 retirees.

(c) The benefits of the letter dated 21.11.1997 applies only to those Officers who were serving in the Establishment as on 01.01.1996

9. In view of the aforesaid, we are of the considered opinion that the plea of the Applicant is not sustainable keeping in mind that he retired on 3.6.1985 and hence not eligible for benefits which are applicable to only those Officers who were in service on 01.01.1996. The Application is bereft of strength and merits dismissal.

10. The OA is disposed off accordingly.

11. No Order on cost.

Pronounced in the Open Court on this day of 16<sup>th</sup> November 2022.

Sd/--

**(LT GEN BOBBY CHERIAN MATHEWS)**  
**MEMBER (A)**

vp

Sd/-

**(JUSTICE K.HARILAL)**  
**MEMBER (J)**

To

1. N.Ravi Chowdhary, Counsel for the Applicant
2. S.Ajay Kumar, CGSC for the Respondents
3. OIC Legal Cell, Army, TASA, Secunderabad
4. Library, AFT, RB, Chennai

**HON'BLE JUSTICE K HARILAL  
MEMBER (J)  
AND  
HON'BLE LT GEN BOBBY CHERIAN MATHEWS  
(MEMBER-A)**

OA No 234 of 2018  
With  
MA No.246 of 2018

Dated: 16.11.2022