

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

**(VIRTUAL HEARING)**

OA No.238 of 2018  
With  
MA No. 255 of 2018

**16.11.2022**

**19**

**CORAM :**

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

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

IC 37109-X

Maj Pathan Abdul Rab Khan, 63 years,  
Son of Mr. Abdul Hamid Khan,  
18-5 Gopal Nagar, Malkajgiri,  
Hyderabad 500 047

.. 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. Principal Controller of Defence Accounts (Pensions)  
Draupati Ghat, Allahabad-211 014
5. Principal Controller of Defence Accounts (Officers)  
Golibar Maidan, Pune 411 001

.. Respondents

By : Shri A.Alavander Goud, CGC

**ORDER**MA No.255 of 2018

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

OA No.238 of 2018

1. The Original Application has been filed by the Applicant seeking direction to the Respondents to produce the records and quash the Impugned Orders

(i) ADG of Manpower (P&P)/MP5(B) Letter No.12656/IC-37109/T-9A/MP-5(B) dated 09 Oct 2017,

(ii) PCDA(O) Golibar Maindan Pune Letter No.PSC/151622/T 03 dated 29 Dec 2017 and

(iii) Army HQs Adjutant Gen Branch ADG PS 4 Letter No.32006/Petn/AG/Ps-2/(vi)(a),

and direct the Respondents to grant Post facto promotion to the rank of Lt Col with associated benefits from 03.03.1998 with arrears of pay in the rank of Lt Col from 03.03.1998 till 01.08.1998 with interest @ 8% p.a. and Pension in the rank of Lt Col wef 2.8.1998 with arrears and interest @ 8% p.a.

2. The Learned Counsel for the Applicant submits that the Applicant was commissioned into the Corps of Artillery in the Indian Army on 03.06.1977. The seniority for promotion and for calculation of reckonable service is from 03.03.1978 on which the Applicant completed 20 years of service. The Applicant opted for premature retirement and the same was granted wef 01.08.1998. 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 promotion and pension in the rank of Lt Col. The GoI Policy dated 14.01.2000 reducing the service liability to 20 years for promotion to Time Scale Lt Col is one of a series of letters defining various aspects of Pay and Allowances and service conditions of the 5<sup>th</sup> CPC and is a continuum of SAI 2/S/98, SAI 1/S/98 and the letter issued on 14.01.2000 and should not be read in isolation as the letter specifically omits the date of implementation but clearly mentioned in the heading itself that the Policy letter supersedes previous letters namely letter No.14(1)/98/D(AG) dated 21.11.1997 on the subject which has a specific date of implementation i.e. 01.01.1996. A specific Para 147.21 of 5<sup>th</sup> CPC recommendations has been implemented, introducing a new policy for time bound promotions of Officers from the entry level to Lt Col. The time bound promotion to Lt Col was reduced to 20 years of service. The Counsel for the Applicant submits that the Applicant is eligible for promotion as he had completed 20 years, 10 months and 29 days and he was in service as on 01.01.1996. The Counsel for the Applicant submits that the 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.

3. The Learned Counsel for the Respondents filed a detailed reply and the Counsel for the Respondents submits that the Applicant's claim is misplaced as the GoI Letter dated 21.11.1997 was issued for grant of pay of Lt Col (TS) with rank of Major to substantive Majors and equivalent on completion of 21 years of Commissioned service with stagnation of one year with rank of Major. There is no provision for grant of Lt Col or Lt Col (TS) in the letter dated 21.11.1997. Para 147.21 of recommendation of CPC of 14.01.2000 and Corrigendum dated 6.10.2000 have not superseded the provisions of GoI, MoD Letter No.1(5)97/D/Pay/Service dated 21.11.1997 which provides for grant of Pay and allowances with effect from 1.1.1996. Any resolution taken on 5<sup>th</sup> CPC recommendations would be implemented prospectively. The Applicant retired prematurely with completion of 21 years of service as such he is not eligible for grant of the scale provided thereunder. The Counsel for the Respondents averred that the judgements relied upon by the Applicant are not relevant to the present case as the Order of the Hon'ble Supreme Court is *in personem* but not *in rem*. In view of the above, the Counsel prays to dismiss the OA being devoid 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.

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

(a) The Applicant was Commissioned in the Indian Army on 03.06.1977 with seniority for promotion and reckonable service with effect from 03.03.1978

(b) The Applicant retired prematurely on 01.08.1998 with a reckonable service of nearly 20 years and 5 months

(c) The Applicant is in receipt of Pension in the rank of Major vide PPO No.M/003695/98.

(d) In the 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.

(e) The case of the Respondents in denying the plea of the Applicant relies on MoD letter dated 21.11.1997.

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. The

Hon'ble Supreme Court in its Order dated 21.02.2018 in Suchet Singh Yadav Vs UoI & Ors in Civil Appeal 770-771 of 2018 held that the Supreme Court judgement in this case was case specific and cannot be quoted as a precedent.

(b) Civil Appeal (arising out of Civil Appeal Diary No.7231 of 2016) - UoI Vs Lt Cdr Bhisham Kumar (Retd) & Ors

The Supreme Court upheld the denial of relief in Suchet Singh Yadav case (supra)

(c) AFT PB – Order dated 29.05.2015 OA 138 of 2013 in the case of Lt Cdr BR Sharma Vs UoI & Ors (Commissioned on 31.01.1977 and retired on 30.09.1997 with 20 years and 8 months of service).

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 31.01.1997 with the

reduction in service as ordered by the Government linked to 5<sup>th</sup> CPC from 21 to 20 years.

7. We have also analysed the citation put forth by the Applicant, viz. the Order dated 12.10.2017 passed by the AFT, PB in Lt Cdr Nanda Kumar Parrat Vs UoI & Ors., wherein the Applicant, an Officer commissioned in the Indian Navy on 01.01.1977 retired prematurely on 31.08.1997 and was granted pension in the rank of Lt Cdr. Noteworthy is Para 4 (ii) of the Order which is extracted : *"4(ii) The Applicant will be entitled to the pay scale of Cdr (TS) with rank pay of Lt Cdr from the date of his stagnation, for one year in the rank of Substantive Maj based on the provisions of Government of India letter dated 21.11.1997"*.

7. The Respondents grounds for disallowing the plea of the Applicant rests on the following grounds :-

(a) The Government of India Letter dated 21.11.1997 was issued for grant of pay of Lt Col (TS) with rank of Major on completion of 21 years of Commissioned Service with stagnation of one year in the rank of Major.

(b) There is no provision for grant of Lt Col (TS) in the Letter dated 21.11.1997

8. The Respondents have not touched upon the implications of Government of India Letter No.14(1)/98/D(AG) dated 14.01.2000 reducing the service criteria for grant of Lt Col (TS) rank from 21 years to 20 years (Annexure A3).

9. A bare study of the AFT, PB Order dated 29 May 2015 in OA No.138/2013 with regard to Lt Cdr BR Sharma who was commissioned on 31.01.1977 and retired on 30.09.1997 with 20 years and 8 months of service clarified all issues flagged in Para 7 and 8 above. Relevant extracts of Order in OA 138/2013 are given below:-

*16. We have heard the learned counsels at length and analysed the legal postulations laid by the Hon'ble High Court of Punjab and the Hon'ble Supreme Court. In the facts presented before us, it is evident that this is not a case where the relevant pay commission recommendation was not accepted by the Government. Nor is it a case of additional benefits given by the Govt at a later date over and above the pay commission recommendations. The Govt order issued on 14.01.2000 clearly stipulates that the subject of the order issued by the Govt is "implementation of V Pay Commission Recommendations – Para 147.21 conditions regarding grant of substantive rank to officers of Army, Air Force and Navy." In respect of promotion to substantive cadres of Lt Col (TS) and equivalent, the years of service required has been stipulated as 20 years of commissioned service. This order does not stipulate any specific date of implementation. The respondents were not able to present before us any valid ground such as financial constraints etc. to justify an effective date other than 31.01.1997 for implementation of the relevant recommendations of 5<sup>th</sup> CPC as applicable to the petitioners consequent to the issue of Gazette notification on 13.10.1997 and the orders of the Govt on Pay & allowances of Armed Forces Tribunal dated 21.11.1997.*

*18. The reduction of years of service from 21 years to 20 years would amount to be benevolent legislation and denial of the same to the petitioner would amount to gross injustice. It will be relevant to*



*point out, that in matters of pension, the role of the state as benevolent employer is exemplified by the provisions contained in the pension regulations providing for waiver of upto one year of qualifying service by the competent authorities.*

*19. In view of the above, we direct that the petitioners be deemed to have been promoted to the rank of Time Scale commander wef 31.01.1997 with consequential benefits as per provisions of Govt of India letter dated 14.01.2000, to be paid within three months from the date of this order.*

10. In view of the aforesaid, we are of the considered opinion that the Applicant is deemed to have been promoted to the rank of Lt Col (TS) on completion of 20 years of reckonable service on 03.03.1998 with all consequential benefits in terms of pay till 31.07.1998 and pension wef 01.08.1998. The arrears be paid within 4 months from the date of receipt of this Order. In case of failure to comply with this Order within the aforesaid time frame, the Respondents shall be liable to pay the Applicant interest @ 8% pa on the arrears from the date of issue of this Order.

11. The OA is disposed off accordingly.

12. No Order on cost.

13. The Learned Counsel for the Respondents made an oral prayer for Leave to Appeal which we reject finding no valid ground for the same.

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 Applicant
2. A.Alavender, CGC 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)**

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With  
MA No.255 of 2018

Dated: 16.11.2022