
(2020) 03 AFT CK 0006

In the Armed Forces Tribunal

Case No : Original Application No. 1623 Of 2016

Bipin Bakshi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0006

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ankit Swarup, Jawad Tariq, Anil Gautam

Final Decision : Disposed Of

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application seeking the

following reliefs:

(a) Set aside the order passed by Respondent No. 4 â?" Director (AG-I), Ministry of Defence, Government of India on 10.03.2016 and communicated

to the applicant vide Memo No. A/00115/6/CAB dated 23.08.2016;

(b) Direct Respondent No. 3 â?" Complaint Advisory Board, COAS Secretariat to reconsider the statutory complaint dated 31.03.2015 of the

applicant in terms of direction passed by Hon'ble Apex Court in I.A No. 9 of 2010 in T.P (C) No. 56 of 2007 titled as Union of India and others v.

N.K. Nair and others; and

(c) Direct the respondents to re-fix the pay of the applicant by including the component of rank pay in computing the revised pay for the period

01.01.1986 to 22.08.1994 and, therefore, pay the said difference along with

interest to the applicant as per the direction passed by the Hon'ble Apex Court in LA No. 9 of 2010 in T.P (C) No. 56 of 2007 titled Union of India and others v. N.K. Nair and others.

2. The applicant was commissioned as a Second Lieutenant in the Indian Army in the year 1982, after being placed first in the order of merit during

the pre-commission training undertaken at the Indian Military Academy. He was promoted as a substantive Lieutenant with effect from 12.06.1984

and looking to his merit, he was detailed for the Engineers Officers Degree Course (EODC), whereas his batch mates, who were lower in merit, were

not detailed for this course that year. They were promoted as acting Captain after completing three years of service on 12.06.1985, whereas the

applicant, who was selected for the degree course because of his high merit, became acting Captain only on 07.06.1987 i.e. after completing the

course, and as a consequence thereof, there was anomaly in the pay fixation of the applicant, inasmuch as batch-mates, who were assessed as lower

in merit became acting Captain earlier than him on 12.06.1985 and started drawing pay higher than the applicant. The applicant, therefore, submitted a

statutory complaint seeking stepping up of his pay at par with his batch mates and for grant of further benefits. When he did not receive any response

to the aforesaid statutory complaint, he invoked the jurisdiction of the Hon'ble Punjab and Haryana High Court by filing a writ petition (C.W.P No.

16128 of 1997) and the Hon'ble High Court, vide Annexure A1 order dated 12.05.1998, finding that his pay was fixed lower than that of his juniors,

allowed his writ petition. It was also held that the anomaly in the pay was not because of the mistake of the applicant but on account of the fact that

the applicant was detailed to undergo a regular course being higher in the order of merit than his batch mates. Thus it was held that the pay of the

applicant cannot be less than that of his juniors and accordingly, a direction was given to step up the pay of the applicant. However, the payment of

arrears was restricted to three years from the date of filing of the writ petition i.e. 23.10.1997. On account of the fact that there was restriction of

three years for payment of arrears, the applicant invoked the jurisdiction of the Hon'ble Supreme Court by filing a Special Leave Petition, which was

dismissed on 15.12.1998. The applicant was granted the benefit of step up of pay and the order was implemented. In the meanwhile, during the course

of implementation of 4th Pay Commission recommendations with effect from 01.01.1986 by the Government of India, Ministry of Defence, when a

dispute arose in the matter of grant of rank pay to military officers, one Maj. A.K. Dhanapalan approached the Hon'ble High Court of Kerala by filing

a writ petition-O.P No. 2448 of 1996-N, and on 05.10.1998, a learned single Judge found that in accordance with the recommendations made by the

relevant Pay Commission, 'rank pay' was awarded to certain categories of officers over and above the basic pay, but, while arriving at the total

emoluments to be paid to the officer, deduction of rank pay from the basic pay was given effect to by the respondents. This was held to be not

permissible and, therefore, the learned single Judge decided the issue in the following manner:

2. When both Ext. R1 and R1(a) speak about the entitlement of the Army Officers for the rank pay in addition to the existing scale of pay, I

see no reason to deduct the amount from the pay of the petitioner. The respondents were requested to file any additional affidavit or bring

forward some materials to explain why the deduction was made. But the above additional counter affidavit does not contain any new

materials or statement which will support the earlier stand of the respondents. Under these circumstances, I am of the view that Respondents

2 and 3 had completely misunderstood the scope of extending the benefit of the payment of rank pay to the Army Officers. Rank pay is

something which has been given to the Army Officers in addition to the existing pay scales. That is not an amount which has to be deducted

in order to arrive at the total emoluments which an Army Officer is entitled to get.

Under the circumstances, the Respondents 2 and 3 are directed to re-fix the pay of the petitioner with effect from 1.1.1986 without

deducting the rank pay of Rs.200/- as has been done by Respondents 2 and 3. The petitioner is also entitled to get his pay re-fixed in

accordance with the pay fixation of 1987 evidenced by Ext. P1. Respondents 2 and 3 are directed to complete the process of re-fixation of

the pay of the petitioner as directed above, within three months from the date of deposit of a copy of this judgment.

The Original Petition is disposed of as above.

This order was challenged by the Union of India in appeal - W.A No. 518 of 1999

and, vide Annexure A4 judgment dated 04.07.2003, the writ appeal was dismissed by the Division Bench. Consequently, at the instance of the Government of India, the matter travelled to the Hon'ble Supreme Court and when the matter was pending before the Hon'ble Supreme Court, various other writ petitions claiming similar benefits pending before various High Courts were also transferred to the Hon'ble Supreme Court and it was decided by a detailed order (Annexure A6), which was passed on 08.03.2010. The Hon'ble Supreme Court found that the judgment rendered by the learned single Judge on 05.10.1998 in the case of Maj. Dhanapalan (supra) and upheld by the Division Bench on 04.07.2003 was correct and finding no reason to take a different view, dismissed the petition filed by the Government and, at the same time, allowed all the transferred petitions that were filed before various High Courts. Annexure A5 dated 12.07.2005 is the order passed by the Hon'ble Supreme Court dismissing the SLP filed in the case of Maj. Dhanapalan and Annexure A6 dated 08.03.2010 is the order passed allowing all the transferred petitions. The order allowing the transferred petitions reads as under:

We have carefully perused the judgment dated 5.10.1998 of the learned Single Judge as well as judgment dated 4.7.2003 of the Division

Bench of the High Court of Kerala and we respectfully agree with the reasoning given therein for grant of rank pay retrospectively from

1.1.1986. We also direct interest to be paid thereon at 6% p. a. Accordingly, these writ petitions as well as the transferred writ petitions are

allowed. However, after the aforesaid order was passed by the Hon'ble Supreme Court, it seems that the matter was taken up again in an

interlocutory application by the Union of India being I.A No. 9 of 2010 in Transfer Petition (C) No. 56 of 2007 and the Hon'ble Supreme

Court on 04.09.2012, decided the interlocutory application in the following manner: =

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3. As regards Interest, on totality of the circumstances including the circumstance that Special Leave Petition arising from the judgment dated July 4,

2003 in the matter of Major A.K Dhanapalan was dismissed by this Court in August, 2005 and the Kerala High Court had not ordered payment of

Interest on the arrears of pay, we direct that the interest shall be paid by the

petitioners to the respondents @ 6% p.a from January 1, 2006 instead of January 1, 1986. It is clarified that this order shall govern all similarly situated officers who have not approached the court and also those who have filed Writ Petitions which are pending before various High Courts/Armed Forces Tribunal. (emphasis supplied)

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From the aforesaid, it is clear that except for modifying its order, with regard to date of payment of interest, the Hon'ble Supreme Court clarified that

the order should govern all similarly situated officers who had not approached the Court and also those who had not filed any writ petition and also

those who had filed writ petitions which were pending before various High Courts or Armed Forces Tribunal. When this order was implemented vide

Annexure A8 dated 27.12.2012 only to such persons who had approached the Court and when benefit was not granted to the applicant, he submitted a

complaint and his complaint was rejected by the impugned order and, therefore, this petition.

3. The grievance of the applicant now before us is that his complaint has been rejected by the first respondent only on the ground that, in his case,

stepping up of pay had already been granted by the Hon'ble Punjab and Haryana High Court and not having claimed fixation of pay based on the rank

pay, he cannot claim the said benefit now. According to the learned counsel appearing for the applicant, this contention of the respondents is wholly

misconceived. According to the respondents, when the matter was agitated by the applicant before the Hon'ble Punjab and Haryana High Court and

when the decision was rendered by the High Court on 12.05.1998, the question of granting rank pay and the action of the respondents were not

decided by the Hon'ble Kerala High Court in the case of Mal Dhanapalan (supra). It was only on 05.10.1998 that the said judgment was decided and

thereafter implemented when the SLP was dismissed. The applicant submits that when the Hon'ble Supreme Court, while implementing the judgment

in the case of Maj. Dhanapalan (supra) in all the transferred petitions on 04.09.2012, had directed that the order should be made applicable to all

similarly situated persons and there is no reason why the same benefits were not extended to the applicant.

4. Learned counsel for the respondents' contention is that the applicant can claim

only the benefit granted by the Hon'ble Punjab and Haryana High Court and in the light of the fact that he was promoted as an acting Captain on 07.06.1987 after the implementation of the recommendations of the Pay Commission on 01.01.1986, all his arguments are misconceived which cannot be substantiated. The applicant argues that when all similarly situated Captains who were working along with the applicant have been granted the benefit, similar benefit cannot be denied to him alone. Merely because the applicant was granted the rank of acting Captain only on 07.06.1987 due to a purely administrative reason that he had been detailed for Engineers Degree Course ahead of his batch mates, and thus could not be promoted as acting Captain on 12.06.1985 along with the rest of his course, the benefit of pay fixation which came into force with effect from 01.01.1986, cannot be denied to the applicant. Therefore, he submits that this application should be allowed.

5. The respondents have filed a detailed objection and their objection is primarily two fold. Firstly, the applicant has got the benefit of step up of pay pursuant to the direction given by the Hon'ble Punjab and Haryana High Court, therefore, he cannot claim any other benefit. It is their case that the applicant could have claimed the said benefit from the High Court and having not done so, cannot now turn around and seek similar benefits. The second contention is that the applicant, having been promoted as acting Captain on 07.06.1987 cannot claim the benefit of rank pay, which was granted only to those holding the rank of Captain on 01.01.1986, in view of the recommendation of the Pay Commission, on the ground that the applicant was not a Captain. In our opinion, both the arguments of the respondents are totally misconceived and without any basis.

6. So far as invoking the jurisdiction of the Hon'ble Punjab and Haryana High Court and the judgment rendered by the High Court is concerned, it is totally a different issue. It was the grievance of the applicant that even though he was first in order of merit and as a consequence thereof, he was detailed to undergo the EODC, which resulted in his being promoted as acting Captain only on 07.06.1987, his junior batch mates, who were less meritorious and were detailed for the course after some point of time, cannot draw higher pay. This was accepted by the Hon'ble High Court and he was granted the benefit of stepping up of pay. When the question of

implementation of the Pay Commission with effect from 01.01.1996 and the question of making deduction in the rank pay was undertaken, the matter travelled to the High Court and it was on 05.10.1998 that the learned single Judge of the Kerala High Court laid down the law as reproduced herein above. The claim now made by the applicant is to grant him the benefit as per this judgment, which was upheld by the Honible Supreme Court and as indicated herein above, directed to be implemented to all similarly situated persons who had not approached the Court or and also those who had filed writ petitions which were pending before various High Courts/Armed Forces Tribunal. This being the position, we have no hesitation in holding that the first ground canvassed by the respondents deserves to be rejected.

There is no reason as to why the applicant, who is identically situated like Maj. Dhanapalan and others who have got the benefit of the judgment rendered in Maj. Dhanapalan (supra), be not given such benefits when such benefits were given to similarly situated persons.

6A The second ground, that the applicant was promoted as a Captain only on 07.06.1987, much after 01.01.1986 and, therefore, he is not entitled to the said benefits also deserves to be rejected, on two grounds. First of all, when we asked a specific question to the learned counsel for the respondents as to what was the basis for making such an averment, as the right accrued on account of the recommendation of the Pay Commission, implemented with effect from 01.01.1986, and when we specifically wanted to know as to whether there are any orders, instructions or circulars in this regard, he was not able to produce anything before us. On the contrary, we find that in the case of the applicant's batch mates, who did not make it to the merit and had not been detailed for the earlier EODC and thus were promoted as acting Captain on 12.06.1985 and thus may have got the benefit or may have been entitled to the said benefit, has been denied to the applicant without any basis or justification.

7. Keeping in view the totality of the facts and circumstances, we allow this application and direct the respondents to extend the benefit of the judgment rendered by the Hon'ble High Court of Kerala in the case of Maj. Dhanapalan (supra) to the applicant and to re-fix his pay without deducting the rank pay deeming him to have been promoted to acting rank of Captain along with his batch mates on 12.06.1985. This order shall be

implemented within four months from the date of receipt of a copy as to costs.