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**(2014) 07 P&H CK 0816**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 7794 of 2013**

Nirmal Singh

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 15-07-2014

**Acts Referred:**

Armed Forces Tribunals Act, 2007 — Section 14

**Citation :** (2014) 07 P&H CK 0816

**Hon'ble Judges :** Hemant Gupta, J; Fateh Deep Singh, J

**Bench :** Division Bench

**Advocate :** R.A. Sheoran, Advocate for the Appellant; Mohit Malik, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 12.03.2013, whereby an Original Application filed by the petitioner u/s 14 of the Armed Forces Tribunal Act, 2007 claiming arrears of pension from 01.01.1986 to 31.12.1995 remained unsuccessful.

2. The petitioner joined Army on 15.09.1960 and was promoted to the rank of Subedar Major w.e.f. 17.12.1980 after rendering 20 years and 3 months service. The petitioner retired from service on 31.12.1985 after completing 5 years tenure in the rank of Subedar Major. His pension was fixed at Rs. 987/- per month though it is asserted by the petitioner that it was required to be fixed at Rs. 1355/- per month in terms of letter dated 30.10.1987 issued by the Ministry of Defence, Government of India, as he retired from service after completion of more than 25 years. After 5th Central Pay Commission, the pension of the petitioner was fixed at Rs. 4158/- w.e.f. 01.01.1996, but the revised pension as revised vide Circular dated 21.11.1997 was not granted to the petitioner.

3. The grievance of the petitioner is that he retired on 31.12.1985 after

completion of 25 years of service and that he was pensioner on 01.01.1986, therefore, he is entitled to the benefit of pension as fixed in pursuance of the recommendations of 4th Central Pay Commission as well as revised pension w.e.f. 01.01.1996 in terms of the recommendations of 5th Central Pay Commission.

4. The claim of the petitioner was rejected by the Tribunal for the reason that the Government of India letter dated 30.10.1987 is applicable to those pensioners, who were discharged on or after 01.01.1986, whereas the petitioner has retired on 31.12.1985. Therefore, the petitioner is not entitled to arrears of pension as well.

5. Learned counsel for the petitioner refers to the letter dated 30.10.1987 after the recommendations of 4th Central Pay Commission were accepted. The relevant extract from the said letter reads as under:

Reproduction of Government of India, Ministry of Defence Letter No. 1(5)87/D (Pension/Services) Dated 30th October, 1987

Sub.: Implementation of the Govt. decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces Officers and personnel below officer rank retiring or dying in harness on or after 01.01.1986.

Sir,

I am directed to refer to the Govt. decisions on the recommendations of the Fourth Central Pay Commission, as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare Resolution No. 2/13/87-PIC dated 18th March, 1987 and convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the Commissioned Officers (including MNS and Territorial Army Officers) and personnel below officer rank (including NCs (E) of the three services, Defence Security Corps and the Territorial Army) (hereinafter collectively referred to as Armed Forces personnel).

1.1 The provisions of the Pension Regulations of the three Services and various instructions/Govt. orders, which are not affected by the provisions of this letter, will remain unchanged.

#### Part-I Date of effect and Definitions

a. The provisions of this letter shall apply to the Armed Forces personnel who were in service as on 01.01.1986 or joined/join service thereafter.

b. Where pension has been sanctioned provisionally in cases occurring on or after 01.01.1986 the same should be revised in terms of the orders. In cases where pension has been finally sanctioned under the pre-revised orders and if it happens to be more beneficial than the pension becoming due under orders, the

pension already sanctioned shall not revised to the disadvantage of pensioners."

6. The facts are not in dispute. The petitioner retired from service on 31.12.1985 after he discharged his duties as Subedar Major for 5 years. Thus, on 01.01.1986, the petitioner became entitled to draw pension. Clause-b of para 1.1 of letter dated 30.10.1987 contemplates that where pension has been sanctioned provisionally in cases occurring on or after 01.01.1986, the same should be revised in terms of the orders so issued. The petitioner having retired on 31.12.1985 is entitled to pension w.e.f. 01.01.1986. Therefore, in terms of clause-b, the petitioner is entitled to pension.

7. A perusal of the communication dated 10.01.2011 (Annexure A-10) shows that the letter dated 30.10.1987 was said to be applicable to those personnel, who were discharged on or after 01.01.1986. The said communication is incorrect, as the petitioner became a pensioner on 01.01.1986, he having retired on 31.12.1985. The stand is incorrect, as the date of discharge of the petitioner is 31.12.1985 and not 01.01.1986. The learned Tribunal referred to clause-a of the letter dated 30.10.1987, but in fact it is clause-b of the letter, which is applicable. Such clause has not been noticed by the Tribunal. The date of retirement of the petitioner being 31.12.1985, the next day the petitioner as a retiree is entitled to pension as per the recommendations accepted by the Central Government and communicated vide letter dated 30.10.1987. Thus, the petitioner is covered by clause-b of the aforesaid letter.

8. Consequently, we allow the present petition and set aside the order dated 12.03.2013 passed by the Tribunal. The official respondents are directed to revise the pension payable to the petitioner from 01.01.1986 and pay the arrears thereof within a period of four months from the receipt of the copy of the order.