

(2020) 11 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 2342 Of 2019

P Subhash Babu

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Citation : (2020) 11 AFT CK 0008

Hon'ble Judges : Rajendra Menon, J;P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, Neeraj

Final Decision : Allowed

Judgement

Si

No.",Rank,Service No.,Name,"Date of

Commission","Pay in July 19

(with MSP)","Duff in Ray

1.,AVM,17908K,PS Babu,14.06.1985,"218,200/-",

2.,Air Cmde,18161H,S Bhaskaran,06.12.1985,"2,26,800/-",-8600

3.,Air Cmde,17916H,VN Srinivas,14.06.1985,"2,26,800/-",-8600

4.,Air Cmde,19255N,NM Desai,19.12.1987,"2,20,600/-",-2400

5.,"Gp Capt (Time

Scale)",17904R,TS Khurana,14.06.1985,"2,19,000/-",-800

6.,"Gp Capt (Time

Scale)",17915F,AK Nigam,14.06.1985,"2,19,000/-",-800

6. Learned counsel further submitted that in Para 3(c) and (e) of the Counter

affidavit filed, the respondents admit about the anomaly but their" ,,,,,,

explanation is two -fold; one that by adding MSP, the juniors are drawing more pay, only because of inclusion of MSP as a separate element but if the" ,,,,,,

basic pay of the applicant is seen, he is drawing basic pay more than his juniors. It is further pointed out that the Ministry of Defence, while processing" ,,,,,,

the Statutory Complaint of the applicant returned the complaint with the comments and it was informed that the matter is being examined by the ,,,,,,

Ministry of Defence and till date, no decision has been taken. However, learned counsel refers to the pleadings made in Para 3(e) to say that the" ,,,,,,

respondents themselves admit that the issue of anomaly has to be resolved and a junior cannot draw more pay or pension than his senior. Learned ,,,,,,

counsel further invites our attention to a communication said to have been made by the Chief of Defence Staff to the Cabinet Secretary on ,,,,,,

03.06.2020, wherein the learned CDS has requested the Government to resolve the issue." ,,,,,,

7. Shri Chhibber argued that the issue already stands resolved by the Delhi High Court in case of S.N. Chaturvedi (supra) and the respondents should ,,,,,,

have granted relief to the applicant. This, having not been done, he submits that his application should be allowed and the entire prayer granted." ,,,,,,

8. Respondents, represented by Mr. Neeraj, Sr. CGSC, refuted the aforesaid contention of the applicant and argued that the applicant's pay on" ,,,,,,

promotion has been fixed in accordance to the requirement of pay fixation rule and in view of the fact that the juniors are drawing more pay in view of ,,,,,,

the Circular (Annexure R-1) dated 02.05.2008, the applicant should not have any grievance in the matter as the basic pay of the applicant is more than" ,,,,,,

that of his juniors. It is stated that merely in view of the fact that the juniors were entitled to the MSP and if by adding it to their basic pay, their pay" ,,,,,,

has increased, the applicant cannot have any grievance in this regard. Accordingly, the respondents submit that, at this stage, no indulgence should be" ,,,,,,

made and by referring to the averments made by the respondents in Para 3(e) of the counter affidavit, it is stated that the matter is pending" ,,,,,,

consideration with the Government of India, Ministry of Defence and, therefore, at this stage indulgence should not be made." ,,,,,,

9. We have heard the learned counsel for the parties and have considered the rival contentions advanced. ,,,,,,

10. There is no dispute with regard to the factual aspects of the matter. The respondents have explained the anomaly by contending that in view of,,,,,,

adding MSP to the basic pay, the juniors are receiving more pay than the applicant. However, they also admit that the efforts to resolve this anomaly",,,,,,

are going on and the matter is with the Competent Authority of the Union of India. However, in our considered view, as canvassed by Shri Ankur",,,,,,

Chhibbcr, the issue stands resolved by the Delhi High Court in the judgment rendered in S.N. Chaturvedi's case (supra) and we see no reason to take",,,,,,

a different view from the one expressed by the Delhi High Court.,,,,,,

11. In the case before the Delhi High Court, petitioner therein (AVM S.N. Chaturvedi) was also serving as Air Vice Marshal in the Indian Air Force,",,,,,

was receiving pay of Rs.5,900/-. Two officers junior to him, who were Air Commodores, were receiving less pay prior to 01.01.1986. When the",,,,,,

Fourth Pay Commission Report was accepted by the Government of India and it was implemented with effect from 01.01.1986 with certain,,,,,,

modifications, in view of the pay fixation done, anomaly arose between the pay of the petitioner therein and his two junior officers and when the",,,,,,

representation was rejected, the matter travelled to the Delhi High Court. Before the Delhi High Court, Special Instructions, namely, Special Air Force",,,,,,

Instructions dated 26.05.1987 were taken note of and based on the aforesaid, the Delhi High Court had allowed the petition of AVM S.N. Clause 6(g)",,,,,,

of the Special Air Force dated 26.05.1987, which is relevant, reads as",,,,,,

6 (g) Where in the fixation of pay under this paragraph the pay of an officer who, in the existing scale was drawing immediately before 01",,,,,,

Jan 86 more pay than another officer junior to him in the same cadre gets fixed in the revised scale at a stage lower than that of such,,,,,,

junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior""." ,,,,,,

12. The matter has been examined by the Delhi High Court and after taking note of the aforesaid Special Instructions, in Paras 7 and 8, the issue has",,,,,,

been discussed in the following manner:,,,,,,

â??7. As already noted, the two officers Air Commodore Adlakha and Air Commodore Desai as a result of fixation of their pay pursuant to",,,,,,

the aforesaid Instruction dated 26th May, 1987, were getting more pay than the petitioner. With effect from 1st August, 1988 Air",,,,,,

Commodore Adlakha was promoted to the rank of Air Vice Marshal. His pay was then fixed at Rs.6500.00. By invoking clause 9 of the,,,,,,

aforesaid Instruction, the petitioner's pay was stepped up to Rs.6500.00 with effect from 1st August, 1988.",,,,,

8. As would be evident from the above, the grievance of the petitioner is that between 1st January, 1986 and 1st August, 1988 he was",,,,,

drawing pay which was less than the officers who were junior to him. The pay of the petitioner was increased only because an officer,,,,,

junior to him had been promoted to hold an equal rank to that of the petitioner. In our opinion, the decision of the Government not to",,,,,

remove the anomaly which had resulted while fixing pay with effect from 1st January, 1986 is clearly arbitrary and without any reasonable",,,,,

basis. It is now well accepted that there has to be equal pay for equal work. It is also accepted that person discharging duties as a senior,,,,,

officer should not get salary less than what his juniors get. The Instructions which have been issued, relevant portions of which have been",,,,,

quoted hereinabove, clearly take care of ensuring that the officers in the equal rank are not discriminated in the sense that junior officer",,,,,

does not get more pay than his senior but this reasoning, which is logical and valid, has not been extended to a case where the ranks of the",,,,,

two officers are different. We fail to understand as to why this is so. If on promotion Air Commodore Adlakha was to get the same salary as,,,,,

that of Air Vice Marshal Chaturvedi, the petitioner, it does not stand to reason that the petitioner should be getting lesser salary than what",,,,,

Air Commodore Adlakha was getting before the latter's promotion. If on the promotion of Air Commodore Adlakha to the rank of Air Vice,,,,,

Marshal the salary of the petitioner could not be less than that of A.V.M. Adlakha, there is no reason as to why the salary of the petitioner",,,,,

should have been less when Mr. Adlakha had not been promoted from the rank of Air Commodore. If the petitioner had not been promoted,,,,,

as Avm before 1st January, 1986 he would have got more pay as an Air Commodore than what Air Commodore Adlakha was getting, while",,,,,

in the same rank of Air Commodore, and he would have continued to get more pay than what has been fixed as Air Vice Marshal with effect",,,,,

from 1st January 1986.""" ,,,,,,

13. If the aforesaid principles and instructions are applied in the present case, we are of the considered view that the applicant is entitled to the benefit" ,,,,,,

of stepping -up of pay. Clause 6(g) of the Special Air Force Instructions, as reproduced hereinabove, clearly contemplates that if the junior is drawing" ,,,,,,

more pay than the senior officer, the provision of stepping-up of pay has to be invoked. There is no reason as to why the principle of stepping up of" ,,,,,,

pay should not be made applicable in the case of the applicant also as held by the Delhi High Court in the aforesaid judgement.,,,,,,

14. That apart, on 05.04.1991, vide Annexure A -4, certain circulars have been issued by the Government of India, Ministry of Defence, in the matter" ,,,,,,

of stepping-up of pay of Major Generals and their equivalents in the Air Force and Navy and it is indicated that the question of extending benefit by ,,,,,,

Delhi High Court i.e. in the case of S.N. Chaturuecit (supra), has been examined by the Government of India and similarly placed Major Generals and" ,,,,,,

equivalent officers would be granted stepping up of pay if officers lower in the rank like Brigadiers are drawing more pay than the senior officers like ,,,,,,

Major Generals. In this regard, if we take note of the objections raised by the respondents, they only say that because of the inclusion of the MSP, on" ,,,,,,

revision, the anomaly has arisen and if by adding the element of MSP, the anomaly had occurred, then to remove the said anomaly, there is no reason" ,,,,,,

as to why stepping up of pay should be granted because the MSP was granted to the applicant also. We find that the juniors in the Accounts Branch ,,,,,,

holding the rank of Air Commodore and below continue getting their annual increments as well as MSP, whereas in the case of persons like the" ,,,,,,

applicant, this was not followed even though he was granted MSP while fixing his pay on promotion as Air Vice Marshal on 01.07.2016. Merely" ,,,,,,

because by adding MSP as revised, the juniors are getting higher pay, the benefit of stepping up of pay cannot be denied to the applicant. Even in the" ,,,,,,

Army, the benefit of stepping-up of pay is recommended in the circular at Annexure A-4 as indicated hereinabove." ,,,,,,

15. That being so, merely because the Union of India has taken no decision in the matter to remove the anomaly, we cannot lose sight of the fact that" ,,,,,,

the principle of stepping - up of pay is a well settled principle in service jurisprudence. It has been enforced only for the purpose of removing anomaly ,,,,,,

in the pay scale and pension between a junior and senior officer and if the

anomaly has arisen on account of revision of pay-scales, the same should",,,,,,
be removed by stepping-up of pay of the senior officers, as has been done in the
case of S.N. Chaturvedi (supra) by the Delhi High Court.",,,,,
16. Keeping in view the aforesaid, we allow this application and direct that in
rejecting the Statutory Complaint of the applicant dated 17.09.2019,",,,,,
without considering all these aspects, the respondents have committed grave
irregularities and illegalities, accordingly, impugned order dated",,,,,,
15.10.2019, being unsustainable, is quashed. Respondents are directed step-up
the pay of the applicant retrospectively with effect from 01.07.2017,",,,,,
bringing it at par with his immediate juniors and thereafter grant all arrears of
pay retrospectively with effect from 01.07.2017. The respondents are,,,,,
also directed to grant pension and other consequential benefits to the applicant
with effect from 01.07.2020. The aforesaid directions be complied with,,,,,
within a period of three months from the date of receipt of the copy of this order,
along with interest 6% per annum from the date due till the payment",,,,,,
of arrears.,,,,,,
17. With the aforesaid, the application stands allowed.",,,,,