

**OA 522 of 2010 AND OTHER CONNECTED MATTERS DECIDED ON  
25<sup>TH</sup> NOVEMBER 2010**

OA 522 of 2010	SS Matharu and Others Vs UOI and ors	Mr Navdeep Singh/ Dr Puneet Bassi
OA 257 of 2010	Jagdish chander and Others Vs UOI and ors	Mr Navdeep Singh/ Dr Amarpreet Kaur
OA 410 of 2010	HS Taunque and Others Vs UOI and ors	Mr Navdeep Singh/ Mr Suveer Sheokand
OA 521 of 2010	GS Kang and Others Vs UOI and ors	Mr Navdeep Singh, Dr Amarpreet Kaur Sandhu
OA 409 of 2010	NN Sud and Others Vs UOI and ors	Mr Navdeep Singh/ Brig SD Dutta

FREE COPY OF ORDER  
DATED..... 25/11/20

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IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

GA-522/10

1. 16517, Sqn Ldr SS Matharu son of Labh Singh, aged 69 years, Hno 65, Teg Colony, Patiala, Punjab, 98146-32951
2. 19295, Sqn Ldr SS Kadian (Shaurya Chakra) son of Ram Gopal aged 66 years Vill and PO Beri, Pana-Bathian, Distt Jhajjar, Haryana, 98128-46628
3. 18213, Sqn Ldr RS Oberoi son of Nanak Singh aged 67 years, Hno 34, Officer Enclave, Phase II, Patiala, Punjab, 9023468484
4. IC 48798 Major Yashpaul Singh son of Ranjha Singh aged 51 years, Vill- Bering via Kamahi Devi, Distt-Hoshiarpur, Punjab, 94636-46654
5. SL 2845 Major Hari Chand son of Udho Ram aged 66 years, Vill- Samoh, PO- Bani, Tehsil Barsor, Distt- Hamirpur, HP, 98168-10879
6. 15505 Sqn Ldr NS Bajaj son of Jagat Singh aged 71 years, Flat # 27, Block II, Mohali, Employees Cooperative Society, Sector 68, Punjab, 98150-27398
7. 17087 Sqn Ldr Joga Singh son of Pritam Singh aged 69 years, Hno 2298, Sector 71, Mohali, Punjab, 0172-2266098
8. 18357 Sqn Ldr PS Kalra son of Mehar Singh aged 69 years, Plot # 489, Industrial Area, Phase IX, Mohali, Punjab, 98727-93844
9. 13691 Sqn Ldr RP Singh son of Joginder Singh aged 58 years, Plot 562, street 2, new shakti ngr, Behind Dada Motors, Ludhiana, Punjab, 97790-06573
10. 8388 Sqn Ldr RS Bawa son of Pritam Singh Bawa aged 67 years, 303, Green Avenue, Amritsar, Punjab, 92164-33981

.....Applicants

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AFT (PROCEDURE) RULES 2008

*M. K. Singh*  
(Section Officer)

16/12

PREPARED BY :- *[Signature]*

CHECKED BY :- *[Signature]*  
16/12

Vs

1. Union of India through Secretary to Govt of India, Ministry of Defence, South Block, New Delhi – 110 011

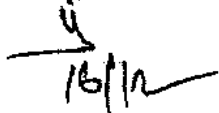
2. Director (Pensions), Ministry of Defence, Sena Bhawan, DHQ PO, New Delhi – 110 001

3. Director (Pensions), Department of Pensions, Govt of India, Lok Nayak Bhawan, Khan Market, New Delhi

.....Respondents

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AFT (PROCEDURE) RULES 2008"

(Section Officer)

  
16/12

PREPARED BY :-

CHECKED BY :-

  
  
16/12

ARMED FORCES TRIBUNAL CHANDIGARH REG BENC  
AT CHANDIMANDIR

O.A. No. 522 of 2010 and other connected matters.

Sqn. Ldr. SS Matharu & Ors. ....Petitioners

Vs

Union of India and others .....Respondents

ORDER  
25-11-2010

Coram : **Justice Ghanshyam Prasad, Judicial Member.**  
**Lt Gen H S Panag (Retd), Administrative Member.**

For the Applicant (s) : Mr. Navdeep Singh, Advocate.

For the respondent(s) : Dr. Puneet Bassi, CGC.

Justice Ghanshyam Prasad

This order will dispose of a bunch of applications bearing O.As. No. 522 of 2010, OA No. 346 of 2010, OA No.257 of 2010, OA 728 of 2010, OA No. 410 of 2010, OA No. 521 of 2010 and O.A. No.409 of 2010 since in all these OAs, an identical question of law is involved.

Therefore, they are taken together and are being disposed of by this common order.

The petitioners in all the OAs are officers, who retired from different wings of AFMIA. O

01-01-2006 in the rank of Major or its equivalent ranks (Sqn. Leader and Lt. Commander). The common question of law and fact involved in these OAs is with regard to mode of fixation of pension after implementation of recommendations of 6<sup>th</sup> Pay Commission by Ministry of Defence. Their main grievance is that their pension has not been fixed in accordance with the recommendations of 6<sup>th</sup> Pay Commission Report and has been fixed in violation of Hon'ble Apex Court decision (Union of India & ors. Vs. Major General SPS Vains) and they have prayed for issuance of directions to the respondents to maintain parity between retirees falling before or after a particular cut-off date.

It is averred that during 5<sup>th</sup> Central Pay Commission there were different pay-scales for all ranks. The 6<sup>th</sup> CPC instead of continuing with separate pay scales of different ranks introduced a system of Pay Bands. Different pay scales of different ranks were merged into four basic Pay Bands. Different ranks were adjusted within the same basic pay-bands but with a separate minimum guaranteed pay for each rank along with Grade Pay. The ranks of Lieutenant, Captain and Majors were placed on one 'Single Pay Band' of Rs. 15,600 - Rs. 39,100/- + Grade Pay and MSP.

It is further averred that carrying on with the system of modified parity, the 6<sup>th</sup> CPC fairly recommended that the pension of all those officers, who retired prior to 01-01-2006 would be fixed not less than 50% of the sum of the minimum of the pay in the pay band and the

grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. A sum of Military Service Pay was to be added into the said figure for defence personnel meaning thereby that naturally the pension was to be fixed @ 50% of 15,500 (Minimum Pay) + 5400 (Grade Pay) + 6000 (MSP) for Lieutenants (13500), 50% of 18,600 (Minimum Pay) + 6100 (Grade Pay) + 6000 (MSP) for Captains (i.e. Rs15350) and 50% of 23808 (Minimum Pay) + 6600 (Grade Pay) + 6000 (MSP) for Majors (i.e. Rs. 18204). The said recommendation of the 6<sup>th</sup> CPC was duly accepted vide para 12 of a Gazette notification dated 29-08-2008 by the Govt. of India (Annexure A-4). However, while implementing the same, the respondents have interpreted the above stipulation to mean that the pension of all pre-2006 retirees of the rank of Lieutenant, Captain and Major would be calculated by taking into account the minimum of Pay Band-3 that is, Rs. 15600 which happens to be the minimum of pay in the pay band corresponding to the pre-revised scale of the particular rank from which a person retired. The respondents have hence based the calculation of pension of Lieutenants, Captains and Majors all on a single minima of Rs. 15,600. As a result the minimum guaranteed pension of the Applicants has been fixed at Rs.14,100 per month instead of Rs. 18204 (These figures are for a qualifying service of 33 years and pension is reduced proportionately for lesser years of service. Such a decision was taken at the level of department of pension who on their own issued a clarification to this effect and by totally by-passing the gazette notification the said

department issued a letter wherein it was stated that the minimum of pay would mean the minimum of the pay band and that too irrespective of the scale from which the pensioner had retired rather than the minimum corresponding to the scale from which the pension had retired as was recommended by the 6<sup>th</sup> CPC and accepted by the Govt. of India through the ibid gazette notification.

Written statement has been filed by the respondents. According to them, the modified parity was provided as per the recommendation of 6<sup>th</sup> Central Pay Commission as accepted by the Government and implemented vide Government order No. 17 (4)/2008 (1) D (Pen/Pol.) dated 11-11-2008. The Government of India, Ministry of Defence letter No. 17(4)/2008(1)/D (Pen/Policy) dated 11.11.2008 which is already on record as Annexure A-6 implementing recommendations of Sixth Central Pay Commission in respect of pre-2006 retired Armed Forces Personnel stipulated in Para 4 that Pension of all Pre-2006 retired Armed Forces Personnel shall be revised by the consolidation method i.e. 2.26 times the basic pension (without DP merger) as on 01-01-2006. The revised consolidated pension was further protected under Para 5 of the ibid Government letter stipulating that the revised pension so consolidated shall in no case be less than 50% of the minimum of the pay band + Grade Pay corresponding to the rank + MSP for 33 years of qualifying service including rank wise weightages.

It is further stated that granting of benefit of pay and pension is a matter of policy and the Govt. is entitled to take into account various factor including financial implications and availability of resources to decide what benefit or how much benefit should be granted and from which particular time. Such a policy is not open to judicial review unless the same is found arbitrary and against the public policy with the object to the achieved and in the present case no such factor of arbitrariness is found.

We have heard the learned counsel for both the parties and perused the record.

In course of submissions, the learned counsel for the petitioners filed some decisions of Apex Court including a recent decision of Principal Bench of Armed Forces Tribunal dated 14-09-2010 passed in OA Nos. 270 and 24 of 2010 Sqn. Ldr. Vinod Kumar Jain & others Vs. Union of India & others.

In the above OAs similar questions of law fell for consideration before the Principal Bench. The Principal Bench after consideration of all letters, Memorandum etc. issued by the Government of India, Ministry of Defence upheld the contention of the petitioners with regard to mode of fixation of pay and pension of Pre-01-01-2006 retirees in the rank of Major (in the case of Air Force Sqn Ldr, and in case of Navy, Lt. Commanders). Para Nos.8 and 9 of the judgment are relevant, which are as follows:-



"8. In this revised pay structure according to the applicant the basic pay of in pre revised scale for the rank of Lt. commander and equivalent rank was Rs. 11,600/- and rank pay was  $1200 \times 1.86$  and Rs. 23,810/- has been worked out as minimum pay in the pay bank for the rank of Lt. Commander in the Sixth Pay Commission. Therefore, contention of learned counsel for the applicant is that this is the pay in the pay band of this revised pay scale for Lt. Commander and learned counsel for the applicant submitted that the expression used in the implementation order and in the recommendations of the Sixth Pay Commission is that incumbent shall get 50% of the minimum of the pay in the pay band. Therefore, learned counsel for the applicant submits that Rs 23810/- is the minimum pay in the pay band for Lt. Commander and it should be taken up for consideration of the pension of the pre-retirees. Learned counsel for the applicant submits that since distinction of pre and post has been done away in the Fifth Pay Commission which has also been accepted under the Sixth Pay commission that means a person who retires on 01.01.2006 as a Lt. Commander and the persons who have already retired prior to 01.01-2006, there will be no distinction for them for pension. In the present case, as per the definition of the pay in the pay bank by the Naval Special Order which has to be read as wherever the expression appears would mean that Rs. 23810/- will be minimum pay in the pay band for the Lt. Commanders and equivalent rank.

9. As against this, learned counsel for the respondents has strenuously urged before us that the expression 'minimum pay in the pay band' should only mean that the minimum of the scale in the pay band should be taken as terminative factor of the determination of the pension and not the minimum of the pay in the pay band. We would have readily accepted the contention of learned counsel for the respondents but for the fact that the Naval Special Order which defines the expression pay band and had already given a table below that what shall be the minimum for the Lt. Commander in the Sixth Pay Commanders. Therefore, we cannot add or subtract anything beyond what have already been defined by the respondents. Had this distinction not been there perhaps the example which the respondents have shown from the various documents and the Circulars issued by the Comptroller General of Defence Accounts could have been readily accepted. But the fact that the Government by the Special Order dated 18<sup>th</sup> October, 2008 themselves have defined the pay in the pay band, therefore, we have to accept the definition given by them and then reading this expression 'the minimum of the pay in the pay band' along with the recommendations of the Pay Commission and the implementation order should be taken for determination of the pension has to be accepted. Had this expression not been defined anywhere perhaps argument of learned counsel for the respondents would have been accepted. In this connection, we may further point out that the earlier

communication dated 17<sup>th</sup> December, 1998 in the Fifth Pay commission, the Government has clearly mentioned that pension of all pensioners irrespective of the date of their retirement shall not be less than 50% the minimum pay was revised from 01.01-2006 for the last post held by the pensioners. Had this expression been repeated, perhaps it would carry the same interpretation. In the present case, pay structure has been revised and now all the pay scales have been categorized in the various pay bands and in the case of Lt. Commander or equivalent fall in the Pay Band-III and minimum of Pay Band-III is 15,600/- at the entry level i.e. minimum of the pay band for this rank. Had this expression used in this pay scale of Sixth Pay Commission, we would not have come to interpretation as was clarified by the Fifth Pay Commission by the Government Order dated 17<sup>th</sup> December, 1998. But in the present case, the expression pay in the pay band has been defined by the Government in the communication dated 18<sup>th</sup> October, 2008 put the matter beyond any controversy. The expression which has been defined in the scheme of things has to be accepted while interpreting all the provisions of the Pay Commission and the implementation order. Here the expression 'minimum of the pay in the pay band' is to be taken for the purposes of deciding the pension of pre 2006 pensioners. Therefore, one has to interpret the provisions as exist and we have to take it minimum pay in the pay band for equivalent rank then that

Government in Column 7 of table at para 4 (a) as such we have to accept the figure of 23810/- being the minimum of the pay in the pay band for Lt. Commanders and equivalent ranks. If that is taken then naturally 50% of this will have to be treated as a basic pension and rest of it will be added to it as grade pay and other benefits which are given to the persons of that rank. There is no controversy with regard to grade pay and Military Service pay and other benefits to which we are not concerned. We are concerned with what is minimum has to be taken for pre 2006 retirees and minimum pay scale for the purpose of determining the pension. In our opinion

as per the Government Order for all pre retirees of Lt. Commander and other ranks their minimum of the pay has to be accepted as determined by the Government for the purpose of fixation of the officers in 2006 i.e. Rs. 23810/-. Accordingly, we direct let the pension of pre-retirees should be decided on the basis of minimum of the pay in pay band i.e. Rs 23,810/- with all other benefits and shall be given to them. All exercise may be completed as far as possible within three months. Both the petitions are allowed in the aforesaid terms. No order as to costs."

From the above discussion and the decision of the Principal Bench, it is quite apparent that all the OAs deserve to be allowed in terms of the aforesaid decision.

Before parting with the judgment, we would like to add few words.

In para 8 of the written statement, it has been averred that granting of benefit of pay and pension is a matter of Policy and the Government is entitled to take into account various factors including financial implications and availability of resources to decide what benefit or how much benefit should be granted and from which particular time. Such a policy is not open to judicial review unless the same is found arbitrary and against the public policy with the object to be achieved and in the present case, no such factor of arbitrariness is found.

In this regard we tempted to refer to a decision of the Hon'ble Supreme Court reported in 2003 AIR (SC) 2305. Similar arguments were advanced on behalf of the Union of India in the matter of Pay Commission Recommendations of Trade Tax Officers. In paragraph 11 of the judgment, it has been held as follows:-

*"There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. In the present case, however, judicial review is not sought against the report of recommendation of the Pay Commission. What the respondent/association has questioned the implementation of the Resolution*

*of the Government based on the report and recommendations of the Pay Commission....."*

In this case also, judicial review is not sought against the report of recommendations of the Pay commission for all intents and purposes. The question is of true interpretation of the resolution of the Government regarding the mode of fixation of pay/pension based on the report of the Pay Commission as well as the different circulars of the Government. Therefore, the objection taken by the learned counsel for the respondents has no force.

Learned counsel for the petitioners has also filed some decisions namely **2008 (4) SCT 453 (Union of India and another vs. SPS Vains (retd.) and others)**, **2006 (1) SCT 561 (Major General SPS Vains vs. Union of India)**, **1983 AIR (Allahabad) 209 (Bidhubhushan Malik vs. Union of India)**, **1991 (3) SCT 670 (Union of India vs Deoki Nandan Aggarwal)**, **1988 (4) S.L.R 495 (M.L. Jain vs Union of India)**, and **1991 (1) S.L.T. 441 (Air Vice Marshal S.N. Chaturvedi vs. Union of India and others)**.

We have gone through the decisions cited above by the learned counsel for the petitioners.

In almost all the decisions, similar law has been laid down that the object sought to be achieved was not create a class within a class, but to ensure that the benefits of pension were made available to

all the persons of the same class equally irrespective of their date of retirement. The officers, who retired on higher posts, cannot get pension less than the officers holding lower ranks. To hold otherwise would cause violation of provisions of Article 14 of the Constitution of India.

Here the point in issue does fall within the above decisions.

Thus, having regard to the facts and circumstances of the case as well as the decision of the Principal Bench referred to above, all the applications are allowed. We direct the respondents to fix/refix the pension of all the petitioners on the basis of minimum of the pay in Pay Band i.e. Rs. 23,810/- and release all other benefits to them within four months from the date of receipt of this order. There shall be no order as to costs.

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AFT (PROCEDURE) RULES 2008"

(Section Officer)



Sd/-

(Justice Ghanshyam Prasad)

Sd/-

(Lt Gen H. S. Panag (Retd))

25.11.2010  
'dls'

PREPARED BY :-

CHECKED BY :-