

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT  
CHANDIMANDIR**

O.A. No. 100 of 2010

**Major General S P S Vains & Ors Vs. U.O.I & ors.**

ORDER

Present: For the applicant : Mr. Nidesh Gupta, Sr. Advocate with  
Mr. Chanderhas Yadav, Advocate.

For the respondents : Mr. Mohit Garg, CGC.

Issue notice to the respondents.

Mr. Mohit Garg, CGC, accepts notice on behalf of all the respondents.

It has been submitted by the learned counsel for the petitioners that some of the petitioners moved the Punjab and Haryana High Court by way of CWP No. 17233 of 2001 for removal of the anomaly of the 5<sup>th</sup> Pay commission report in the matter of fixation of pay of pre-1996 retiree Major Generals. The Punjab and Haryana High Court decided the case in favour of the petitioners against which the Union of India filed SLP (Civil) No.12357 of 2006 which was also dismissed by the apex court on 9-09-2008 and it has been held in para 31 of the judgment as follows:-

"We, accordingly, dismiss the appeal and modify the order of the High Court by directing that the pay of all pensioners in the rank of Major General and its equivalent rank in the two other Wings of

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the Defence Services be notionally fixed at the rate given to similar officers of the same rank after the revision of pay scales with effect from 1-1-1996, and, thereafter, to compute their pensionary benefits on such basis with prospective effect from the date of filing of the writ petition and to pay them the difference within three months from date with interest at 10% per annum. The respondents will not be entitled to payment on account of increased pension from prior to the date of filing of the writ petition."

It is further submitted by the learned counsel for the petitioners that direction given by the apex court in the decision rendered in the aforesaid SLP has not yet been fully implemented.

In the mean time the 6<sup>th</sup> Pay commission has also submitted its report and on the basis thereof a similar anomaly has occurred in the fixation of the pay of these officers. According to the learned counsel for the petitioners the position is worse than earlier and has been compounded by the fact that even officers 2-3 ranks below the petitioners who at one time were their subordinates in service and remain in lower rank on retirement have been granted pension more than the petitioners.

Learned counsel for the respondents submits that the principle has already been laid down by the Constitutional Bench of the Supreme Court in the case of **D.S. Nakra and others Vs. Union of India**, reported in AIR 1983 S.C. 130.

However, it appears from the documents placed on record by the petitioners that the principle laid down by the Constitutional Bench has not been implemented or followed in letter and spirit while fixing the pension of the petitioners.

In the facts and circumstances of the case, the respondents are directed to implement the decision of the Constitutional Bench as well as decision of the Supreme Court rendered in SLP (Civil) 12357 of 2006 (Union of India and another Vs. SPS Vains (Retd) and others) referred to above in letter and spirit in the matter of fixation of pension of the petitioners within three months from the date of receipt of this order.

With the above direction, this application stands disposed of.

~~Justice Ghanshyam Prasad~~  
(Justice Ghanshyam Prasad)

~~Lt Gen N S Brar (Retd)~~  
(Lt Gen N S Brar (Retd))

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AFT (PROCEDURE) RULES 2007

4-03-2010  
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~~Section Officer~~  
5-3-10

Entry made in  
Register

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