

A SUCHET SINGH YADAV & ORS.

v.

UNION OF INDIA & ORS.

B (Civil Appeal Nos. 770-771 of 2018)

FEBRUARY 21, 2018

**[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]**

C *Armed Forces – Pensionary benefits – Claim for higher pay*  
*scale – When not valid – In consequence of implementation of Fifth*  
*Pay Commission Report, Government Order dtd. 21.11.1997 issued*  
*with respect to “pay and allowances of Armed Force officers” –*  
*Relying thereon, Commissioned officers of all the three wings of*  
*Defence Forces, i.e. Army, Air Force and Navy, who had retired*  
D *prior to 01.01.1996, filed O.As. before Armed Forces Tribunal for*  
*grant of next higher scale to one held by them at the time of retirement*  
*– Some claims were rejected while others were allowed by Tribunal*  
*– On appeal, held: A perusal of Order dtd. 21.11.1997 indicates*  
*that what was conveyed by the said order was sanction of the*  
E *President for improvement of pay scales of the Officers, w.e.f.*  
*01.01.1996 – Word used in the order is “pay scales” of the officers*  
*with effect from 01.01.1996, which pre-supposes that improvement*  
*of pay-scales of the Officers who are still in the establishment, has*  
*been made– Order dated 21.11.1997 was not issued with regard to*  
*commissioned officers, who had retired prior to 01.01.1996, nor it*  
F *provides for stepping up of the pay-scale of such retiree officers, to*  
*a higher rank – Thus, those who were not in service on 01.01.1996*  
*could not claim any benefit of the order dated 21.11.1997 – Further,*  
*even order dtd. 14.01.2000 was not issued for giving any benefit to*  
*those who retired prior to 01.01.1996 – Applicants-Commissioned*  
G *officers were not entitled for grant of benefit of higher pay scale*  
*under Order dtd. 21.11.1997 – Orders of Tribunal extending the*  
*said benefit to those applicants who had already retired before*  
*01.01.1996 are set aside – Whereas, the orders of Tribunal holding*  
*that Armed Forces Officers, who have retired before 01.01.1996*  
*are not entitled for pensionary benefits are upheld.*

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**Disposing of the appeals, the Court**

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**HELD: 1.1** The Government of India, Ministry of Defence *vide* its Resolution dated 13.10.1997 had decided to implement the Vth pay Commission Report w.e.f. 01.01.1996. In continuation of the above Resolution dated 13.10.1997, another order was issued by the Ministry of Defence on 21.11.1997. A perusal of the said order indicates that what was conveyed by the said order was sanction of the President for the improvement of the pay scales of the Officers, w.e.f. 01.01.1996. The word used in the order is “pay scales” of the officers with effect from 01.01.1996, which pre-supposes that improvement of the pay-scales of the Officers has been made, who are still in the establishment. Clause (a) of the order is the basis of the claim of the applicants. Clause (a) consists of two separate provisions. The first part of clause (a) states “Officers who become substantive Majors or equivalent on or after 01.01.1996 will be granted the scale of Lt. Colonel or equivalent.....”. The above clause specifically refers to those Officers who became substantive Majors or equivalent on or after 01.01.1996. This clause is clearly inapplicable with regard to present applicants. The second part of clause (a), which is relied, is “As a one time measure, however, those who became substantive Majors or equivalent before 01.01.1996 will be granted the scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Major”. The above quoted portion refers to grant of scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service, i.e., in the 22<sup>nd</sup> year with the rank pay of Major. In the Government order dated 21.11.1997, the grant of pay-scale of Lt. Col. or equivalent is contemplated. The second part of the clause (a) also refers to grant of pay-scale of Lt. Colonel or equivalent to Armed Forces Personnel. The grant of pay-scale in next cadre is generally in reference to existing officers. [Paras 17, 18][762-B; 763-E-H; 764-A-B]

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**1.2** The above view is fortified by subsequent order dated 07.06.1999 issued by the Government, which was with regard to “implementation of Government’s decision on the recommendations of the Vth CPC relating to pensionary benefits in respect of commissioned officers and personnel below officer

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A rank”. The said order provides that with effect from 01.01.1996  
pension of all Armed Forces Pensioners irrespective of their date  
of retirement shall not be less than 50% of the minimum pay in  
the revised scale of pay introduced w.e.f. 01.01.1996 of the rank,  
and rank Group (in case of PBOR) held by the pensioners. The  
B fixation of pension thus clearly of all retirees prior to 01.01.1996  
is with regard to the rank, which was held by the pensioner. In  
event, it was intended that the benefit of Government Order dated  
21.11.1997 of giving one scale higher to the rank, which was held  
by retiring officers at the time of retirement, the said prescription  
ought to have found its way in the order dated 07.06.1999. Rather  
C the prescription and requirement in the order dated 07.06.1999  
run counter to the interpretation put by the applicant on the order  
dated 21.11.1997. [Paras 19, 20][764-C, F-H; 765-A]

1.3 Para 2.1 of the order dated 07.06.1999, relating to the  
the commissioned officers of both post and pre 1996 cases, also  
D clearly indicates that 50% of the minimum of the revised pay  
scale was introduced w.e.f. 01.01.1996 for the rank last held by  
the commissioned officers at the time of his/her retirement. The  
said provision does not bring any concept of giving a higher scale  
of pay to one, which was held by the commissioned officers at the  
E time of his retirement. Thus, a plain reading of the order dated  
07.06.1999 clearly indicates that the order dated 07.06.1999 was  
issued relating to “pensionary benefits in respect of  
commissioned officers” while order dated 21.11.1997 was issued  
with respect to “pay and allowances of Armed Force officers.”  
Thus, the subject matters of both the orders were different, which  
F is clear by the reading of both the orders. The order dated  
21.11.1997 was not issued with regard to commissioned officers,  
who had retired prior to 01.01.1996, nor it provides for stepping  
up of the pay-scale of such retiree officers, to a higher rank, i.e.  
from rank of substantive Majors or equivalent to the scale of Lt.  
Colonel or equivalent. [Paras 20, 21][764-F-H; 765-D-F]

G 1.4 A reading of the order dated 14.01.2000, on which also  
reliance was placed by the applicants to support their contention  
that earlier prescription of 21 years has been reduced to 20 years,  
indicates that revised years of service required for promotion of

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substantive cadres were provided for. The promotion to substantive cadres, which was specifically referred to in the Government order was clearly with regard to officers, who were in service on 01.01.1996, which was the date for implementation of Vth Pay Commission recommendations. The said order dated 14.01.2000 was not issued for giving any benefit to those who retired prior to 01.01.1996. [Paras 22, 23][765-G-H; 767-A-B]

1.5 It is well settled that pensioners for the purposes of pension benefit form a class and the schemes which classify pensioners into two classes on the basis of cut off date have always been frowned by this Court. There cannot be any dispute to propositions that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut off date for extension of benefits especially pensionery benefits, there has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. However, present is not a case where there is any discrimination in pensionery benefits of pre 01.01.1996 and post 01.01.1996 retirees. Para 2.1 of the order dated 07.06.1999, provides for same principle or formula for computation of pension of both “post and pre 01.01.1996 cases”. The applicants, based their claims on the order of the Government of India dated 21.11.1997 and it is already held that those who were not in service on 01.01.1996 could not claim any benefit of the order dated 21.11.1997. Order dated 21.11.1997 was issued in reference to pay and allowances of Armed Forces Officers, which pre-supposes that these officers were in the establishment on 01.01.1996. Thus, applicants were clearly not entitled for grant of benefit of higher pay scale under the order dated 21.11.1997. The orders of the Armed Forces Tribunal extending the said benefit to those applicants who had already retired before 01.01.1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that Armed Forces Officers, who have retired before 01.01.1996 are not entitled for pensionery benefits are upheld. [Paras 30, 31 and 34][770-G-H; 773-B-F]

*Maj. K.G. Thomas v. Union of India & Ors.* [Judgment dated 19.12.2012 passed by Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 256 of 2011] – distinguished.

- A *Col. B.J. Akkara (Retd.) v. Government of India and Others. (2006) 11 SCC 709; [2006] 7 Suppl. SCR 58 ; D.S. Nakara & Ors. v. Union of India (1983) 1 SCC 305 ; [1983] 2 SCR 165 ; K.C. Bajaj & Ors. v. Union of India & Ors. (2014) 3 SCC 777 : [2013] 14 SCR 1100 ; V. Kasturi v. Managing Director, State Bank of India (1998) 8 SCC 30 : [1998] 2 Suppl. SCR 269 ;*
- B *Union of India & Anr. v. SPS Vains (Retd.) & Ors. (2008) 12 SCALE 360 – referred to.*

Case Law Reference

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|---|-------------------------|-------------|---------|
| C | [2006] 7 Suppl. SCR 58  | referred to | Para 30 |
|   | [1983] 2 SCR 165        | referred to | Para 31 |
|   | [2013] 14 SCR 1100      | referred to | Para 33 |
| D | [1998] 2 Suppl. SCR 269 | referred to | Para 33 |
|   | (2008) 12 SCALE 360     | referred to | Para 33 |

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 770-771 of 2018.

F From the Judgment and Order dated 29.12.2015 of the Armed Forces Tribunal, Principal Bench, New Delhi in O. A. No. 666 of 2014, and Order dated 06.04.2016 in Review Application No. 4/2016 in O. A. No. 666 of 2014/Order dated 29.06.2016 in M. A. No. 431 of 2016 in R. A. No. 4/2016 in O. A. No. 666 of 2014

WITH

G Civil Appeal No. 7989 of 2015, Civil Appeal No. 7917 of 2016 and Civil Appeal Nos. 773-774, 2368 and 2369 of 2018.

Sukhjinder Singh, Alok Gupta, R. Balasubramanian, Ms. Aarti Sharma, Prabhas Bajaj, Akshay Amritanshu, S.S. Ray, P. K. Mullick, Mukesh Kumar Maroria, Advs. for the appearing parties.

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The Judgment of the Court was delivered by A

**ASHOK BHUSHAN, J.** 1. Delay condoned.

2. These appeals relate to claim of commissioned officers of all the three wings of the Defence Forces, i.e. Army, Air Force and Navy, who retired prior to 01.01.1996 for grant of next higher scale to one which was held by them at the time of retirement, on the strength of the Government of India's Order dated 21.11.1997 issued in consequence of implementation of Fifth Pay Commission Report. B

3. These appeals were heard in two groups. First group consisting of Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016) – Suchet Singh Yadav & Ors. Vs. Union of India & Ors. and Civil Appeal(arising out of Civil Appeal Diary No. 25429 of 2017) – Union of India & Ors. Vs. Lt. Cdr. C.M. Mittal & Ors., which was heard on 16.01.2018. Second group of the appeals consisting of Civil Appeal No. 7989 of 2015 – Lt. Cdr. Gurmukh Singh Vs. Union of India & ors., Civil Appeal No. 7917 of 2016 – V.K. Mehta Vs. Union of India & Ors., Civil Appeal (arising out of Civil Appeal Diary No. 7231 of 2016) – Union of India & Ors. Vs. Lt. Cdr. Bhisham Kumar (Retd.) & Ors. and Civil Appeal (arising out of Civil Appeal Diary No. 22257 of 2017) – Union of India & Ors. Vs. Sqn. Ldr. Jai Kumar & Ors., was heard on 02.02.2018. C D E

4. The appeals have been filed both by the Defence Officers whose claims have been rejected by Armed Forces Tribunal and by Union of India where the claims were allowed by the Armed Forces Tribunal. The judgments delivered by Armed Forces Tribunal, Principal Bench, New Delhi as well as the other Regional Benches have on different occasions expressed divergent views on the same issue. F

5. Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016) – Suchet Singh Yadav & Ors. Vs. Union of India & Ors. and Civil Appeal(arising out of Civil Appeal Diary No. 25429 of 2017) – Union of India & Ors. Vs. Lt. Cdr. C.M. Mittal & Ors. have arisen against the same judgment of the Armed Forces Tribunal, Principal Bench, New Delhi dated 29.12.2015 and 06.04.2016, arising out of O.A. No. 666 of 2014 filed by Sqn. Ldr. Suchet Singh Yadav & Ors. Reference of facts and pleadings in the Civil Appeal filed by Sqn. Ldr. Suchet Singh Yadav shall be sufficient to decide all these appeals, which raises common questions of facts and law. G H

**A Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016)  
– Suchet Singh Yadav & Ors. Vs. Union of India & Ors.**

6. Sqn. Ldr. Suchet Singh Yadav was commissioned on 27.03.1965 and he retired on 14.08.1985 while holding the rank of Sqn. Ldr. in the Air Force. The report of Fifth Pay Commission was submitted on 30.01.1997 pertaining to structure of emoluments, allowances and conditions of service of Armed Forces Personnel. The Central Government issued order dated 13.10.1997 implementing the recommendations with certain modification w.e.f. 01.01.1996. On 21.11.1997, the Government of India, Ministry of Defence issued an order regarding pay and allowances of Armed Forces Officers. On 07.06.1999, the Government issued an order regarding implementation of Government's decision on the recommendations of the Vth CPC relating to pensionary benefits in respect of commissioned officers and personnel below officer rank. On 14.01.2000, another order implementing Vth Pay Commission recommendations – Para 147.21 “conditions regarding grant of substantive rank to officers of Army, Air Force and Navy” was issued. The appellant Suchet Singh Yadav and other fourteen Armed Forces Officials, who held the rank of Sqn. Ldr./Major/Lt. Cdr. respectively claim that they were entitled to fixation of their pay/pension in the next pay-scale of Lt. Col. or equivalent in pursuance of the Government Order dated 21.11.1997, which has been denied to them. Consequently, Sqn. Ldr. Suchet Singh Yadav and fourteen other Armed Forces Officials filed O.A. No. 666 of 2014 in the Armed Forces Tribunal, Principal Bench, New Delhi. In the Original Application, the applicants claimed following reliefs:-

F (a) The petitioner be granted pension of the rank of Wing Commander (Time Scale) and equivalent ranks with effect from 01.01.1996 with consequential benefits in pursuance of implementation of 5<sup>th</sup> CPC recommendations (Para 147.21), as approved vide Govt. of India letter dated 14.01.2000 at Annexure-P-3 by quashing respondents communications dated 02.09.2014 and other such communications/orders as and when issued at minimum level in terms of Govt. of India letter dated 21.11.1997, read with Govt. of India letter dated 07.06.1999 and 09.02.2001(granting modified parity) and Govt. of India letter dated 14.01.2000 with 12% interest.

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(b) The above prayers may also kindly be applied simultaneously to other fourteen petitioners herein, as they have joined together to file a single petition; A

(c) Pass any other relief(s), which this Hon'ble Tribunal may deem fit appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the petitioners. B

7. A Counter Affidavit on behalf of the respondents in O.A. was filed pleading that letters of Ministry of Defence dated 21.11.1997 and 14.01.2000 are not applicable in respect of applicants, who had retired prior to 01.01.1996. Armed Forces Tribunal after hearing the parties vide judgment dated 29.12.2015 dismissed the O.A. The Tribunal held that the claim cannot be extended prior to 01.01.1996 and further they did not complete the necessary service, which was necessary for grant of higher pension. An application for review was filed before the Tribunal being R.A. No. 4 of 2016. In the Review Application, it was contended that although some of the applicants had completed 20 years but majority of them had completed 21 years of service prior to 01.01.1996, hence, they would be covered by judgment of the Tribunal dated 19.12.2012 in *Maj. K.G. Thomas Vs. Union of India & Ors.*, O.A. No. 256 of 2011, which judgment was also upheld by this Court. The Tribunal vide its judgment and order dated 06.04.2016 allowed the review application of all the applicants except Sqn. Ldr. Suchet Singh Yadav, who was at Sl. No.1 and those, who were mentioned at Sl. No. 11, 12 and 14. Suchet Singh Yadav and three others, namely, Maj. H.R.Y.Rajan, Lt. Cdr. I.N. (Retd.) R.E. Balasubramanian and Maj. Ashok Kumar Choudhary have filed civil appeal questioning the judgments dated 29.12.2015 and 06.04.2016. The Union of India aggrieved by the judgments of the Tribunal dated 29.12.2015 and 06.04.2016 has filed appeal. C  
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**Civil Appeal No. 7989 of 2015 – Lt. Cdr. Gurmukh Singh Vs. Union of India & ors.,**

8. This appeal has been filed by Lt. Cdr. Gurmukh Singh aggrieved by the judgment of the Armed Forces Tribunal, Principal Bench dated 11.01.2012 by which claim of the appellant on the basis of the Government order dated 21.11.1997 to give the benefit of time scale promotion in the scale of Commander has been rejected. The appellant had retired from the post of Lt. Cdr. on 01.10.1992. G

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A **Civil Appeal No. 7917 of 2016 – V.K. Mehta Vs. Union of India & Ors.**

9. This appeal is filed against the judgment dated 18.10.2011 refusing the claim of the appellant to grant time scale of Commander. The appellant had also retired as Lt. Cdr. on 30.12.1995. The Tribunal has rejected the claim.

B **Civil Appeal(arising out of Civil Appeal Diary No. 7231 of 2016) – Union of India & Ors. Vs. Lt. Cdr. Bhisham Kumar (Retd.) & Ors.**

C 10. The Union of India is in appeal against the order dated 25.02.2015 passed by the Armed Forces Tribunal by which the claim of the respondents was allowed relying on earlier judgment of the same Tribunal in *Maj. K.G Thomas Vs. Union of India & Ors.*, O.A. No. 256 of 2011 decided on 19.12.2012. The respondents had also retired on 30.09.1993 as Lt. Cdr.

D **Civil Appeal(arising out of Civil Appeal Diary No. 22257 of 2017) – Union of India & Ors. Vs. Sqn. Ldr. Jai Kumar & Ors.**

E 11. The appeal has been filed against the judgment of the Armed Forces Tribunal dated 14.10.2016 by which judgment the claim of the respondents was allowed following the earlier judgment of the Tribunal in *Maj. K.G Thomas Vs. Union of India & Ors.*, O.A. No. 256 of 2011. The respondents had also retired in July, 1993 as Sqn. Ldr.

F 12. We have heard the learned counsel appearing for the Armed Forces Personnel, who are appellants before us as well as learned counsel for the Union of India. Parties are being referred to as described in the Original Application before the Armed Forces Tribunal, i.e., the applicants and the respondents.

G 13. Learned counsel for the applicants submitted that Government order dated 21.11.1997 granted the benefit to those who became substantive Majors or equivalent before 01.01.1996, the scale of Lt. Col. or equivalent on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Major. The learned counsel for the applicants submitted that prescription of 21 years was subsequently reduced to 20 years by order dated 14.01.2000. The applicants, who have completed 21/20 years of commissioned service, were entitled to scale of pay of Lt. Col. or equivalent. The stand of the respondents that

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the benefit of the order dated 21.11.1997 was not available to those, A  
who retired prior to 01.01.1996 is incorrect and unjustified. There cannot  
be any discrimination with regard to benefits of a homogeneous class of  
retirees on the basis of cut off date, i.e. 01.01.1996. All those, who  
retired prior to 01.01.1996 or who shall retire after 01.01.1996 are entitled  
for the same benefit, i.e., stepping up of one higher scale on completion B  
of 21/20 years of commissioned service.

14. It is submitted that Armed Forces Tribunal Principal Bench  
has allowed the similar claim in *Maj. K.G. Thomas Vs. Union of India*  
& *Ors.*, O.A. No. 256 of 2011 vide its judgment dated 19.12.2012, which  
judgment has also received affirmation of this Court vide its order dated C  
06.02.2015 in Civil Appeal No.1843-1844 of 2015 (arising out of Diary  
No. 12209 of 2014), all the applicants are also entitled for the same  
benefit. Learned counsel for the appellants has relied on various orders  
passed by different benches of Armed Forces Tribunal accepting the  
claim as well as on few judgments of this court, which shall be referred  
to while considering the submissions in detail. D

15. Learned counsel for the Union of India refuting the submissions  
contended that the applicants are not entitled to any benefit under the  
order dated 21.11.1997. The order dated 21.11.1997 was issued with  
regard to pay and allowances of the Armed Forces Personnel. The  
order dated 21.11.1997 pre-supposes that officers are in service on E  
01.01.1996. He submits that with regard to pensionary benefits to those,  
who had retired prior to 01.01.1996, the Government issued another  
order on 07.06.1999. The applicants, thus, are covered by the Government  
order dated 07.06.1999, which had also revised their pension by stepping  
up the pension in accordance with the terms and conditions of the order.  
He submits that order of the Armed Forces Tribunal in *Maj. K.G. Thomas* F  
*Vs. Union of India & Ors.*, O.A. No. 256 of 2011, which is relied by  
the applicants was confined to the facts of the said case and this Court's  
order while dismissing the appeal made it clear that judgment was limited  
to the facts of that case. It is submitted that no such ratio can be read  
from the order of this Court dated 06.02.2015 dismissing the appeal of G  
the Union of India against the judgment of Armed Forces Tribunal in  
*Maj. K.G. Thomas* case, which may help the applicants in the present  
case. It is submitted that the argument of discrimination in extending the  
pensionary benefits to those, who retired prior to 01.01.1996 and those,  
who were in service after 01.01.1996 is wholly misconceived and has  
been founded on misconception. H

A 16. We have considered the submissions of the learned counsel for the parties and have perused the records.

17. The Government of India, Ministry of Defence *vide* its Resolution dated 13.10.1997 had decided to implement the Vth pay Commission Report w.e.f. 01.01.1996. In continuation of the above  
B Resolution dated 13.10.1997, another order was issued by the Ministry of Defence on 21.11.1997, which is the sheet anchor of the claim of the applicants. It is useful to extract the entire order dated 21.11.1997, which falls for consideration in the present batch of appeals. The order dated 21.11.1997 is to the following effect:-

C  
“No. 1(5)/97/D(Pay/Services) GOVERNMENT OF INDIA,  
MINISTRY OF DEFENCE,  
NEW DELHI, 21st November 1997.

D To  
The Chief of the Army Staff  
The Chief of the Naval Staff  
The Chief of the Air Staff

**Sub :- PAY AND ALLOWANCES OF ARMED FORCES OFFICERS.**

E Sir,

In continuation of this Ministry's Resolution No, 1(3)/97/D(Pay/ Services) dated 13th October 1997 notified in the Gazette of India dated 16th October 1997 regarding implementation of pay and allowances etc. of the Armed Forces Officers as a result of  
F the recommendations of the Fifth Central Pay Commission, I am directed to convey the sanction of the President for the following improvement of the pay scales of the officers with effect from 1-1-1996 :-

G (a) **Majors and equivalent**

Officers who become substantive Majors or equivalent on or after 1-1- 1996 will be granted the scale of Lt. Colonel or equivalent on their stagnation for one year in the revised scale of Major or equivalent. Such officers will, however, continue to draw the rank pay for Majors or equivalent.  
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As a one time measure, however, those who become substantive Majors or equivalent before 1-1-1996, will be granted the scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service i.e. in their 22nd year with the rank pay of Major. A

(b) **Officers under training** B

The existing stipend of Rs. 8,000/- given to officer trainees may be converted to 'Pay' for all purposes on successful completion of training. However, the period of training will not be treated as commissioned service.

2. This issues with the concurrence of the Ministry of Defence(Finance) vide their U.O No. 1151/PA Gp, dated 21.11.1997. C

Yours faithfully,

Sd/- x x x D  
( M.S. SOKHANDA)  
Joint Secretary to the  
Government of India.

Copy to all concerned.”

18. A perusal of the above order indicates that what was conveyed by the said order was sanction of the President for the improvement of the pay scales of the Officers, w.e.f. 01.01.1996. The word used in the order is “**pay scales**” of the officers with effect from 01.01.1996, which pre-supposes that improvement of the pay-scales of the Officers has been made, who are still in the establishment. Clause (a) of the order is the basis of the claim of the applicants. Clause (a) consists of two separate provisions, (the first part of clause (a) states “Officers who become substantive Majors or equivalent on or after 01.01.1996 will be granted the scale of Lt. Colonel or equivalent....., the above clause specifically refers to those Officers who became substantive Majors or equivalent on or after 01.01.1996. This clause is clearly inapplicable with regard to present applicants. The second part of clause (a), which is relied, is “As a one time measure, however, those who became substantive Majors or equivalent before 01.01.1996 will be granted the scale of Lt. Colonel or equivalent on completion of 21 years of F  
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- A commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Major”. The above quoted portion refers to grant of scale of Lt. Colonel or equivalent on completion of 21 years of commissioned service, i.e., in the 22<sup>nd</sup> year with the rank pay of Major. In the Government order dated 21.11.1997, the grant of pay-scale of Lt. Col. or equivalent is contemplated. The second part of the clause (a) also refers to grant of pay-scale of Lt. Colonel or equivalent to Armed Forces Personnel. The grant of pay-scale in next cadre is generally in reference to existing officers.

19. Our above view is fortified by subsequent order dated 07.06.1999 issued by the Government, which was with regard to “implementation of Government’s decision on the recommendations of the Vth CPC relating to pensionary benefits in respect of commissioned officers and personnel below officer rank”. The opening paragraph of the Government Order provides :-

- “Consequent on issue of Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners’ welfare OM No. 45/10/98- P&PW (A) dated 17.12.1998 regarding modified provisions on grant of pension / family pension in respect of civilians, the undersigned is directed to say that the President is pleased to decide that w.e.f. 1.1.96 pension of all Armed Forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.96 of the rank, and rank Group (in case of PBOR) all held by the pensioner.....”

20. The above order provides that with effect from 01.01.1996 pension of all Armed Forces Pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996 of the rank, and rank Group (in case of PBOR) held by the pensioners. The fixation of pension thus clearly is of all retirees prior to 01.01.1996 is with regard to the **rank, which was held by the pensioner**, in event, it was intended that the benefit of Government Order dated 21.11.1997 of giving one scale higher to the rank, which was held by retiring officers at the time of retirement, the said prescription ought to have been found its way in the order dated 07.06.1999. Rather the prescription and requirement in the order dated 07.06.1999 run counter to the interpretation put by the applicant on the

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order dated 21.11.1997. Para 2.1 relates to the commissioned officers of both post and pre 1996 cases, which is as follows:- A

**“2.1 COMMISSIONED OFFICERS**

*POST & PRE - 1.1.96 CASES* B

(a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1275/- p.m. and a maximum of upto 50% of the highest pay applicable to Armed Forces personnel but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank last held by the commission officer at the time of his / her retirement. However such pension shall be reduced pro-rata, where the pensioner has less than the maximum required service for full pension.” C

21. The above provision also clearly indicates that 50% of the minimum of the revised pay scale was introduced w.e.f. 01.01.1996 for the **rank last held by** the commissioned officers at the time of his/her retirement. The above provision does not bring any concept of giving a higher scale of pay to one, which was held by the commissioned officers at the time of his retirement. Thus, a plain reading of the order dated 07.06.1999 clearly indicates that the order dated 07.06.1999 was issued relating to “pensionary benefits in respect of commissioned officers” while order dated 21.11.1997 was issued with respect to “pay and allowances of Armed Force officers.” Thus, the subject matters of both the orders were different, which is clear by the reading of both the orders. The order dated 21.11.1997 was not issued with regard to commissioned officers, who had retired prior to 01.01.1996, nor it provides for stepping up of the pay-scale of such retiree officers, to a higher rank, i.e. from rank of substantive Majors or equivalent to the scale of Lt. Colonel or equivalent. D E F

22. The order dated 14.01.2000, on which also reliance has been placed by the applicants to support their contention that earlier prescription of 21 years has been reduced to 20 years also needs a comment. The order dated 14.01.2000 issued by the Ministry of Defence was to the following effect:- G

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A “No. 14(1)/98/D(AG)  
Government of India,  
Ministry of Defence,  
New Delhi, the 14th January, 2000.

To

B Chief of the Army Staff  
Chief of the Naval Staff  
Chief of the Air Staff

C **Subject : Implementation of Vth Pay Commission  
Recommendations – Para 147.21 Conditions regarding  
grant of substantive rank to officers of Army, Air Force  
and Navy.**

Sir,

D In supersession of the existing orders on the grant of  
substantive promotion to officers of Army, Air Force and  
Navy, the President is pleased to sanction the following  
revised years of service required for promotion to substantive  
cadres of the following services/Corps :-

Arms/Service/ Corps	Lt. & Equiv.	Capt. & Equiv. (Years)	Major & Equiv. (Years)	Lt.Col. (TS) & Equiv. (Years)
(i) Officers of Services other than AMC, ADC, MNS, RVC, SCO, MF, SL, SD List Officers (Navy) & RCO Officers ..... .....	On completion of training ..... .....	4 ..... .....	10 ..... .....	20 ..... .....

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23. A reading of the aforesaid order indicates that revised years of service required for promotion of substantive cadres were provided for. The promotion to substantive cadres, which was specifically referred to in the Government order was clearly with regard to officers, who were in service on 01.01.1996, which was the date for implementation of Vth Pay Commission recommendations. The said order dated 14.01.2000 was not issued for giving any benefit to those who retired prior to 01.01.1996.

24. Much reliance has been placed by the appellant on the orders passed by the Armed Forces Tribunal in *Maj. K.G. Thomas Vs. Union of India & Ors.*, O.A. No. 256 of 2011, against which order, the appeal was also dismissed by this Court. Maj. K.G. Thomas was also an officer, who was holding the rank of substantive Major at the time of retirement on 31.05.1988. O.A. No. 256 of 2011 was filed by him claiming the grant of pay-scale of Lt. Colonel (Time Scale) in pursuance of the order dated 21.11.1997. The Tribunal vide its judgment dated 19.12.2012 allowed the claim. Para 3, 4 and 5 of the judgment, which are relevant, are quoted as below:-

“3. Therefore, the grievance of the petitioner is that, either he may be given the rank of Lt Col (TS) or in the alternative he should be given monetary benefit as he has put in more that 21 years of service as a substantive major. It appears that so far as first relief is concerned, the same is not possible. The alternative relief for grant of pay scale of Lt Col (TS) without giving him the rank of Lt Col has been acceded to by the respondents in their reply. As per para 4.12 and para 5.8. In para 4.12 they have stated that “as per MoD letter dated 21 Nov 1997, officers holding the rank of substantive Major before 01 Jan 1996 are to be granted the scale (but not the rank) of Lt Col with rank pay of Major on completion of 21 years of commissioned service”. Similarly, in para 5.8, they have admitted the same position that the petitioner is eligible for grant of scale (not rank) of Lt Col (TS) with grade pay of Major on completion of 22 years of service after accounting 01 year of forfeiture of service in terms of guidelines given in the MoD letter dated 21.11.1997.

4. Therefore, there is no difficulty in granting this relief to the petitioner. Learned counsel for the respondents very fairly

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A           conceded that he deserves this benefit. However, he submitted that the petitioner has approached this Tribunal belatedly and has filed the present OA on 06.07.2011. Therefore, relief may be restricted to three years only.

B           5. This objection of learned counsel for the respondents is upheld. The petitioner is held entitled to the arrears of benefit from the three years preceding the date of filing of the petition (26.07.2011). The respondents are directed to calculate the amount of arrears of the petitioner and same shall be paid to him within three months with 12% interest. The petition is allowed in part. No order as to costs.”

C           25. A perusal of the above judgment indicates that the said judgment was based on the concession, which was specially recorded in Para 4. After the said judgment, the Union of India has immediately filed a review. In the review, it was pleaded by the Union of India that benefit of the upgradation as per the letter of the Government of India, Ministry of  
D           Defence dated 21.11.1997, was only to be given to those officers in the rank of Major, who were in service on 01.01.1996. The review application was dismissed on 09.10.2013 by Armed Forces Tribunal.

E           26. Taking the view that none of the contentions were raised when O.A. No. 256 of 2011 was decided, the Tribunal held that pleas taken by  
the Union of India do not fall in the scope of review. The review was rejected by making following observations in Para 7 of the Order :-

F           “7. We are of the considered opinion that the Tribunal has decided OA 256/2011 according to the very specific admissions by the UOI in the counter affidavit and the scope of the review is limited that that is whether there is an error apparent on the face of the record or not. None of the contentions which have been raised before us today in the review were raised before the Tribunal when OA 256/2011 was decided and nor those documents were produced and therefore, we are of considered opinion that the  
G           pleas taken by the applicant UOI do not fall in the scope of the review of the order 19.12.2012. Order can be reviewed only when error is apparent on the face of the record and can be found without deep analysis of legal debatable issue. Hence, the review application No.25/2013 is dismissed. No order as to costs.”

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27. Union of India filed an appeal against the aforesaid two orders, which appeal was dismissed on ground of delay and also on merits by order dated 06.02.2015. It is useful to extract the entire order passed by this Court on 06.02.2015, which is to the following effect:-

“IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2015  
(D. NO. 12209 OF 2014)

UNION OF INDIA & ORS. Appellant (s)

VERSUS

K. G. THOMAS Respondent(s)

O R D E R

Heard learned counsel for the parties.

Besides inordinate delay, we find no merit in the appeals.

Accordingly, the appeals are dismissed on the ground of delay as also on merits.

However, it is made clear that the order of the Armed Forces Tribunal shall be limited to the facts of the present case, since according to the appellants, full facts were not brought to the notice of the Tribunal.

It is made clear that it will be open to the appellants to bring the full facts to the notice of the Tribunal in appropriate cases.

..... J.  
(KURIAN JOSEPH)

..... J.  
(R.K. AGRAWAL)

New Delhi;  
February 06, 2015.”

A 28. This Court clearly had mentioned in its order dated 06.02.2015 that order of the Armed Forces Tribunal shall be limited to the facts of the said case, since according to the Union of India, full facts were not brought to the notice of the Tribunal. Further, this Court clarified that it will be open to the Union of India to bring the full facts to the notice of the Armed Forces Tribunal in appropriate cases. The order of this Court  
B dated 06.02.2015 thus cannot be read as laying down any ratio in favour of the applicants, which can be relied by them in the present case. In the case of Sqn. Ldr. Suchet Singh Yadav and others, all materials were brought on the record including filing of counter affidavit by the Union of India. As noted above, the Armed Forces Tribunal in case of Lt. Cdr.  
C Gurmukh Singh and V.K. Mehta has rejected their claim accepting the case of the Union of India.

29. We thus are of the opinion that order of the Armed Forces Tribunal in *Maj. K.G. Thomas* case is confined to that case alone and cannot be read as any precedent, as clarified by this Court itself in its order dated 06.02.2015. Thus, reliance by the learned counsel for the  
D applicants on the case of *Maj. K.G. Thomas (supra)* and order of this Court dated 06.02.2015 is misplaced.

30. As noted above, present is not a case where any discrimination has been made by Union of India in payment of pension to those, who retired prior to 01.01.1996 and those, who retired after 01.01.1996. We  
E have already extracted Para 2.1 of the order dated 07.06.1999, which provides for same principle or formula for computation of pension of both “post and pre 01.01.1996 cases” This Court in the case of *Col. B.J. Akkara (Retd.) Versus Government of India and Others., (2006) II SCC 709* while considering the question of revision of pension of  
F both pre and post 01.01.1996 retirees had observed that both have been treated similarly, although, said observations were made by this Court while considering the computation of pension in context of Non Practicing Allowance of officers working in the Army Medical Corps, Dental Medical Corps and Veterinary Medical Corps.

G 31. It is well settled that pensioners for the purposes of pension benefit form a class and the schemes which classify pensioners into two classes on the basis of cut off date have always been frowned by this Court. In this context, reference is made to Para 42 of judgment of *D.S. Nakara & Ors. Vs. Union of India, (1983) 1 SCC 305*, which is to  
H the following effect:-

“42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months’ salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months’ average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation

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A of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14."

B 32. In a judgment of this Court in *Col. B.J. Akkara (Rettd.) Versus Government of India and Others., (2006) 11 SCC 709* the circular dated 07.06.1999 was considered and it was observed that circular puts those who retired on or after 01.01.1986 and Pre-1986 retirees on a par. Paragraph 11 is to the following effect:-

C "11. We may first refer to the intent and purport of the circular dated 7-6-1999. The circular dated 7-6-1999 neither prescribes the requirements/qualifications for entitlement to pension nor the method of determination of pension. It only effectuates the President's decision that the pension (which has already been determined in accordance with the applicable rules/orders) irrespective of the date of retirement, shall not be less than 50% of the minimum pay in the revised scales of pay introduced with effect from 1-1-1996. Pension is determined as per relevant rules/orders, by calculating the average of reckonable emoluments (basic pay, rank pay and NPA) drawn during the last 10 months of service and then taking 50% thereof as the retiring pension applicable to retirees with 33 years of qualifying service, with proportionate reduction for retirees with lesser period of qualifying service. The basis for calculating the pension in respect of those who retired prior to 1-1-1996, and those who retired on or after 1-1-1996 happens to be the same. The retiring pension is 50% of the average reckonable emoluments for retirees with 33 years of qualifying service, with proportionate reduction for those with lesser years of qualifying service. The President's decision given effect by the circular dated 7-6-1999 only extends to all pre-1996 retirees, who did not have the benefit of fixation of pension with reference to the revised pay scales which came into effect on 1-1-1996, the benefit of the said revised pay scales, albeit in a limited manner. In so doing, it also puts those who retired on or after 1-1-1986 and pre-1986 retirees on a par and on a common platform, removing the disparity, if any, in their pensions."

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33. Learned counsel for the appellant has also referred to judgments of this Court in *K.C. Bajaj & ors. Vs. Union of India & Ors., (2014) 3 SCC 777; V. Kasturi Vs. Managing Director, State Bank of India, (1988) 8 SCC 30; Union of India & Anr. Vs. SPS Vains (Retd.) & Ors., (2008) 12 SCALE 360.* A

34. There cannot be any dispute to propositions laid down in above mentioned cases of this Court where this Court has laid down that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut off date for extension of benefits especially pensionary benefits, there has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. B  
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As noted above, present is not a case where there is any discrimination in pensionary benefits of pre 01.01.1996 and post 01.01.1996 retirees. The applicants, base their claims on the order of the Government of India dated 21.11.1997 and we have already held that those who were not in service on 01.01.1996 could not claim any benefit of the order dated 21.11.1997. Thus, present is not a case of any kind of discrimination and differentiation in pensionary benefits of pre and post 01.01.1996 retirees. We have already noticed above that order dated 21.11.1997 was issued in reference to pay and allowances of Armed Forces Officers, which pre-supposes that these officers were in the establishment on 01.01.1996. We thus are of the view that applicants were clearly not entitled for grant of benefit of higher pay scale under the order dated 21.11.1997. The orders of the Armed Forces Tribunal extending the said benefit to those applicants who had already retired before 01.01.1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that Armed Forces Officers, who have retired before 01.01.1996 are not entitled for pensionary benefits are upheld. D  
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Consequently, the appeals filed by the Union of India, i.e. Civil Appeal(arising out of Civil Appeal Diary No. 25429 of 2017) – Union of India & Ors. Vs. Lt. Cdr. C.M. Mittal & Ors.; Civil Appeal(arising out of Civil Appeal Diary No. 7231 of 2016) – Union of India & Ors. Vs. Lt. Cdr. Bhisham Kumar (Retd.) & Ors. and Civil Appeal(arising out of Civil Appeal Diary No. 22257 of 2017) – Union of India & Ors. Vs. Sqn. Ldr. Jai Kumar & Ors. are allowed and those of the applicants i.e. Civil Appeal(arising out of Civil Appeal Diary No. 26259 of 2016) – Suchet Singh Yadav & Ors. Vs. Union of India & Ors.; Civil Appeal G

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- A No. 7989 of 2015 – Lt. Cdr. Gurmukh Singh Vs. Union of India & ors.; and Civil Appeal No. 7917 of 2016 – V.K. Mehta Vs. Union of India & Ors., are dismissed.

Divya Pandey

Appeals disposed of.