

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28160 of 2017 (O&M)

Date of Decision:15.01.2018

Ex-Naik Harbhal Singh

..... Petitioner

versus

Union of India & another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Simranjeet Singh Sidhu, Advocate for the petitioner.

B.S.WALIA, J.

1. Prayer is for the issuance of a Writ of Certiorari to quash Annexure P-4 dated 05.09.2016 to the extent Military Service Pay (hereinafter referred to as MSP) granted to JCOs/ORs is very less in comparison to MSP granted to Commissioned Officers and Military Nursing Staff. Prayer is also for the issuance of a Writ of Mandamus for directing the official respondents to grant the petitioner Military Service Pay equal to or more than as is payable to Commissioned Officers etc.

2. Grievance of the petitioner is that MSP as notified by the Government vide Annexure P-4 dated 05.09.2016 w.e.f. 01.01.2016 pursuant to the recommendations of the 7th Pay Commission is discriminatory and in view thereof the petitioner is entitled to be paid Military Service Pay equivalent to or more than what is payable to Commissioned Officers.

3. We have heard learned counsel for the petitioner and are of the considered view that matters regarding parity of pay scales and such like matters including grant of Military Service Pay fall exclusively within the domain of specialised agencies like the Pay Commission and final decision in respect thereto is to be

taken by the competent authority as Courts hardly have the expertise to adjudicate upon such intricate issues. Reference in this context is made to the decision of Hon'ble the Supreme Court in **State of U.P and others versus J.P. Chaurasia and others, 1989(1) SCC 121**. Relevant extract of aforementioned decision is reproduced hereunder :-

“The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

4. Fixation of MSP to JCOs/ORs, Commissioned Officers including Military Nursing Officers having been gone into by the Pay Commission and its recommendations in respect thereto having been accepted by the competent authority, we find no reason to tinker with the rate of Military Service Pay fixed for respective categories by the Pay Commission as approved by the Government in the absence of it being shown that the same was made on extraneous consideration. It is not for this Court in exercise of writ jurisdiction to usurp the powers conferred on any authority and fix Military Service Pay admissible to different categories of military personnel different from the Military Service Pay prescribed by the competent Authority in exercise of said powers. The equivalence of the claim for grant of equal Military Service Pay by the petitioner i.e. an Ex Naik with a Commissioned Officers is a matter exclusively to be determined by an expert body like the Pay Commission and the said body would be the best judge to evaluate the duties performed, nature of duties, risk etc and other germane considerations qua the post held for grant of MSP.

5. In the light of the position as noted above, it is not open to this Court to go into the claim made by the petitioner. Accordingly, the writ petition is dismissed in limine while leaving it open to the petitioner to make a representation to the competent Authority to take an appropriate decision in respect thereto in accordance with law after taking into account all aspects of the matter.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

January 15, 2018

ps

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No