



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

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**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

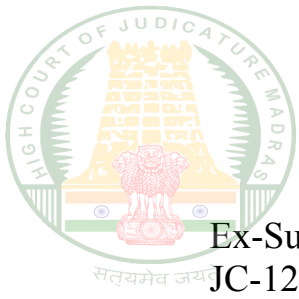
W.P.No.4876 of 2025

and

WMP.No.5406 of 2025

1. Union of India,
Represented by the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi - 110 011.
 2. The Chief of the Army Staff,
Integrated HQs of MoD (Army),
Sena Bhavan, New Delhi - 110 011.
 3. The Officer-in-Charge,
Madras Regiment Records,
Wellington, Nilgiris,
Tamil Nadu - 643 231.
 4. The Principal Controller of Defence Accounts,
(Pensions), Draupadi Ghat, Allahabad,
Uttar Pradesh - 211 014.
- .. Petitioners

Vs.



W.P.No.4876 of 2023



Ex-Sub (Hony Sub Maj), Nagarajan,
JC-128500 'H', S/o. Govindan, aged about 72 years,
No.5/9-D (Near All India Radio Station),
Adhiyamankottai Post, Taluk - Nallampalli,
District, Dharmapuri, Tamil Nadu - 636 807. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the records dated 11.09.2023 passed in OA.No.157 of 2022 with M.A.No.242 of 2022 on the file of the Armed Forces Tribunal, Regional Bench, Chennai, thereby quashing the impugned order.

For Petitioners	: Mr.V.Balasubramanian Senior Panel Counsel
For Respondent	: Mr.M.K.Sikdar

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

Aggrieved and dissatisfied with the orders of the Armed Forces Tribunal, Regional Bench, Chennai in OA.No.157 of 2022 dated 11.09.2023, Union of India, preferred the present writ petition.

2. The respondent was the applicant before the Arms Tribunal and enrolled in Indian Army on 06.10.1969 and discharged on 31.10.1997 in the



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rank of Subedar after 28 years and 26 days of qualifying service. Admittedly, the respondent is in receipt of service pension in the rank of Subedar Vide PPO dated 21.05.1997 with effect from 01.11.1997 and the pension is being revised periodically pursuant to the implementation of subsequent Pay Commissions to the pensioners.

3. The original application was filed by the respondent challenging the order dated 18.02.2017 which is a reply to the application filed under RTI Act. Thus, a preliminary objection has been raised by the writ petitioners is that the application itself has been instituted after a lapse of about seven years.

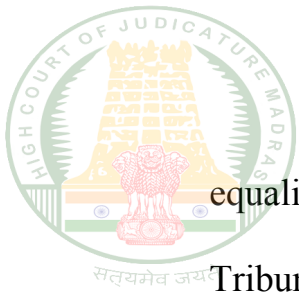
4. The learned Senior Panel Counsel appearing on behalf of the writ petitioners would mainly contend that the reply to an RTI application would provide no cause for institution of Original Application seeking stepping up of pension on par with the territorial army pensioner. The respondent, admittedly, is a regular army pensioner and therefore, he cannot compare the pension awarded to the territorial army pensioner. Both the Rules for regular and territorial army are distinct and different and not comparable. That apart, the respondent has not mentioned any pensioner for seeking



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stepping up of pension. Generally, the respondent has stated that the territorial army pensioners are receiving more pension than that of the respondent and therefore, his pension is to be stepped up on par with the territorial army pensioners. Such a vague claim ought not to have been entertained by the Arms Tribunal. The Tribunal granted the relief for stepping up of the pay without making any reference to any personnel from the category of territorial army pensioner. That being so, the impugned order is to be set aside.

5. Mr.M.K.Sikdar, the learned Counsel for the respondent would vehemently oppose the contention of the writ petitioners by stating that the claim of the respondent is well found by the tribunal. The respondent is receiving lesser pension than that of the territorial army pensioner. Regular army personnel are serving up to the age of 57 years and territorial army personnel are engaged on need basis and for a special purposes. That being so, the pension being received by the territorial army pensioner is higher than that of the pension being received by the regular army personnel. They are entitled for stepping up of pension and therefore, the Tribunal has rightly considered the grievances of the respondent. It is contended that territorial army pensioners are receiving additional pension of Rs.392/- over and above the regular army pensioner and the Tribunal directed the writ petitioners to



equalise the pension which cannot be said to be wrong. Thus, the order of the Tribunal is to be affirmed.

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6. We have considered the arguments made between the parties to the lis on hand.

7. The Governing legal principles are that the doctrine of equal pay / pension is not an abstract doctrine. It has no mechanical application in every case. It requires consideration of various dimensions of the Government job. The applicability of this principle must be left to be evaluated and determined by an expert body. These all are not matters where the writ Court can actually interfere. Granting pay scale is purely an executive function and the writ Court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and the Authorities. Equation of posts and salary is a complex matter, which should be left to the Establishment.

8. In the case of ***S.C. Chandra & Ors. Vs. The State of Jharkhand & Ors. reported in 2007 (8) SCC 279***, the apex Court held that granting of pay scale is purely an executive function and hence Courts should not interfere with the same. The Courts are expected to exercise judicial restraint

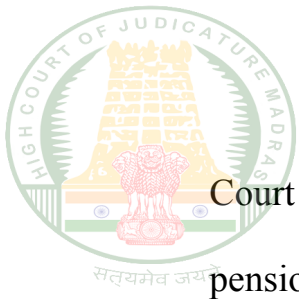


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and not interfere in such executive function unless the fixation of pay is found to be apparently erroneous or directly in violation of service rules applicable to a particular personnel. However, Courts in exercise of limited powers of judicial review can only examine whether the decision of the Authorities is rational and just or prejudice to a particular state of employees. Unless there is complete, wholesale / wholesome identity between two posts, they should not be treated as equivalent and the Court should avoid applying the principle of equal pension.

9. In the present case, admittedly, the respondent served in regular army, retired and receiving service pension. Further, he made a comparison with the territorial army pensioner. The service pension for regular army and territorial army are distinct and different. Both the services are incomparable and Service Rules are separate. That being so, the very comparison made by the respondent is untenable, since the regular army personnel and the territorial army personnel cannot be construed as homogenous class. When the nature of service conditions between the regular army and territorial army are distinct and different, comparison of pension would not arise at all.

10. Mr.M.K.Sikdar, meticulously made an effort to convince this



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Court with reference to the table regarding fixing of scale of pay to the pensioners. Merely on the based on such comparison, Court cannot interfere with the fixation of pension as it requires elaborate consideration of nature of services, application of rules, eligibility, length of services, last pay drawn etc., All these factors require over all consideration from the hands of the establishment and such an effort cannot be undertaken by the Courts in exercise of powers of judicial review.

11. Presuming that the grievances of the petitioners is correct in the sense that a territorial army pensioner is getting more pension than that of regular army pensioner, such grievances are to be placed before the competent Authority of the Ministry, who in turn is empowered to examine the same and if they found that the grievances are genuine, they can initiate appropriate action to redress the same. Contrarily, the Tribunal or the High Court cannot interfere with such fixation of pay, when the nature of services by itself is not similar. Dissimilar services cannot be taken into consideration for stepping up of pension. Stepping up of pension is impermissible under service jurisprudence. Stepping up of pay for in-service employees are permissible but stepping up of pension is impermissible. It is possible that amongst the same rank personnel, the senior may get lesser pension than that



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of a junior and by comparing the junior, the senior retiree cannot seek stepping up of pension. On account of pay commissions, the senior pensioner can get lesser pension than that of the junior pensioner and all these aspects are within the executive domain which cannot be entertained by the Courts.

12. The Arms Tribunal has gone into the tables provided by the respondent and merely considered the fact that the territorial army pensioner is getting more pension than that of the regular army pensioner and consequently issued a direction for stepping up of pension of the respondent, which in the opinion of this Court is not in consonance with the legal principles and not in accordance with the service law applicable to two different categories namely territorial army pensioner and regular army pensioner. At the outset, stepping up of pension is not contemplated under the pension regulations. In the absence of any such regulation under the pension rules, the relief of such nature cannot be granted by the Courts.

13. The Hon'ble Supreme Court of India in the case of ***Indian Ex-Servicemen Movement and Ors Vs. Union of India and Ors*** reported in ***(2022) 7 SCC 323*** held the principles governing pensions and cut-off dates. Paragraph Nos.70.1 and 70.4 reads as under:



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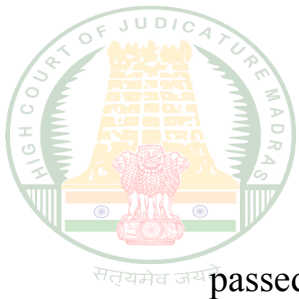


"70.1 All pensioners who hold the same rank may not for all purposes form a homogeneous class. For example, amongst Sepoys differences do exist in view of the MACP and ACP Schemes. Certain Sepoys receive the pay of the higher ranked personnel.

.....

.....

70.4. It is not a legal mandate that pensioners who held the same rank must be given the same amount of pension. The varying benefits that may be applicable to certain personnel which would also impact the pension payable need not be equalised with the rest of the personnel."



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14. This Court is of the considered opinion that the impugned order passed by the Armed Forces Tribunal cannot be sustained. Consequently, the order dated 11.09.2023 passed in O.A.No.157 of 2022 is set aside and the writ petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S,J.] [K.R.S,J.]

25.03.2025

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Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

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