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*Before S.S. Nijjar, & S.S. Saron, JJ.*

MAJ. GEN S.P.S. VAINS (RETD.) & OTHERS,—*Petitioners*

*versus*

UNION OF INDIA AND ANOTHER,—*Respondents*

C.W.P. No. 17233 of 2001

26th May, 2005

*Constitution of India, 1950—Art. 226—Petitioners retired as Major Generals from the Indian Army—In 4th Pay Commission Major General drawing more pay than a Brigadier including rank pay which was recommended to Brigadier—In 5th Pay Commission, by including rank pay a Brigadier drawing more pay than a Major General as no rank pay recommended to Major General—A Brigadier drawing more pension and family pension than those officers who retired in the rank of Major General—Government stepping up the pension of Major General equivalent to that of Brigadier—Major General is promotional rank from that of Brigadier—Pay scale of Major General cannot be equated to that of a Brigadier for the purpose of fixation of pension—On promotion to the rank of Major General from the rank of Brigadier the initial pay of Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as Brigadier by one increment in the revised scale at the relevant stage for the post 1st January, 1996 retirees—Action of respondents in not extending the same benefit to the pre 1st January, 1996 retirees is arbitrary—Pre 1st January, 1996 Major General retirees also entitled to higher pay and pension than that of a Brigadier—Petition allowed and respondents directed to fix minimum pay scale of Major General above that of the Brigadier and grant pay above that of a Brigadier as granted to post 1st January, 1996 retirees.*

*Held*, that in terms of Fundamental Rule 22(1)(a) (1) the promotion to another post carrying duties and responsibilities of greater importance than those attaching to the post held by an employee, his initial pay in the time scale of higher post is to be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay accrued or Rs. 100 which is more. The rank of

Major General admittedly is a post carrying duties and responsibilities of greater importance than those attaching to the post of Brigadier. Therefore, the initial pay in the time scale of the higher post is to be fixed at the stage next above the notional pay arrived at by increasing the pay of officers holding the rank of Major General in respect of lower post held by them regularly by an increment at the stage at which such pay had accrued or Rs. 100 only whichever is more.

(Para 12)

*Further held*, that the heading of clause 9 of the instructions dated 26th May, 1987 provides for stepping up of pay of Major General on promotion from Brigadier after 1st January, 1996 whereas the clause itself reads that pay of all officers promoted to the rank of Major General prior to 1st January, 1996 will be stepped up to the pay fixed for Brigadier in the revised scale of pay as on 1st January, 1996. Clause 12(c) is under section III which provides for; "regularization of pay of officers commissioned on or after 1st January, 1996". Clause 9 falls under section II which provides for "fixation and regulation of pay of officers commissioned prior to 1st January, 1996". Therefore, the head note above clause 9 relates to stepping up of pay of Major General on promotion from Brigadier after 1st January, 1996. Therefore Clause 9 would apply to the case in hand and pay of all officers promoted to the rank of Major General prior to 1st January, 1996 is to be stepped up equal to the pay fixed for a Brigadier in the revised scale of pay as on 1st January, 1996 subject to the fulfilment of certain conditions. Besides the pay scale of Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as a Brigadier by one increment in the revised scale at the relevant stage. This is in accord with and is the application of Fundamental Rule 22(I)(a)(I). Even otherwise the cut off date of 1st January, 1996 for the officers holding the rank of Major General before and after 1st January, 1996 in the circumstances of the case is not proper and is arbitrary.

(Para 12)

*Further held*, that when a pay scale is fixed for pre 1st January, 1996 retirees and post 1st January, 1996 retirees, the pay scale of Major General cannot be and is not to be equivalent to that of a Brigadier for the purpose of fixation of pension and a Brigadier having been given a higher pay scale than that of a Major General, then the Major General cannot be equated with the Brigadier by merely stepping

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up his pay equivalent to that of Brigadier and he is to be given a scale above that of a Brigadier by applying the principle in Fundamental Rule 22(I)(a)(I), which is applicable irrespective of the date of retirement and is applicable to the post carrying duties and responsibilities of greater importance than those of attaching to the post of Brigadier. Therefore, on promotion to the rank of Major General from the rank of Brigadier the initial pay of the major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as Brigadier by one increment in the revised scale at the relevant stage for the post 1st January, 1996 retirees. It would be arbitrary to not extend the same benefit to the pre 1st January, 1996 retirees.

R.S. Randhawa, Advocate, *for the petitioners.*

Gurpreet Singh, Additional Central Government Standing Counsel for the Union of India.

#### JUDGMENT

**S.S. SARON, J.**

(1) The petitioners herein are retired Major Generals from the Indian Army and one of them a retired Air Vice-Marshal from the Indian Air Force. They retired during the period ranging from 1978 to 1996. They are aggrieved against the fixation of their pension and family pension after revision of the same by the Fifth Pay Commission. As a consequence of the revision of their pension and family pension, the same has been fixed equal to that of the officers of the rank of Brigadier and in some cases they are drawing less pension than the officers who retired in the rank of Brigadier. The petitioners, therefore, by way of this petition under Article 226 of the Constitution of India seek direction commanding the respondents to remove the anomaly in fixing the pension and family pension in respect of the petitioners who retired in the rank of Major Generals as they are getting equal and in some cases less pension and family pension than the officers who retired in the rank of Brigadier which is a rank lower to that of Major General.

(2) The case of the petitioners is that on the basis of recommendations of the Fourth Pay Commission in 1986 a running pay band was introduced from the rank of Lieutenant to Brigadier on the basis of number of years of service rendered by them. It did

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not depend on the promotion earned to various ranks except for the rank pay which varied with each rank. The running pay band from Lieutenant to Brigadier introduced on the basis of 4th Pay Commission recommendation was Rs. 2,300-100-3,900-EB-150-4,500-EB-5,100. The rank pay that was fixed was Rs. 200, 600, 800, 1,000 and 1,200 for the ranks of Captain, Major, Lt. Colonel, Colonel and Brigadier respectively. Major General was given a starting salary of Rs. 6,700 on the basis of the recommendations of the Fourth Pay Commission. A Brigadier could, however, draw Rs. 6,300 (i.e. Rs. 5,100+rank pay of Rs. 1,200). In this manner, a Major General always draw more pay than a Brigadier. In fact, no Brigadier could ever drew more than a Major General even by including the rank pay. The pension payable to the officers on the basis of the Fourth Pay Commission recommendations was calculated on the basis of salary drawn during the last ten months prior to retirement. On this basis a Major General always drew more pension and family pension than that of a Brigadier. This, it is stated, is the requirement also because the rank of Major General is a promotional rank from that of a Brigadier and otherwise also carried much more added diverse and onerous responsibilities. This system continued till the change that has now been introduced on the basis of the Fifth Pay Commission recommendations which have also been accepted by the Government. It is on account of the acceptance of the recommendations of the Fifth Pay Commission that an anomaly has occurred in the fixation of pay of a Brigadier vis-a-vis a Major General. Brigadiers are now drawing more pay than the Major Generals and resultantly their pension and family pension has also been fixed more than that of Major Generals. As per recommendations of the Fifth Pay Commission, a Brigadier has been given the pay scale of Rs. 15,350-450-17,600 and rank pay of Rs. 2,400. The equivalent recommended for the rank of Major General is the scale of Rs. 18,400-500-22,400. The maximum scale of Brigadier, therefore, is Rs. 17,600 and the minimum pay scale of Major General is Rs. 18,400. However, Brigadier was recommended to be paid rank pay of Rs. 2,400 which was not given to a Major General. By adding rank pay to the pay scale of Brigadier, the pension payable becomes more because rank pay is taken into consideration for calculating pension and family pension. By adding the rank pay, it is stated that a Brigadier who was supposed to draw less pay than a Major General in fact gets more. However, the Government accepted the recommendations of the Fifth Pay Commission of all other ranks but

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in the case of Brigadiers instead of accepting the recommendations of the Fifth Pay Commission granted the pay scale of Rs. 16,700-450-18050+rank pay or Rs. 2,400. In this manner, the minimum pay that the Brigadier drew came to Rs. 16,700 being the minimum of the scale plus rank pay of Rs. 2,400 i.e. Rs. 19,100. This, therefore, still came to more than the minimum pay scale of a Major General which was fixed at minimum of Rs. 18,400 with no rank pay. This it is stated to have resulted in the anomaly. It is submitted that a Brigadier who would be promoted to the rank of Major General would in this manner start drawing less pay than he was getting as a Brigadier as on promotion as Major General he would not be entitled to the rank pay of Rs. 2,400. This situation would not have arisen had the scale recommended by the Fifth Pay Commission in respect of the rank of Brigadier not been changed. The effect of this anomaly is that a Brigadier consequentially draws more pension and family pension than those officers who retired in the rank of Major General. This though is sought to have been thought of but has not been given due consideration. The copies of the resolution dated 13th October, 1997 on the basis of which the pay scales have been recommended by the Government have been attached as Annexure-P-2. Another recommendation of the Fifth Pay Commission which has been accepted by the Government is in regard to pension and family pension payable to various officers and Jawans. As per the instructions dated 7th June, 1999 (Annexure-P-3) it has been decided that with effect from 1st January, 1996 pension of all armed forces pensioners irrespective of the date of their retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January 1996 of the rank and rank and group (in the case of PBOR) held by the pensioners. The effect of the same is that all officers would draw the same pension irrespective of their date of retirement which, however, is not to be less than 50% of the minimum pay scale in the revised scale of pay. The pay scale of the Brigadiers have been fixed in a manner that they draw more pay than the Major Generals. The Government in order to somehow lessen these discrepancies and anomalies stepped-up the pension of Major General from Rs. 9,200 to Rs. 9,550. As a consequence of this the pension of Major General and that of Brigadier as such has been equated. However, the grievance of the petitioners, who are in the rank of Major Generals, is that the rank of Major General is a higher rank as compared to that of Brigadier and the pension for both the ranks cannot be the same. These discrepancies and anomalies are assailed in this writ petition.

(3) On notice, written statement has been filed by the Under Secretary, Ministry of Defence of behalf of the respondents. It is stated that the petitioners are not entitled to invoke the extra-ordinary writ jurisdiction of this Court. Besides, in no case pension of an officer of the rank of Major General has been fixed less than that of an officer of the rank of Brigadier. It is further stated that the Fifth Pay Commission had recommended revision of pension of all past pensioners. The Government with a view to further improve the pension/family pension of old pensioners, issued an order, which had a provision to grant fitment weightage @ 40% instead. Further to bring near parity in the pension/family pension drawn by them and the pension applicable to post 1st January, 1996 retirees, the Government issued orders which provided that pension of all pre 1st January, 1996 pensioners/family pensioners after consolidation would be further stepped-up to 50%/30% of the minimum of the revised pay scale introduced with effect from 1st January, 1996, in case consolidation of pension is found to be less than 50% of the revised pay scale introduced with effect from 1st January, 1996. As such in the case of Major General a provision was made that in no case their pension would be less than what would have been admissible to them had they retired as Brigadiers. This stipulation, it is stated, in comparison to consolidation of pension of Major Generals has been more beneficial. This provision of modified parity in the case of the petitioners, it is stated, was more beneficial, therefore, their pension had been rightly fixed at Rs. 9,550 which is not lower than that admissible to the rank of Brigadiers. It is admitted that the Fifth Pay Commission and recommended the pay scale of Rs. 15,350-450-17,600 with rank pay of Rs. 2,400 for Brigadiers, which has been accepted by the government. However, the pay scale of Brigadiers and equivalent ranks in the Navy and Air Force was raised to Rs. 16,750- 450-18,050 plus rank pay of Rs. 2,400. This, it is stated, was necessitated because of marginal difference in the scale of Brigadier i.e. Rs. 15,350-450-17,600 and the one stipulated for the rank of Colonel i.e. Rs. 15,100-450-17,350 and the impact of pay fixation in these ranks. It is further stated that with a view to off-set the increase provided to Brigadier by way of granting the rank pay, the pay fixation of Major General has been done as per the provisions of Special Army Instructions ('SAI' for short) 2/S/98. As per clause 9 of the said instructions SAI 2/S/98 pay of all officers promoted to the rank of Major General prior to 1st January, 1996 has been stepped-up

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equal to the pay fixed for a Brigadier in the revised pay as on 1st January, 1996 subject to the fulfilment of certain conditions. As per note to clause 9 it is provided that while stepping-up the pay if identical stage was not available in the pay scale of the rank of Major General, the pay would be fixed at the lower stage and the difference shall be allowed as personal pay which was to be absorbed in future increments of pay. It is further stated that in the case of Major General promoted to the rank after 1st January, 1996, the pay fixation was carried out as per clause 12(c) of SAI 2/S/98 and when a Brigadier is promoted to the rank of Major General his initial pay in the pay scale of Major General was fixed at the stage above the pay notionally arrived at rank pay by increasing his pay including rank pay as a Brigadier by one increment in the revised scale at the relevant stage. This, it is stated, is the application of Fundamental Rule 22(1)(a)(1). In terms of the said provision the minimum pay of Major General is fixed at Rs. 19,900 when promoted from the rank of Brigadier. Thus in the pay fixation formula it is stated that it has been ensured that in the revised pay scale no Major General could ever draw less pay than a Brigadier belonging to the same arm/service. The pension/family pension of all pre 1996 pensioners, it is stated, has been revised in terms of Government of India, Ministry of Defence letters dated 27th May, 1998 (Annexure-R.1) and dated 7th June, 1999 (Annexure-R-2) as amended,—*vide* letter dated 28th August, 2001 and note under para 6 (b) of the Government of India, Ministry of Defence letter dated 30th October, 1987 (Annexure-R-3) and letter dated 3rd February, 1998 (Annexure-R-4).

(4) It is further stated that the particulars of the petitioners as given in Annexure-P-1 itself shows that pension of all the pre 1st January, 1996 pensioners of the rank of Major General has been fixed at Rs. 9,550 which is equal to the pension of a Brigadier. Therefore, in no case the pension of a pre 1st January, 1996 retiree officer of the rank of Major General is less than that of a Brigadier. Similarly, the family pension of an officer of the rank of Major General and equivalent is not less than the family pension which would have been admissible to the officer of the rank of Brigadier or equivalent in terms of Government instructions dated 28th August, 2001 (Annexure-R.2). The family pension of an officer of the rank of Major General and equivalent, it is submitted, is not to be less than the family pension which is admissible to an officer of the rank of Brigadier or equivalent

had he not been promoted to the rank of Major General and equivalent. It is also stated that the pension and family pension of a Major General in no case can be less than the pension and family pension of an officer of the rank of Brigadier. Accordingly it is prayed that the petition be dismissed.

(5) The petitioners have filed rejoinder to the written statement filed by the respondents in which it is stated that even if an officer holding the rank of Brigadier is drawing pension equivalent to that of an officer who retired as Major General than the anomaly is apparent and clear and this aspect stands conceded. Besides, it is submitted that in some cases Brigadiers are drawing more pension than that of Major Generals. It is, however, submitted that as per the Government order i.e. Corrigendum PPO (Annexure-P-5) issued by the officer of the Chief CDA (Pensions), Allahabad in respect of petitioner No. 1 the pension in no case is to be less than 50% of the revised scale of pay introduced with effect from 1st January, 1996 for the rank last held by the Commissioned Officer at the time of his/her retirement. Accordingly, the pension is to be fixed on the basis of revised pay scale introduced with effect from 1st January, 1996.

(6) Mr. R.S. Randhawa, Advocate, learned counsel appearing for the petitioners has contended that there is a basic anomaly and a discrepancy in the grant of pension and family pension to the petitioners, who were holding and have retired from the rank of Major General *vis-a-vis* the officers holding the rank of Brigadiers. It is submitted that the rank of Major General is above that of a Brigadier and, therefore, a Major General cannot be treated at par with a Brigadier in the hierarchy of seniority in the armed forces. In fact by including the rank pay of the Brigadier in his basic pay, he gets more advantage. The officers holding the rank of Major General it is contended are liable to be treated a scale above than those holding the rank of Brigadier. It is submitted that in terms of para 12(c) of the SAI 2/S/ 98, when a Brigadier is promoted to the rank of Major General on his promotion to the rank of Major General his initial pay in the pay scale of Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay, including the rank pay, as a Brigadier by one increment in the revised scale at the relevant stage. This is the application of Fundamental Rule 22(I)(a)(1). It is



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submitted that the mere fact that the Major General is getting equivalent pension and/or family pension to that of Brigadier is not enough and officers of higher rank holding the rank of Major General or equivalent are entitled to higher pension/ family pension from their juniors holding the rank of Brigadier.

(7) In response, Mr. Gurpreet Singh, Advocate, learned counsel appearing for the Union of India has vehemently argued that there is no anomaly in the grant of pension and family pension to the petitioners, who are holding the rank of Major General or its equivalent rank. It is submitted that the pension and family pension has been fixed in accordance with the statutory rules and army instructions including special army instructions and there is no anomaly in the fixation and grant of pension and family pension. In support of his contention, learned counsel has relied upon a Division Bench Judgment of the Hon'ble Delhi High Court in the case of **Air Vice Marshal S.N. Chaturvedi versus Union of India and others, (1)**. It is submitted that in no case a Major General is getting less pension or family pension than an officer of the rank of Brigadier. Both the officers of the rank of Brigadier and Major General are getting equal pension/family pension and the anomaly that was there has been removed,—*vide* Ministry of Defence letter dated 28th August, 2001 which provides that family pension of an officer of the rank of Major General and equivalent is not to be less than the family pension which is admissible to the family of the officer holding the rank of a Brigadier had he not promoted to the rank of Major General.

(8) We have given our thoughtful consideration to the contentions of the respective learned counsel. The issue that requires consideration in this petition is whether the pension/family pension which is being given to an officer of the Armed Forces of the rank of Major General can be the same or equivalent with that of an officer of the rank of Brigadier and whether by allowing it to be the same is there an anomaly which requires to be redressed and removed. From the pleadings of the parties and the contentions raised by the respective, learned counsel, it is appropriate to note that the position is that the petitioners who have retired from service are pre

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(1) 1991 (1) S.L.R. 724

1st January, 1996 retirees from the rank of Major General or its equivalent. The anomaly in the grant of pension/family pension has arisen from 1st January, 1996 onwards. The Government of India, Ministry of Defence issued letter dated 27th May, 1998 (Annexure-R.1) regarding implementation of Government decisions on the recommendations of Fifth Central Pay Commission regarding revision of pension of pre 1986/pre 1996 service pensioners etc./ordinary family pensions belonging to Armed Forces commissioned officers. In terms of the said instructions the sanction of the President was accorded to the revision of pension/ ordinary family pension with effect from 1st January, 1996 in respect of pre 1986/pre 1996 armed forces pensioners/ordinary family pensioners who were in receipt of the types of pension as mentioned therein as on 1st January, 1996 in the manner as indicated in the succeeding paras therein. The other instruction dated 7th June, 1999 (Annexure-R.2) also provide for implementation of the Government's decision on the recommendations of the Fifth Pay Commission relating to pensionary benefits in respect of commissioned officers and personnel below officer rank. It was decided in terms of the said instructions that with effect from 1st January, 1996 pension of all armed forces pensioners irrespective of the date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January, 1996 of the rank and rank and group (in case of PBOR) held by the pensioner. Besides, with effect from 1st January, 1996 family pension was not to be less than 30% of the minimum pay in the revised scale introduced with effect from 1st January, 1996 of the rank and rank and group (in case of PBOR) last held by the pensioner/deceased individual. Accordingly, the provisions as contained in certain earlier instructions, it was decided, shall be treated as modified to the said extent.

(9) The relevant provisions of SAI 2/S/98 based on the recommendations of the Fifth Central Pay Commission and the Government decision thereon were implemented in relation to revision of pay scales, fixation of initial pay in the revised scale and regulation of pay on promotion. The existing scale of pay admissible to army officers were revised with effect from 1st January, 1996 and pay fixed in the revised scales in accordance with the provisions of the said instructions which were applicable to all officers who were on the effective strength of the army as on 1st January, 1996 and those

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who joined the army thereafter. Basic pay, rank pay, existing scale and revised scale were defined in para 2(a), (b), (c) and (d) respectively of the said instructions as follows :—

- (a) **“Basic Pay”** means pay in the pay scale of the rank including stagnation increment if any. Basic Pay does not include Flying Allowance, Qualification Allowance, Technical Pay, Personal Pay or any other type of Special Pay.
- (b) **“Rank Pay”** means the pay admissible to an officer appropriate to the rank actually held, either in acting or substantive capacity, in addition to the pay in the revised scale. Rank pay forms part of the basic pay.
- (c) **“Existing Scale”** existing scale in relation to an officer means integrated pay scale or fixed rate of pay of the rank applicable to him as on 1.1.96 whether held in a substantive or acting capacity.
- “(d) “Revised Scale”** in relation to officers of All Arms and Services including MNS officers, means the respective pay scale of that rank whether fixed or otherwise specified against each rank in paragraph 3 of this instruction.”

(10) In terms of the said instructions officers upto the rank of Brigadier of all arms and services were given the revised pay scale of Rs.16700-450-18050. Besides, rank pay of Rs.2400 to the Brigadiers was given in the above pay scales. The Major Generals were given the revised scale of Rs.18400-500-22400. However, no rank pay was given to the Major Generals. In terms of the definition of rank pay as indicated above the same was to form part of the basic pay. In this manner in the minimum pay scale of Rs.16,700, the rank pay of Rs.2400 was added for the officers holding the rank of Brigadiers and this comes to Rs.19,100 and the minimum basic pay of officers holding the rank of Brigadiers thus became more than the minimum pay scale of the officers holding the rank of Major General which was Rs. 18,400. The stand of the respondents is that with a view to off-set the increase provided to Brigadiers by way of rank pay, pay fixation of Major General has been done as per para 9 of the SAI 2/S/98 and

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the pay of all officers prior to 1st January, 1996 is stepped-up equal to the pay fixed for a Brigadier in the revised pay as on 1st January, 1996 subject to the fulfilment of certain conditions as indicated in para 9 of the instructions. Besides, in respect of Major General promoted to the said rank after 1st January, 1996 it is stated that the pay fixation is being done as per para 12(c) of SAI 2/S/98. Paras 9 and 12(c) of SAI 2/S/98 read as follows :—

**“STEPPING UP OF PAY OF MAJOR GENERALS ON PROMOTION FROM BRIGADIER AFTER 1ST JANUARY, 1996 :**

9. Pay of all officers promoted to the rank of Major General prior to 1st January, 1996, will be stepped up equal to the pay fixed for a Brigadier in the revised scale of pay as on 1st January, 1996 subject to the fulfilment of the following conditions :-
  - (a) Both senior and junior officers viz. Major General and Brigadier belonging to the same Arm/Service.
  - (b) The senior officer viz. Major General has longer length of commissioned service than the junior officer viz. Brigadier with reference to whom the pay is proposed to be stepped up.
  - (c) Major General promoted prior to 1st January, 1996 while serving in the rank of Brigadier has been senior and also drawing more or equal pay than the officer viz. Brigadier with reference to whom the pay is proposed.

**Note 1 .—**While stepping up of pay as above, if identical stage is not available in the pay scale of the rank of Major General, the pay will be fixed at the lower stage and the difference shall be allowed as personal pay. The personal pay will be absorbed in future increments of pay.

**Note 2 .—**Where the pay of Major General has been stepped up in accordance with the above provisions, he will be entitled to the next increment on completion of 12 months of qualifying service from the date of re-fixation of pay.

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**REGULATION OF PAY ON PROMOTION :**

12. Pay on promotion will be regulated as under :—

(a) xx        xx        xx        xx        xx

(a) xx        xx        xx        xx        xx

(c) **Promotion to the Rank of Major General of All Arms and Services including MNS.**— When a Brigadier is promoted to the rank of Major General, his initial pay in the pay scale of Major General will be fixed at the stage next above the pay notionally arrived at by increasing his pay, including rank pay, as a Brigadier by one increment in the revised scale at the relevant stage. This is the application of Fundamental Rule 22(I)(a)(1).”

(11) The anomaly that has occurred in the grant of pension is due to the fixation of pay by including the rank pay of Rs. 2,400 in the pay scale of the Brigadier in his basic pay and no rank pay is provided for the officers holding the rank of Major General. The pay of the officers promoted to the rank of Major General prior to 1st January, 1996 has been stepped-up equal to the pay of the Brigadier in the revised scale as on 1st January, 1996. Admittedly, Major General is a higher rank than that of a Brigadier and, therefore, the Major General is entitled to on the basis of any logic a pay scale higher to that of a Brigadier. In fact para 12(c) of the SAI 2/S/98 itself envisages that when a Brigadier is promoted to the rank of Major General his initial pay in the pay scale of Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as a Brigadier by one increment in the revised scale at the relevant stage. This, it is stated, is the application of Fundamental Rule 22(I)(a)(1) which reads as follows :—

**“F.R. 22. (I)** The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows :—

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment

Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more. Save in cases of appointment on deputation to an ex cadre post, or to a post on *ad hoc* basis or on direct recruitment basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an *ad hoc* promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment :

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees one hundred, whichever is more."

(12) In terms of the above fundamental rule the promotion to another post carrying duties and responsibilities of greater importance than those attaching to the post held by an employee, his initial pay

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in the time scale of higher post is to be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay accrued or Rs. 100 whichever is more. The rank of Major General admittedly is a post carrying duties and responsibilities of greater importance than those attaching to the post of Brigadier. It is not at all necessary to highlight the importance of the rank of Major General *vis-a-vis* the rank of Brigadier as the rank of Major General undoubtedly is a post carrying duties and responsibilities of greater importance than that of Brigadier. Therefore, the initial pay in the time scale of the higher post is to be fixed at the stage next above the notional pay arrived at by increasing the pay of officers holding the rank of Major General in respect of the lower post held by them regularly by an increment at the stage at which such pay had accrued or Rs. 100 only whichever is more. The judgment of the Division Bench of the Hon'ble Delhi High Court in the case of Air Vice Marshal S.N. Chaturvedi *versus* Union of India and others (*supra*) cited by the learned counsel appearing for the respondents may be noticed. The preface of the said judgment sums up the case of the petitioners who were holding a senior rank of Major General or equivalent in the Armed Forces. The preface reads as follows :—

“The might of the bureaucratic attitude is clearly evident in the present case. We are sorry to note that senior officers of the Armed Forces who have rendered commendable service for the country have been driven to Court in order to seek redress against apparent injustice which has been done to them.”

(13) In the said case, the petitioner therein as on 1st January, 1986 was serving as an Air Vice Marshal in the Indian Air Force. The pay was fixed as on that date at Rs. 5,900. There were two officers junior to him and prior to 1st January, 1986 they were getting less pay than the said petitioner. The Fourth Pay Commission report was given effect to by a decision of the Central Government with effect from 1st January, 1986. In consequence of that the pay of the petitioner therein was fixed at Rs. 5,900 while that of the two junior officers was fixed at Rs. 6,150. The Hon'ble Delhi High Court considered the case in the light of the provisions of Special Air Force instructions dated 26th May, 1987 and in terms of Clause 9 thereof it was provided that in cases where a senior officer promoted to the higher rank before 1st January, 1986 draws less pay in the revised scale than his junior who

is promoted to the higher rank on or after 1st January, 1986, the pay of the senior should be stepped-up to an amount equal to the pay as fixed for his junior in that higher rank. The stepping-up was to be done with effect from the date of promotion of the junior officer and was subject to the fulfilment of certain conditions as mentioned therein. It was noticed that two officers of the rank of Air Commodore as a result of fixation of their pay pursuant to the instructions dated 26th May, 1987 were getting more pay than the petitioner in the said case. One of the Air Commodore Adlakha was promoted to the rank of Air Marshall with effect from 1st August, 1988 and his pay was then fixed at Rs. 6,500. By invoking Clause 9 of the instructions dated 26th May, 1987 the pay of the petitioner in the said case was stepped-up to Rs. 6,500 with effect from 1st August, 1988. The grievance of the petitioner therein was that between 1st January, 1986 to 1st August, 1988 he was drawing pay which was less than the officers who were junior to him and his pay was increased only because an officer junior to him had been promoted to hold an equal rank to that of the petitioner therein. It was held by the Hon'ble Delhi High Court that the decision of the Government not to remove the anomaly which had resulted while fixing pay of the petitioner therein with effect from 1st January, 1986 was clearly arbitrary and without any reasonable basis. Besides, it was observed that it is accepted principle that persons discharging duties as a senior officer should not get salary less than what his junior gets and the instructions that had been issued clearly took care of ensuring that the officers in the equal rank were not discriminated in the sense that junior officer does not get more pay than his senior. However, this reasoning, which was logical and valid, it was observed had not been extended to a case where the ranks of the two officers were different. It was observed by their Lordships that they failed to understand as to why this was so. Besides, it was observed that if on promotion of Air Commodore Adlakha to the rank of Air Vice-Marshal, the salary of the petitioner therein could not be less than that of Air Vice-Marshal Adlakha. In fact, there was no reason as to why the salary of the said petitioner should have been less when Mr. Adlakha had not been promoted from the rank of Air Commodore. Besides, if the petitioner therein had been promoted as Air Vice-Marshal before 1st January, 1986 he would have got more pay as an Air Commodore than what Air Commodore Adlakha was getting while in the same rank of Air Commodore and he would have continued to get more than what had been fixed as Air Marshal with effect from 1st January, 1986. It was held that the stand of the respondents in not revising the pay of the petitioner therein with effect from 1st January, 1986



to be not less than the salary of the Air Commodore was without any basis or reason and was unreasonable. The writ petition therein was allowed and a direction was issued to fix the pay of the petitioner with effect from 1st January, 1986 at Rs. 6,510 the salary which was being paid to junior Air Commodores and then to revise the petitioner's pay to Rs. 6,300 with effect from 31st May, 1986 which had been fixed for the juniors and further consequential fixation thereof. The said decision, therefore, which is based on the interpretation of clause 9 of the Special Air Force Instructions provided for stepping-up the pay to an amount equal to the pay fixed for the junior in the higher rank. Such an eventuality is provided in terms of para 7 of the present SAI/2/S/98 which envisages for stepping-up of pay of a senior officer if a junior promoted after 1st January, 1996 drawn more pay. In the case in hand, as has already been noticed, para 9(c) of SAI 2/S/98, referred to above, provides for the regulation and fixation of initial pay on promotion to the rank of Major General at the stage next above the pay notionally arrived at by increasing his pay, including rank pay as Brigadier by one increment in the revised scale at the relevant stage. Besides, this has been indicated to be the application of Fundamental Rule 22(I)(a)(i) which provides that in the event of promotion or appointment in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by an officer, his initial pay in the time scale of the higher post is to be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay had accrued or Rs. 100 only which ever was more. It may also be noticed that the heading of clause 9 of the SAI 2/S/98 provides for stepping up of pay of Major General on promotion from Brigadier after 1st January, 1996 whereas the clause itself reads that pay of all officers promoted to the rank of Major General prior to 1st January, 1996 will be stepped up to the pay fixed for Brigadier in the revised scale of pay as on 1st January, 1996, Clause 12(c) is under Section III which provides for ; "regulation of pay of officers commissioned on or after 1st January, 1996." Clause 9 falls under Section II which provides for ; "fixation and regulation of pay of officers commissioned prior to 1st January, 1996". Therefore, the head note above clause 9 relates to stepping up of pay of Major General on promotion from Brigadier after 1st January, 1996. Therefore, Clause 9 of SAI 2/S/98 would apply to the case in hand and pay of all officers promoted to the rank of Major General prior to 1st January, 1996 is to be stepped-up equal to the pay fixed for

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a Brigadier in the revised scale of pay as on 1st January, 1996 subject to the fulfillment of certain conditions. Besides, the pay scale of Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as a Brigadier by one increment in the revised scale at the relevant stage. This is in accord with and is the application of Fundamental Rule 22(I)(a)(I). Even otherwise the cut-off date of 1st January, 1996 for the officers holding the rank of Major General before and after 1st January, 1996 in the circumstances of the case is not proper and is arbitrary. The present is not a case where a new liberalised pension formula is to be applied in which case, the validity of a cut-off date may have had a nexus with the object to be achieved but the present is a case of removing an anomaly. It is appropriate to note that in terms of the instructions issued by the government on 7th June, 1999 (Annexure-R.2) it has been decided that with effect from 1st January, 1996 the pension of all armed forces pensioners irrespective of the date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January, 1996 of the rank and rank and group (in case of PBOR) held by the pensioners. The effect of the same is that all officers would be drawing the same pension irrespective of the date of retirement which would not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January, 1996. The revised scale has been defined in clause 2(d) of the SAI 2/S/98 in relation of officers of all Arms and Services including MNS officers to mean the respective pay scale of the rank whether fixed or otherwise specified against each rank in paragraph 3 of the instructions. The minimum pay scale of Brigadier is Rs. 16,700 plus rank pay of Rs. 2,400 whereas the minimum pay scale of Major General is Rs. 18,400 which is less than the basis pay of the Brigadier because rank pay forms part of basic pay in terms of Clause 2(b) of the SAI/2/S/98. Therefore, when pay is fixed for all ranks irrespective of the date of retirement, it would be iniquitous to prescribe a cut-off date for the pre 1st January, 1996 retirees and the post 1st January, 1996 retirees. In **State Bank of India versus L. Kannaiah and others**, (2) the respondents therein who had served in the Army as Sepoys and joined the service of State Bank of India as Security Guards, sought directions to admit them to the benefits of State Bank of India Employees' Pension Fund and to pay pension. Their pension was denied to them on the ground that they exceeded 35 year's of age as on 1st January, 1965. The age limit was

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later increased to 38 years. The date of confirmation of the respondents therein was earlier to 1st January, 1965 i.e. the crucial date for admission to the aforesaid pension fund. On the said date, the confirmed employees to the Bank were not to have exceeded the age of 35 years. This was the combined effect of the staff circular dated 8th April, 1974 read with Pension Fund Rules. The reason for prescribing the maximum age limit of 35 or 38 years appeared to be for the purpose that the employees would be able to render minimum service of 20 years as was contemplated by the pension Fund Rules therein. It was, however, held that there did not appear to be any rationale or discernible basis for fixing the cut-off date as 1st January, 1965 notwithstanding the earlier confirmation in the bank service. It was observed as follows :—

“True, a new benefit has been conferred on the ex-servicemen and therefore, a cut-off date could be fixed for extending this new benefit, without offending the ratio of the decision in *D.S. Nakara versus Union of India*, AIR 1983 SC 130 but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation has put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ that view.”

(14) Therefore, when a pay scale is fixed for pre 1st January, 1996 retirees and post 1st January, 1996 retirees, the pay scale of Major General cannot be and is not to be equivalent to that of a Brigadier for the purpose of fixation of pension and a Brigadier having been given a higher pay scale i.e. a minimum pay of Rs. 19,100 than that of a Major General i.e. Rs. 18,400, then the Major General cannot be equated with the Brigadier by merely stepping up his pay equivalent to that of Brigadier and he is to be given a scale above that of a Brigadier by applying the principle in Fundamental Rule 22(I)(a)(I) Which is applicable irrespective of the date of retirement and is

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applicable to the post carrying duties and responsibilities of greater importance than those attaching to the post of Brigadier. Therefore, on promotion to the rank of Major General from the rank of Brigadier the initial pay of the Major General is to be fixed at the stage next above the pay notionally arrived at by increasing his pay including rank pay as Brigadier by one increment in the revised scale at the relevant stage for the post 1st January, 1996 retirees. It would be arbitrary to not extend the same benefit to the pre 1st January, 1996 retirees. This is for the reason that the pay of the post of pre 1st January, 1996 retirees is fixed at not less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January, 1996 held by the pensioner and the effect of the same is that all pensioners irrespective of their date of retirement are to be given the pay scale which is not less than 50% of the minimum scale in the revised scale if pay. The literal interpretation of the rule comes out in the following manner :—

Rank	Pay	Pension 50% of Pay
Brigadier	19100/2	= 9550
Major General	18400/2	= 9200
Lt. General	22400/2	= 11200

As per the Fifth Pay Commission, Lt. Generals have been fixed in the scale of Rs. 22400-525-24500.”

(15) Therefore, there being a provision for higher pay and pension for the rank of Lt. General from that of Major General, there is no reason why a Major General should not get a higher pay and pension from that of a Brigadier even in the case of pre 1st January, 1996 retirees and there is no reason not to grant them higher pay and pension than that of a Brigadier.

(16) For the foregoing reasons, the writ petition is allowed and the respondents are directed to fix minimum pay scale of the Major General above that of the Brigadier and grant pay above that of a Brigadier as has been done in the case of post 1st January, 1996 retirees and consequently fix the pension and family pension accordingly. There shall be no order as to costs.