

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (Civil) No 942 of 2019

Sushil Kumar Jain (Retired) & Ors

.... Appellant(s)

Versus

Union of India

....Respondent(s)

ORDER

1. In the present proceedings which have been instituted under Article 32 of the Constitution, the petitioners, who are retired Majors of the Indian Army or persons who have held equivalent posts, have sought a writ of mandamus on the basis of the principle of “equal pay for equal work” for grant of pensionary and other benefits at par with the benefits which accrue as a consequence of the communication dated 21 December 2004 of the Government of India in the Ministry of Defence. The reliefs which have been sought are extracted below:

“a) Issue a writ of mandamus or any other appropriate writ or direction to respondent to apply the constitutional provision of equal pay for equal work for grant of pension at par with grant of pay.

b) Issue a writ of mandamus or any other appropriate writ or direction to respondent to grant pension equal to the pension of Lt. Col. by applying the principle of “equal pension for equal work” to the petitioners under the provisions of Constitution of India.

c) Issue a writ of mandamus or any other appropriate writ or direction to respondent to grant the arrears, resulting out of present Writ Petition, to the petitioners w.e.f. 01.07.2014, the date from which GOI (MoD) letter dated 03.02.2016 was made applicable.”

2. By an order dated 5 August 2019, this Court issued notice and in response a counter affidavit was filed on behalf of the Union of India. The counter affidavit states that the last cadre review was carried out on the basis of the recommendations of the Ajay Vikram Singh Committee, which was formed in order to consider the restructuring of the cadre of Defence Officers. On 21 December 2004, Presidential sanction was granted for revision of the terms and conditions of service of Army Officers of all Arms/Services, except certain stipulated cadres. Paragraphs 2 and 3 of the communication are in the following terms:

“2. Substantive promotion:- To reduce the age profile and suppression level in the army as also to improve vertical mobility, promotion to the substantive rank of officers will be made on completion of reckonable commissioned service as indicated below:-

	Rank	Reckonable Commissioned Service
(a)	Lieutenant	On commissioning
(b)	Captain	2 years
(c)	Major	6 years
(d)	Lieutenant Colonel	13 years
(e)	Colonel (Time Scale)	26 years

Officers will be eligible for grant of substantive rank of Lieutenant Colonel on qualifying examination part D. Subject to this, seniority in service of officers will be protected until they complete 13 years reckonable commissioned service. Loss of seniority for non-qualification in promotion examination already awarded will continue to hold good. Qualification in part D examination will no longer be mandatory for grant of substantive rank of Major. Promotions accruing from Para 2 above shall also be subject to the officers fulfilling other criteria to be notified immediately by the Army Headquarters through Army orders.

3. Those serving in the rank of Lieutenant Colonel (Time Scale) will not be eligible for grant of the substantive rank of Lieutenant Colonel. The existing rank of Lieutenant Colonel (Selection) shall remain applicable till the existing Lieutenant Colonels (Selection) are either promoted to the rank of Colonels (Selection) or Colonel (Time Scale) or are retired. No further consideration for promotion to the rank of Lieutenant Colonel (Selection) shall be made after 16 Dec 2004.

...

11. These orders will take effect from 16 Dec 2004.”

3. The Presidential sanction dated 21 December 2004, which was implemented from 16 December 2004, contemplated for acceleration in promotion in respect of armed forces officers by reducing the service length for various promotions. Officers with six years of service were promoted to the rank of Major and officers with thirteen years of service were promoted to the rank of Lieutenant Colonel. Paragraph 11 of the Presidential sanction stipulates that these orders will take effect from 16 December 2004.

4. The petitioners are former personnel of the Indian Army who retired prior to 16 December 2004. Since the orders of the Union of India have taken effect from 16 December 2004, *ex facie*, they have no application to the petitioners.

5. Mr Sanjay Jain, learned Additional Solicitor General, has placed reliance upon a two judge Bench decision of this Court in **Suchet Singh Yadav v Union of India**¹. In the above case, a Government Order dated 21 November 1997 granted the benefit of pay scale of Lieutenant Colonel or equivalent to those who became substantive Majors or equivalent before 1 January 1996, upon completion of twenty-one years of commissioned service. The Government Order dated 21 November 1997 was challenged by commissioned officers who retired prior to 1 January 1996, seeking a grant of next higher scale and benefits in accordance with the Government Order dated 21 November 1997. This Court rejected the contention and held that the applicants were not entitled to the grant of benefit of higher pay scale under the Government Order dated 21 November 1997 and those who had retired prior to 1 January 1996 could not claim any benefit. Justice Ashok Bhushan speaking for this Court held thus:

“37. ... present is not a case where there is any discrimination in pensionary benefits of pre-1-1-1996 and post-1-1-1996 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 1-1-1996 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-1-1-1996 retirees. We have already noticed above that the Order dated 21-11-1997 was issued in reference to pay and allowances of the Armed Forces Officers, which presupposes that these officers were in the establishment on 1-1-1996. We thus are of the view that the 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 1-1-1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that the Armed Forces Officers, who have retired before 1-1-1996 are not entitled for pensionary benefits are upheld.”

6. Having due regard to the principle which has been enunciated in the above decision, and on the plain terms of the communication dated 21 December 2004, it is not possible to accede to the contention of the petitioners that they should be granted benefits at par with those to whom the communication applies. Paragraph 11 of the Presidential sanction stipulates that the order will take effect from 16 December 2004. Admittedly, the petitioners retired prior to 16 December 2004 and were no longer in service. We are unable to accede to the prayers in the Writ Petition.

7. The Writ Petition is accordingly dismissed.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hemant Gupta]

New Delhi;
February 20, 2020

ITEM NO.50

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).942/2019

SUSHIL KUMAR JAIN (RETIRED) & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

Date : 20-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Kumar Rajesh Singh, Adv.
 Ms. Punam Singh, Adv.
 Mr. Prem Prakash, AOR

For Respondent(s) Mr. Sanjay Jain, ASG
 Ms. Aakanksha Kaul, Adv.
 Mr. Piyush Beriwal, Adv.
 Mr. Arkaj Kumar, Adv.
 Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed reportable order, the Writ
Petition is dismissed.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable order is placed on the file)