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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30.09.2024

+ **W.P.(C) 12842/2018**

VOICE OF EX SERVICEMEN SOCIETY AND ORS.

.....Petitioners

Through: Mr.Nidhesh Gupta, Sr. Adv. with Ms.Japneet Kaur, Mr.Umesh Sharma & Mr.Bikram Dwivedi, Advs.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr.Ravi Prakash, CGSC/UOI with Ms.Astu Khandelwal, Mr.Taha Yasin, Mr.Yasharth Shukla & Ms.Isha Kanth, Advs. with Major Anish Muralidhar.

+ **W.P.(C) 12903/2018**

S P SINGH AND ORS.

.....Petitioners

Through: Ms.Pallavi Awasthi, Mr.Ashok Yadav & Mr.Sheesh Ram Yadav, Advs.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms.Radhika Bishwajit Dubey, CGSC/UOI with Ms.Gurleen Kaur Waraich, Ms.Drishti Rawal & Mr.Karan Khetani, Advs.

Ms.Arti Bansal, Ms.Suniti Singh & Ms.Akansha, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR



NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed primarily challenging the differential rates of Military Services Pay (hereinafter referred to as 'MSP') granted to all combatant personnel, including Junior Commissioned Officers (JCOs), Non-Commissioned Officers (NCOs), and Other Ranks (ORs) of all three wings of the Armed Forces.
2. It is the case of the petitioners that though consistently from the 3rd Central Pay Commission (in short 'CPC') it has been recognised that the MSP, which was earlier known as the 'X' factor, should be granted to the personnel of the Armed Forces keeping in view the degree of hardship, turbulence, hazards etc. inherent in the service, and as the defence forces personnel are expected to conduct full spectrum operations in operational environments which are characterised by extreme complexity and may include force projection outside India's territorial boundaries and that they have to keep themselves posted in modern warfare and are a symbol of national pride, but at the same time, the CPCs have recommended varying rates of MSP for the Officers and Military Nursing Staff, and for the JCOs/ORs and for the non-combatants (enrolled) in the Air Force. The petitioners challenge the differential rates as being discriminatory keeping the object and the purpose of MSP in mind.



3. Mr.Nidhesh Gupta, the learned senior counsel for the petitioner in W.P.(C) 12842/2018, and Ms.Pallavi Awasthi, the learned counsel for the petitioner in W.P.(C) 12903/2018, submit that keeping in view the object for providing MSP, the differential rate of MSP that has been recommended by the CPC, and eventually accepted by the respondents, is discriminatory and arbitrary. They submit that if the purpose of MSP is to compensate the officers for the hardship and turbulence inherent in the service and for the effect of continuous exposure to hazardous situations, isolation, deprivation, and threat to life, there is no reason to differentiate between the officers and the JCOs/ORs who, in fact, are more exposed to such threats.

4. They further submit that in spite of recognizing that the Military Nursing Staff should be given a lesser MSP, as observed in the 6th CPC Recommendations, the eventual recommendation is of a higher MSP being granted, which is almost double to that of the JCOs and the ORs. They submit that this also shows arbitrariness in the fixation of the MSP.

5. The learned senior counsel for the petitioners further submits that while the petitioners meet the object of the MSP as highlighted by the CPC, that is, shorter tenure on account of early retirement age, separation from family, combating war, threat to life, isolation and deprivation etc., the Military Nursing Staff, who do not meet these criteria, have been granted higher



MSP, which is almost double or triple to that granted to the petitioners.

6. Placing reliance on the judgments of the Supreme Court in *Secretary, Finance Department v. West Bengal Registration Service Association*, 1993 Supp (1) SCC 153; *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521; *Federation of Railway Officers Association v. Union of India*, (2003) 4 SCC 289; *Union of India v. Dineshan K.K.*, (2008) 1 SCC 586; *State of West Bengal v. Subhas Kumar Chatterjee*, (2010) 11 SCC 694; *Union of India v. S. Thakur*, (2008) 13 SCC 463; *State of Madhya Pradesh v. Mala Banerjee*, (2015) 7 SCC 698; *Centre for Public Interest Litigation v. Union of India*, (2016) 6 SCC 408; and, *State of Madhya Pradesh v. R.D. Sharma & Anr.*, 2022 SCC OnLine SC 94, they submit that though the Courts generally do not interfere with the fixation of pay, however, it cannot be said that the Courts have no jurisdiction over the same. Where the fixation is found to be arbitrary or discriminatory, the Courts would intervene and come to the aid of the person who has been discriminated against.

7. They submit that in the present case, as there is no reason for discriminating against the petitioners, who equally meet the objects sought to be achieved by the grant of the MSP, therefore, the differential rates are liable to be quashed and the petitioners should be held entitled to similar rates of the MSP as granted to the Officers.



8. On the other hand, the learned counsels for the respondents submit that the rates of MSP have been determined by the CPC based on the inputs received by them and after hearing all concerned stakeholders. They submit that these are matters of expert determination and should not be interfered with by the Courts except in the rarest of rare cases.

9. They submit that in the present case, both, the 6th CPC and the 7th CPC, have considered and given reasons for recommending differential rates of MSP amongst various ranks of officers and, in fact, the MSP is recommended only till the rank of Brigadier and not beyond.

10. Placing reliance on the judgment of the Punjab and Haryana High Court in *Ex-Naik Harbhal Singh v. Union of India & Anr.*, 2018:PHHC:003480-DB, they submit that a similar challenge has been rejected by the High Court of Punjab and Haryana and that the said judgment has attained finality.

11. We have considered the submissions made by the learned counsels for the parties.

12. The object of the grant of MSP has been explained by the 6th CPC and also by the 7th CPC, and even earlier. Only to quote from the 7th CPC, the object of granting the same has been explained as under:-

“6.2.110 The Commission, after careful consideration of the matter, notes that there are exclusive elements that distinguish the Defence forces personnel from all other government employees. The intangible aspects linked to the special conditions of



service experienced by them set them apart from civilian employees. Defence forces personnel are expected to conduct full spectrum operations in operational environments which are characterised by extreme complexity and may include force projection outside India's territorial boundaries. Defence forces personnel are trained for war like situations with highly sophisticated war machinery. They have to keep themselves posted in modern warfare. The military institutions are a key symbol of national pride. Further, the superannuation of defence personnel, particularly Other Ranks (ORs) at a younger age, is also a factor that has been considered. The Commission has therefore taken a conscious decision that the Military Service Pay, which is a compensation for the various aspects described above and for the edge historically enjoyed by the Defence Forces over the civilian scales, will be admissible to the Defence Forces personnel only.

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6.2.115 MSP to be distinguished from 'Edge':
The V CPC, after deliberating on the issue of Military Service Pay, did not recommend granting it. It recommended continuance of all existing concessions and also recommended an edge in the starting pay scale. The VI CPC introduced the Military Service Pay for all Officers up to the level of Brigadiers, without reducing the existing concessions. The VI CPC went on to state upfront that MSP constitutes the 'edge' being provided to the defence forces personnel over civilian pay scales. This Commission taking note of the evolving pay structure of the defence forces personnel and what has been averred by the VI CPC is in agreement with it and is of the view that MSP is the 'edge' being provided to the defence forces personnel."



13. The 7th CPC also considered the rates at which the MSP has to be granted and its application only to defence forces personnel, by observing as under:-

*6.2.107 The Commission has however, taking note of the unique aspects of their role, taken a conscious decision that that **Military Service Pay will be admissible to the Defence forces personnel only**. In Chapter 6.1 the rationale for payment of MSP to the defence forces personnel has been enunciated.*

6.2.108 The recommendations of the Commission regarding the rate of MSP as applicable to the Service officers, MNS officers and JCOs/ORs has been detailed in Chapter 5.2. The revised rates per month being recommended by the Commission are ₹15,500 for officers, ₹10,800 for Military Nursing Service Officers, ₹5,200 for JCOs/ORs and ₹3,600 for Non Combatant (Enrolled) in the Air Force. The recommendations of the Commission with reference to other demands relating to MSP are discussed in the succeeding paragraphs.

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6.2.116 MSP to MNS Officers: The Commission has taken note of the proposals of the Defence Services and has recommended a separate rate of MSP for Military Nursing Service Officers. The rates of MSP for Military Nursing Service Officers have been revised by a factor of 2.57 from the existing ₹4,200 per month to ₹10,800 per month. The revision factor is identical to what is being recommended in the case of Service officers.

14. It is well settled that ordinarily the Courts will not enter into evaluation of the pay scales; these are matters to be left to the experts and the executive. There are various factors which are to be considered while fixing the pay scales, in the present



case, the MSP. These factors having been considered by the authority charged with this duty, unless this Court finds *ex facie* arbitrariness or discrimination in the same or where the same is found to be contrary to law or as being in violation of constitutional provision, the Court would refrain itself from entering this field. Reference in this regard may be made to the judgments of the Supreme Court in *Secretary, Finance Department* (supra), *Shyam Babu Verma* (supra), *Federation of Railway Officers Association* (supra), *Dineshan K.K.* (supra), *Subhas Kumar Chatterjee* (supra), *S. Thakur* (supra), *Mala Banerjee* (supra), and *R.D. Sharma & Anr.* (supra).

15. Considering the above position of law, the High Court of Punjab and Haryana in *Ex-Naik Harbhal Singh* (supra) also refused to entertain a petition on a similar challenge, observing as under:-

“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."

16. We see no reason to differ from the above view.
17. Accordingly, we find no merit in the present petitions and the same are dismissed. This shall, however, not preclude the petitioners from making a representation in this regard to the concerned authority, which may consider the representation of the petitioners remaining uninfluenced by the present order.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 30, 2024/rv/DG/SJ

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