

Legal Brief to Assist The Advocate on Maj Gens
Getting Lower Pension than Brigadiers

1. The 7th Central Pay Commission (hereinafter known as CPC) recommended pay and allowances to all serving employees of Govt of India and pension to all retired employees of Govt of India w.e.f. Jan 2016. Most of the recommendations of the CPC were approved and the same revised pay and pension have been implemented w.e.f Jan 2016.
2. The 7th CPC consulted all ministries, representatives of various pension associations and members of JCM and submitted their recommendation to the Govt of India following the terms and conditions given to them.
3. The pay and allowances of serving Armed Forces personnel and pensions of retired Armed Forces personnel were based on the consultations the 7th CPC made with Tri Service Armed Forces commission cell and representative of Controller General of Defence Accounts (hereinafter known as CGDA) before finalising pay and pension scales of all Armed Forces Personnel.
4. The CGDA does not appear to have given correct advise nor followed the method adopted by 6th CPC in fixing pension of Armed Forces Personnel in 7th CPC. The result is the Major Generals of Army, Rear Admirals of Navy and Air Vice Marshals of IAF are drawing pension less than that of retired Brigadiers / Commodores / Air Commodores. A Maj Gen /R Adm / AVM, with 38 to 39 years of service draws pension of Rs 1,09,100 pm w.e.f. Jan 2016 whereas a Brigadier /Commodore / Air Commodore a one rank lower draws pension of Rs 1,10,300 pm w.e.f. Jan 2016. A Pension Payment Order (hereinafter known as PPO) of a Major General and a Brigadier retired in 2018 is attached (Exhibit A). The reason for this anomaly is because general officers i.e rank of Major General, Lt Gen, Lt Gen (HAG+) are not authorised Military Service Pay (hereinafter known as MSP), an additional pay to compensate for the hardship military personnel undergo and to give a traditional edge of pay enjoyed by the defence service personnel from the days of British rulers compared to civilian equivalents in Govt of India.

5. **Military Service Pay (MSP)**. 6th CPC introduced the concept of MSP w.e.f. Jan 2006 to the Armed Forces Personnel. In their report to the Govt of India at pages 76- 77 the commission gave reasons for introduction of MSP to military personnel as under: -

Analysis - Military Service Pay

2.3.12 The Commission is of the view that running pay bands on par with those recommended for civilian officers needs to be introduced in respect of the Defence Forces as well. This is also in conformity with the recommendations of all the three earlier Central Pay Commissions that had simultaneously considered the pay scales and related issues of civilians as well as the Defence Forces. The edge enjoyed by the Defence Forces over the civilian scales will, after suitable enhancement to meet the genuine aspirations of the Defence Forces, be given as a separate element called Military Service Pay. Presently the edge enjoyed by the Defence Forces officers is limited to the rank of Brigadier. This edge will need to be protected. The edge will be carried to the post of Major General as well because Military Service Pay shall be taken in account for purposes of fitment at the time of promotion from Brigadier to Major General. Higher grades do not need to be extended any MSP. Consequently, the Military Service Pay will be extended to all the posts in the Defence Forces upto the level of Brigadier/equivalent. MSP being a new element, no arrears shall be paid on this account. It will, however, be considered for purposes of fixation of pay and pension.

2.3.13 The Military Service Pay shall count as pay for all purposes except for computing the annual increment(s). However, status of the Defence Forces officers would be determined by the grade pay attached to their post as is the case with civilians. This will meet the two major demands of the Defence Forces viz.

- i. Parity with civilian posts with a distinct edge to compensate for hardships specific to defence service.*
- ii. Grant of Military Service Pay.*

As stated earlier, the Commission has taken adequate care while devising the Military Service Pay to ensure that not only the element of edge over civilian pay scales currently enjoyed by the Defence Forces is maintained but also that the genuine aspirations of the Defence Forces officers are met.

6. The hon'ble 6th CPC erred on few counts as illustrated: -

- a) The British could conquer India with much lesser forces than the forces held by Indian rajas and Maharajas. They understood if their colonies are to be protected the only power which can do is not British legislature, nor British Judiciary, nor British Executive. Thus, they gave higher pay to soldiers and their officers.
- b) A British soldier used to cost the Government three times than that of a civilian. Hence in order to cut down defence expenditure they inducted civilians into non - core areas of Defence Services like Accounts (presently held by Defence Accounts Department with Indian Defence Accounts Service Officers), Military Estates, Military Engineer Services, Ordnance factories, military survey etc. Even in British military units, there were camp followers (presently known as Non Combatants Enrolled in IAF) such as waiters, cooks, tailors, barbers, safai karmacharis, washermen, equipment and boot repairers with much lesser pay than a soldier. The duty of camp followers is to provide administrative support to the British Units. This system of camp followers was followed till 1972 and the NCEs were converted as soldiers to remove the disparity in pay and allowances.
- c) To keep the Armed Forces young, the British had the policy of use and throw in that small percentage of soldiers used to be retained beyond nine years and rest of them used to be discharged with terminal benefits. Such discharged personnel were known as Reservists. This was done to keep the size of defence forces small and these reservists were recalled to military service only when they were carrying out military operations to conquer other colonies. Thus any soldier who could put in nine years colour service and six

years reserve service was paid pension of a soldier. They used senior soldiers as Junior Commissioned Officers as a link between Hindi speaking Indian soldiers and English-speaking British officers.

- d) The lifetime earnings of the Maj Gens and above compared to their civilian Group A officers has not been taken into consideration. The gross injustice done to general officers can be seen in this table where there are few vacancies and long-time span to get into the rank of Maj Gen is quite high. In Group A, 50% of IAS officers become Joint Secretary to Govt of India (post equivalent to Maj Gen) at 19 years of service out of which one year training they undergo in Lal Bahadur Shastri National Academy of Administration is also counted towards their service whereas only 0.85% military officers become Maj Gen / R Adm / AVM at service ranging from 32 to 35 years. The take home pay of a Jt Secy to Govt of India from service of 19 years to almost 35 years is quite huge compared to three to six years of take home pay of a Maj Gen.

No of Vacancies					
Ser No	Cadre	IAS	IPS	Gp A Services	Armed Forces
1	Total Strength	5,246	4,720	14,260	57,137
2	Junior Time Scale (JTS)	Nil	Nil	4,296	5,612
3	Senior Time Scale (STS)	581	2,151	4,307	10,213
4	Junior Administrative Grade (JAG)	458	1,328	3,506	40,740
5	Senior Administrative Grade (SAG)	1,569	496	1,771	429
6	Higher Administrative Grade	1,489	489	331	78
7	HAG+	897	202	29	39
8	Apex Scale	252	54	20	26
Percentage in Higher Ranks					
Ser No	Cadre Strength	IAS	IPS	Gp A Services	Armed Forces
1	Cadre Strength	5,246	4,720	14,260	57,137
2	Posts: JAG	1,569	496	1,771	4,291
3	Percentage	30	11	13	0.75

4	Post HAG & Above	2,638	745	380	143
5	Percentage	50	16	3	0.25

- e) All Central pay commissions from 2nd to 7th followed the recommendations of Post War committee of 1947 and continued to give an edge in pay to the Armed Forces serving personnel and pensions to retired pensioners. There was no discrimination of any rank being exempted from getting this edge. Even Major Generals and senior ranks like Lt Gens right upto Service Chiefs enjoyed this edge in pay and allowances and pension compared to their civilian counterparts.
- f) The 6th CPC without taking into hardships faced by general officers (hereinafter all officers of the rank of Maj Gen, Lt Gen, Lt Gen (HAG+), Army Commanders and Service Chiefs) while commanding their formation in High Altitude areas, counter insurgency areas like in the North East and terrorist infested areas like Jammu & Kashmir.
- g) The 6th CPC for the above reasons should not have exempted General officers from MSP. The traditional edge enjoyed by General officers compared to their civilian counterparts was removed without any rhyme or reason.
- h) All Central Government Group A officers have been sanctioned Non-Functional Financial Upgradation by which the so-called parity of General officers has been removed and now Joint Secretaries and above cadres draw much higher pay and pensions than General officers.
- i) With effect from 01 Jan 2016 Armed Forces Officers and Pensioners are paid lowest pay & allowances and pensions compared to any Central Govt Group A officers.
- j) The General officers also undergo the same hardships of the lower ranked officers. The recent helicopter crash of Chief of Defence Staff and 11 brave hearts is an example. Many General officers suffer from ailments such as hypertension, heart attacks, physical and mental disabilities due to stress and

strain. This fact unfortunately was forgotten by 6th CPC. Right from 1947 there are any number of air crashes where senior officers of the rank of Maj Gen and above have perished.

- k) There is no rationale to deny MSP to a Maj Gen Commanding a Division in any area say Jammu & Kashmir and give it to his deputy GOC and three to four brigade commanders under him. There is very little hike in pay of Maj Gen and Brigadier when both are performing the same military duty.
- l) The 6th CPC mentioned that Maj Gen should be given notional MSP in their report on the ground that when a Brigadier is promoted, he should carry that benefit of MSP. See the illustration given in page 18 of SAI 2/S/2008

Illustration

Fixation of initial pay in the revised pay structure in case of a Brigadier promoted to the rank of Major General on 01 Feb 2006 who opts to fix his pay in higher grade date of his next increment (Refer para 7(a)(v)).

a) Existing scale of pay on promotion	-	Rs 18400 - 22400
b) Pre-revised Basic pay	-	Rs 18050
c) stagnation increment (one)	-	Rs 450
d) Pre-revised pay with stagnation increment	-	Rs 18500
On 01 Jan 2006		
e) Pay in Pay Band	-	Rs 46,050
f) MSP	-	Rs 6000
g) Grade Pay	-	Rs 8,900
h) Pay on promotion on 01 Feb 2006	-	Rs 46050
i) Grade Pay on promotion	-	Rs 10,000
j) Pay on net date of increment (01 Jul)	-	Rs 49400
k) additional increments @3% on total	-	Rs 49400

Of Rs 46050 + 8900 = Rs 3450(refer para 13(b)(i) 1650 + 1700

l) Grade Pay Maj Gen	-	Rs 10,000
m) Revised basic pay (total of pay	-	Rs 65,400

In Band pay and grade pay of higher rank (50890+10000)

(49400+6000+10000)

n) MSP	-	Nil
o) Total Pay for DA and pension	-	Rs 65,400

m) The plain reading of this illustration clearly shows that notional MSP was given to Maj Gens to keep their basic pay higher than Brigadier.

n) Even a layman unaware of defence pay and allowances structure, can make out that Maj Gens can only get higher pay unless notional MSP is given, why the so called experienced CGDA and his subordinates could not bring this to the notice to the 7th CPC. This shows nothing but jealousy and vicarious pleasure they derive by denying justified entitlement to general officers. Even after the major dailies brought out this gross injustice to Maj Gens, the staff of CGDA having deliberately committed a sacrilege have done precious little to remove this anomaly. They firstly created an anomaly in pay and pensions and thereafter they are unable to accept their malafide intention of lowering the pay and pension of Maj Gen compared to a Jt Secy to Govt of India.

o) The CGDA and his staff deliberately hidden the fact that even 6th CPC recommended grant of MSP to Maj Gens in their report as under: -

The edge will be carried to the post of Major General as well because Military Service Pay shall be taken in account for purposes of fitment at the time of promotion from Brigadier to Major General.

7. When the pay and pension of Maj Gen was lesser than Brigadier w.e.f Jan 2006, the Govt of India realised the mistake and enhanced it by giving general officers Notional MSP to keep the pay and thus pension of Maj Gen higher in SAI 2/S/2008.

8. The 7th CPC guided by CGDA has again committed the same mistake initially committed by 6th CPC in not granting MSP to General officers. The notional MSP enjoyed at the time of fixing pay and allowances in 6th CPC has not been followed in Army Pay Rules and thus Maj Gens post Jan 2016 get lower pension.

9. If this situation continues in 8th CPC, the pension of Maj Gen will be less than a Colonel and in 9th CPC it will be much lesser than even a Major due to non-authorization of MSP to General officers.

Prayer

10. The CGDA is entrusted with the responsibility to ensure senior Armed Forces officers do not get lesser pay and pension than junior officers. The CGDA deliberately with malicious intention did not advise the 7th CPC to grant notional MSP to General officers as it was done in 6th CPC. The loss suffered by General officers from Jan 2016 and the interest on such arrears which will be forced to be paid by the Govt of India through intervention of courts should be partially recovered from all those officers of Defence Accounts Departs. But for this mischief and gross irresponsibility and non-accountability, General officers would have got higher pension even in 7th CPC.

11. The General officers must be authorised MSP hereinafter to eliminate such anomalies in future Central Pay Commissions. This will also avoid General officers filing cases time and again to get their justified entitlement.

12. In the light of the above, The Hon'ble Court may give direction to the Govt of India to authorise MSP to all General officers to avoid recurrence of such anomalies in the future.