COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

2.

MA 2376/2022 IN OA 808/2019

Sub D Subramani ..... Applicant
Versus
Union of India and Ors. ..... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

WITH

3.

RA 33/2022 WITH MA 3199/2022 IN OA 808/2019

Union of India and Ors. ..... Applicant
Versus
Sub D Subramani ..... Respondents

For Applicant : Mr. Rajeev Kumar, Advocate
For Respondents : Mr. S.S. Pandey, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R
23.02.2023

MA 3199/2022

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in ***Union of India and Others*** *Vs.* ***Tarsem Singh*** [(2008) 8

SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. MA stands disposed of.

RA 33/2022

3. The RA has been filed under Section 18 of AFT (Procedures) Rules, 2008 read in conjunction with Section 14 (4F) of AFT Act 2007, by the respondents in OA 808/2019 seeking a review of the order dated 08.11.2021 passed by this Tribunal.

4. OA 808/2019 was filed by the applicant therein with the prayer that his pay in the 6th CPC regime be fixed from the date of the antedate seniority (01.10.2008) granted against a physical promotion to the rank of Nb Sub on 18.10.2008. After due consideration of the matter the OA was allowed and vide our Order dated 08.11.2021, the respondents were directed to:-

(a) Review the pay fixed of the applicant on his promotion to Nb Sub with ante date seniority in the 6th CPC, and after due verification, re-fix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors.

(b) Thereafter re-fix is pay in all subsequent ranks and on transition to 7th CPC, where applicable, and also ensure that the applicant is not drawing less pay than their juniors; and

(c) Issue all arrears including the amount recovered if any within three months of this order.

5. The applicant here (respondents in OA 808/2019) has prayed that the RA be allowed and that the AFT (PB) order dated 08.11.2021 in OA 808/2019 be reviewed. The applicant in OA 808/2019 had earlier filed MA 2376/2022 regarding the non-execution of the order dated 08.11.2021 in OA 808/2019. Vide our order dated 17.10.2022 in MA 2376/2022, it was directed that the MA be listed along with RA 33/2022 and subsequently the respondents were permitted to bring on record additional documents, which have since been taken on record in RA 33/2022.

6. The counsel for the respondent here (applicant in OA 808/2019) stated that the implementation instructions issued vide SAI 2/S/2008 stated that the pay was to be fixed from the date of promotion and that it does not state anywhere that the promotion is to be on physical assumption of the higher rank. He further added that the date of seniority once assigned to a rank governs all subsequent action including fixation of pay and

allowances. The counsel vehemently asserted that in the instant case, though the applicant had assumed the rank of Nb Sub on 18.10.2008, his seniority had been fixed as on 01.08.2008 and since the date of seniority reckons in the transition period, the applicant was entitled to have his pay fixed with the most beneficial option as granted in all other similar cases. The counsel relied on AFT, (Principal Bench) order dated 20.12.2021 in OA 385/2021, ***Sub M/Tech (NW) Hari Shankar*** Vs. ***Union of India and Ors.*** and AFT, (Regional Bench), Chandigarh, order dated 15.12.2015 in OA 246/2014, ***Satpal Dahiya*** Vs. ***Union of India and Ors***.

7. The counsel for the applicant in RA (respondents in the OA) stated that the respondent (applicant in OA) was enrolled in the Army on 24.12.1991 in 28 Air Defence Regt in the trade of Driver MT (DMT) and was promoted to the rank of Havildar on 07.04.2004 with date of seniority as of 01.04.2004. The counsel further elaborated that in Dec 2005, prior to transiting to 6th CPC, the respondent (applicant in OA) was drawing the pay of a Hav (Basic pay – Rs.4,000/-). The respondent's (applicant in OA) pay in 6th CPC was fixed as on 01.01.2006 at Rs.7630/- with grade pay Rs.2800/-. The respondent (applicant in OA) was then promoted to the rank of Nb Sub on 18.10.2008 with date of seniority as 01.08.2008. The

counsel further added that since the respondent (applicant in OA) was now promoted after the transition period and having already had his pay fixed in the revised pay structure of 6th CPC, his pay fixation was governed by the provisions of Para 14 of SAI 1/S/2008. Accordingly, the respondent's (applicant in OA) pay was fixed at BP Rs.9300/- with Grade pay of Rs.4200/- on the date of promotion and on his date of next increment on 01.07.2009, the pay was increased with the authorised 3% increment and fixed at Rs.9710/- with grade pay of Rs.4200/-. The counsel further emphasised that pay and allowances on promotion is fixed only on the date of physical assumption and not from the date of ante date seniority, where granted. The counsel further added that the date of seniority would reckon for all future promotions and other considerations where date of seniority was a criteria. The counsel vehemently asserted the following grounds for seeking the review :-

(a) That the date of seniority of the respondent (applicant in OA) as mentioned in the OA as well as in Court order dated 08.11.2021 are incorrect and that the correct date of seniority of the respondent (applicant in OA) is 01.08.2008 and not 01.10.2008 (Annexure R-4).

(b) That the respondent (applicant in OA) has not provided the details of his juniors who are getting more pay than the respondent (applicant in OA). And that on scrutiny of the sheet roll of the individual no record has been found of any juniors to the respondent (applicant in OA) getting more pay than the respondent (applicant in OA).

(c) That, that since the respondent (applicant in OA) had physically assumed the rank of Nb Sub on 18.10.2008 with antedate seniority of 01.08.2008, as per the policy in vogue, pay and allowances are applicable only from the date of physical assumption of the rank.

(d) That the respondent (applicant in OA) did not enjoy the benefit of exercising an option to fix his pay from the date of his promotion to the rank of Nb Sub on 18.10.2008 as this date was beyond the stipulated duration of the transition period which was from 01.01.2006 to 11.10.2008.

(e) That the ante date seniority is only a reference date from which an employee gets a seniority for consideration for subsequent promotion and does not have any impact on the pay and allowances in the rank in which the seniority is adjusted.

(f) That the respondent (applicant in OA) had already been granted the most beneficial option on promotion to the rank of Nb Sub as per Para 14 of SAI 1/S/2008, which is applicable to those promoted after transition to 6th CPC.

(g) That the AFT, (PB) order dated 03.09.2021 in OA 1182/2018, ***Sub Mahendra Lal Srivastava*** as mentioned in the order dated 08.11.2021, is not applicable in the case of the respondent (applicant in OA) here as that case was in respect of those promoted in the transition period and were denied the most beneficial option.

8. Both sides in RA 33/2022 were heard at length. Review is neither an appeal nor re-hearing of a case. The law with regard to review application has now been well settled in the case of ***Sasi (Dead) Through Legal Representatives*** Vs. ***Aravindakshan Nair and Others*** [(2017) 4 SCC 692] and in Paras 6, 7, 8 and 9, the principle of review has been laid down which read as under:-

6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provisions are satisfied.

7. In Thungabhadra Industries Ltd. V. State of A. P., the court while dealing with the scope of review had opined. (AIR p. 1377, para 11)

> *"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record" . The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it*

was an "error apparent on the face of the record". For there is a distinction which is real, though it might not always be capable of expositon, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error".

8. In Parsion Devi v. Sumitri Devi, the Court after referring to Thungabhadra Industries Ltd. Meera Bhanja v. Nirmala Kumari Choudhary and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma held thus; (Parsion Devi case, SCC p. 719. Para 9)

"9. Under order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apartment on the face of the record. An error which is not self- evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purposed and cannot be allowed to be "an appeal in disguise".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.

9. The only issue which merits consideration is whether there are any error apparent on the face of the records, which necessitates the recall of our order dated 08.11.2021 in OA 808/2019. We, therefore, find it necessary to examine the correctness of date of ante date seniority and whether pay and allowances are to be fixed from the date of physical assumption, or the ante date of seniority, when granted.

10. The date of seniority of the applicant as mentioned in the order dated 08.11.2021 is 01.10.2008 based on the details provided in the OA by the original applicant; in that he was promoted to the rank of Nb Sub on 18.10.2008 with ante date seniority of 01.10.2008. Since the OA was allowed on admission, the details as given in the OA had

been relied on. It has now been brought on record through the 'Assumption Certificate' (Annexure R-4) signed by the OC Adm Regt, Army AD College that the respondent (applicant in OA) physically assumed the higher rank of Nb Sub w.e.f 18.10.2008, and that he is granted ante-date without effect on pay and allowances w.e.f 01.08.2008. The Assumption Certificate dated 18.08.2008 is reproduced below :-

Annex- R4

ASSUMPTION CERTIFICATE

Certified that:

(a) No 14408312WL Rank Hav (DMT) Name D Subramani of Adm Regt/ Army AD College has physically assumed higher rank/ appt of Nb Sub wef 18 0c1 2008.

(b) The above individual is granted ante-date seniority without effect on pay and allces wef 01 Aug 2008.

(c) The promotion is within the authorised establishment.

(d) The individual is fully qualified with reference to SAO 8/S/78 and AO 45/80 as the case may be on the date of promotion.

(e) The individual is within the age and service limit for promotion/appt to the rank of Nb Sub laid down in Govt of India, Min of Def letter No F/14 (3)/DIAG dt 03 Sep 98 as amended vide letter even dt 18 Sep 98.

(f) The individual is fully qualified and eligible in all respects (Including cadre, course, age and service limit).

(g) The individual is not involved in any disciplinary/ vigilance/ criminal case in terms of AO 20/81.

(h) The individual is in acceptable Medical Category. Present Medical Category is SHAPE-I on the date of promotion.

(j) The individual is passed Junior Leader Proficiency Test (In case of promotion from Nb Sub to Sub only).

Station : C/O 99 APO
Date : 18 Oct 2008

Sd xxxxx
(Signature of OC Uint)
Lt Col
OC Adm Regt
Army AD College

11. The issue pertaining to date of promotion reckoning from the date of physical assumption and the relevance of grant of date of seniority has been examined in AFT, Regional Bench, Jaipur, order dated 15.04.2021 in OA 18/2018. The applicant in OA 18/2018 too was promoted to the rank of Nb Sub on 06.11.2008 (date of physical assumption) with ante date seniority of 05.10.2008 and had, therefore, prayed that his pay in 6th CPC be fixed from 05.10.2008, by granting him the most beneficial option. The AFT, (RB), held that he was only entitled to fix his pay and allowances from the date of physical assumption and not from the ante date of seniority. Relevant portions of this order are reproduced below :-

> *3. Heard and considered the submissions of Learned Counsels for the parties and perused the material placed on record. The question that falls for consideration is whether the Applicant is entitled to get pay and allowances in the revised pay structure from the date of promotion to the rank of Nb Sub with ante-date seniority on 05.10.2008 or from the date of physical assumption of the rank on 06.11.2008.*
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> *4. Perusal of the material on records shows that the Applicant physically assumed the rank of Nb Sub on 06.11.2008 with ante-date seniority of 05.10.2008. ….. In the reply statement, the Respondents submitted that since the Applicant assumed the promotion physically on 06.11.2008, le., after publication of Notification on 11.10.2008, his pay has been correctly fixed from the date of physical assumption of promotion in terms of IHO of MoD (Army) letter dated 12.03.2001 (Annexure R/3), which reads as*
>
> > *"1. A unit has represented that promotions are issued by Records retrospectively without anti-date seniority, in case of late passing of mandatory mil edn, as a result junior become senior and indi looses pay and allowances in between date of prom notified in the prom order as well as physical assumption of prom.*
> >
> > *2. This trend has shown an alarming increase in the recent past from some Line Dtes, where a large number of cases of such prom received, which leads to the only logical inference that there is some intrinsic infirmity in planning which has given spurt to such cases.*

3. It is clarified that promotion can be legally enforced on an individual on the first vac as per his seniority subject to fulfillment of QR. However, prom will be notified in the Pt II order from date of physical assumption and pay & allces will be regulated accordingly. In the case of lacking mil ed due to various reasons and it is not possible to reserve vac due to administrative difficulties for a particular indl who is senior, junior will be promoted on the first vac. Consequent to passing of mandatory mil edn, former one will be illegible for prom on the next vac and he will be given anti-date seniority from date of passing of lacking edn, irrespective of whether Junior is senior or otherwise, to maintain their inter-se-seniority."

5. Careful perusal of Para 1 and 3 of the above letter makes it amply clear that the Part II Order for promotion has to be notified from the date of physical promotion and pay and allowances will be regulated from the date of physical promotion and not from the date of seniority. In terms of the above letter, the Applicant should have exercised option for pay fixation from the date of physical assumption of the rank, ie 06.11.2008 and not from the date of seniority of promotion, ie 05.10.2008. Therefore, the Respondents have not erred in rejecting the Part II Order dated 24.09.2011. Moreover, as per Para 7 (b) of SAI 1/S/2008, in cases where a PBOR has been placed in a higher pay scale between is day of January 2006 and the date of notification of this instruction (ie., 11.10.2008) on account of promotion, upgradation of pay scale etc., the individual may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc. In the present case, the Applicant physically assumed the rank of Nb Sub on 06.11.2008, and in fact no window was available to exercise option for pay fixation after 11.10.2008.

6 to 7 xxxxx

8. In view of the above reasons, we are of the considered opinion that the Applicant physically assumed the rank of Nb Sub on 06.11.2008, ie after the date of publication of the notification on 11.10.2008. Hence, he is entitled for the pay and allowances in the revised pay scale as per Para 9 and 13 of SAI 1/S/2008 and not from the date of seniority of promotion, i.e., 05.10.2008. Thus, the Original Application lacks merit and hence stands dismissed.

12. Implementation instructions of 6th CPC for PBOR of the Army was issued vide SAI/1/S/2008 dated 11.10.2008. As per the provisions of Para 5 of the SAI, those promoted to a higher rank/upgraded between 01.01.2006 and 11.10.2008 (issue of instructions) had the option to fix their pay in the revised pay structure of 6th CPC from the date of promotion/date of next increment/01.01.2006, which ever was most beneficial. Each individual was required to exercise the option within the stipulated

period and forward the option certificate to the concerned PAO. Where an option was not exercised or, was exercised beyond the stipulated period, the pay in the revised pay structure was fixed as on 01.01.2006. Thus, anyone who is promoted/upgraded after 11.10.2008, *has already been brought into the revised pay structure of 6th CPC* and his pay now on promotion/upgradation is to be fixed as per the provisions of Para 14 of the SAI, which is reproduced below :-

> ***14. Fixation of Pay On Promotion on or after 1st January 2006.*** *In the case of promotion of a PBOR from one grade pay to another in the revised pay structure, the fixation of pay in the running pay band will be done as follows:-*
>
> (a) *One increment equal to 3% of the sum of the pay in the pay band, existing grade pay and Group 'X' pay (if any) will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band, The grade pay corresponding to the promoted rank, will thereafter be granted in addition to this pay in the pay band, In cases where promotion involves change in the pay band also, the same methodology will be followed.*
>
> *However, If the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will `be stepped up to such minimum.*
>
> (b) *On promotion from one rank to another/financial upgradation under ACP, PBOR has an option to get his pay fixed in the higher post either from the date of his promotion or from the date of his next increment, viz 01 Jul of the year. The pay will be fixed in the following manner in the revised pay structure:-*
>
> (i) *In case PBOR opts to get his pay fixed from his date of next increment then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher rank will be granted. Further re-fixation will be done on the date of his next increment i.e. 01 Jul. On that day, he will be granted two increments; one annual increment and the second on account of promotion. While computing these two increments, Basic Pay prior to the date of promotion shall be taken into account.* ***To Illustrate****, if the Basic Pay prior to the date of promotion was Rs 100, first increment would be computed on Rs 100 and the second on Rs103.*
>
> (ii) *In case a PBOR opts to get his pay fixed in the higher grade from the date of his promotion he shall get his first increment in the higher grade on the next 01 Jul, if he was promoted between 02 Jul and 01 Jan. However, if*

he was promoted between 02 Jan and 30 Jun of a particular year, he shall get his next increment on 01 Jul of next year.

(iii) *PBOR will have the option to be exercised within one month from the date of promotion to have his pay fixed from the date of such promotion or to have the pay fixed from the date of his next increment, Option once exercised shall be final. Form of option is given at* ***Appendix 'D'*** *to this SAI.*

(iv) *If no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options mentioned above is allowed to the PBOR. Pay on promotion may be fixed in the following manner if it is more beneficial :-*

(aa) In case promoted between 02 Jan and 30 Jun, the fixation, on promotion will be done from the date of his next increment i.e 01 Jul.

(ab) In case promoted between 02 Jul and 01 Jan, the fixation on promotion will be done on the date of the promotion of the PBOR.

(v) *As a one time measure, PBOR promoted on or after 01 Jan 2006 and before publication of this instruction, may exercise their option afresh within three months of the issue off this instruction. Form of option is given at* ***Appendix 'D'*** *to this SAI.*

(c) *In case of promotion to Hony Captain/Lieutenant rank on or after 1st January 2006, One additional increment will be given as in all other cases unless this amount is less than Rs 15600 i.e minimum of PB-3 then the pay will be stepped up to Rs 15600. In addition Grade Pay and MSP as indicated in the table below para 13 will be admissible.*

13. Thus, as seen from the above consideration, there are two errors in the order dated 08.11.2021 passed by this Tribunal in OA 808/2019. One, that the date of ante date seniority has been incorrectly mentioned as 01.10.2008, whereas, the correct ante date is 01.08.2008. This error itself would not have warranted a review of the order, as this could have been corrected through a Miscellaneous Application. However, the fact that the order granted the option of the most beneficial option for fixing the respondent's (applicant in OA) pay from the ante date seniority of 01.10.2008 (or

even if it was 01.08.2008) is patently an error on the face of the record since the respondent (applicant in OA) was not entitled to this since the pay and allowances on promotion are to be fixed only from the date of physical assumption and not from the ante date seniority. And in this case, the respondent (applicant in OA) was physically promoted on 18.10.2008, beyond the stipulated period in which the beneficial option was applicable.

14. In the light of the above consideration, RA is allowed, our order dated 08.11.2021 in OA 808/2019 is hereby recalled and OA 808/2019 is hereby dismissed being bereft of any merit.

15. In view of the consideration in the RA, MA 2376/2022 stands disposed of.

16. No orders as to costs.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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