

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

30.

OA 1839/2021

Gp Capt S K Tiwari

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. S S Pandey, Advocate

For Respondents : Mr. Y.P Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R
26.09.2023

OA 1839/2021

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is a serving Gp Capt and is aggrieved by the incorrect pay fixation in 6th CPC resulting in continuous financial loss and disadvantage including on transition to 7th CPC in 2016, seeking the following reliefs:

“(a) Call for the Records based on which the Respondents most discriminately have fixed the pay of the Applicant in the rank of Wg Cdr w.e.f 18.06.2007 by applying Para 12 of the SAFI 2/S/2008 @ Rs 37,400/- instead of giving the minimum pay @ Rs 38,530/- as prescribed in the note 2 to amendment dated 21.04.2009 as has been granted to officers who were promoted to the rank of Wg Cdr between 01.01.2006 and 11.10.2008 upon submission of option as well as the records based on which the impugned orders dated 28.09.2020 has been issued seeking clarification when there was no clarification required for such correction along with the impugned orders dated 25.01.2021 has been passed by which the representation of the Applicant for fixation of pay @ Rs 38530/- w.e.f 18.06.2007 has been rejected and thereafter quash the same including the impugned orders dated 25.01.2021.

(b) Direct the Respondents to fix the pay of the Applicant from the retrospective date of his promotion to the rank of Wg Cdr w.e.f 18.06.2007 @ 38,530/- as per MoD letter dated 21.04.2009 and pay on promotion as Wg Cdr may be fixed by applying more beneficial clause from the date of promotion as Wg Cdr @Rs 38530 or from the date of increment @Rs 40140/- as the case may be.

(c) Issue further direction to grant him the enhanced benefit of pay, DA, emoluments and increments as applicable as per the basic pay of Rs 38530/- /40140 as Wg Cdr and Gp Capt thereafter re-fix the pay in the 7th CPC w.e.f 01.01.2016 as applicable in the enhanced pay and accordingly grant him all such consequential benefits including arrears on such difference of pay upon fresh revision of basic pay in 6th and 7th CPC with the penal interest @ 18%.

(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.

In the interim:

Considering the fact that this Hon'ble Tribunal has already issued directions to grant the benefit to all those officers who were promoted to Wg Cdr prior to 11.10.2008 when the SAFI was notified and following the said judgments the Respondent No.1 has already issued instructions dated 17.07.2020 to extend the benefit of the more advantageous clause of fixation of pay in the 6th CPC from the date of promotion as Wg Cdr, without prejudice to the right of the Applicant to seek the benefit of fixation of pay @Rs.38530/- arising out of policy dated 21.04.2009 and reserving his right to do so as and when this Hon'ble Tribunal adjudicates the legality of the impugned order dated 25.01.2021 which is only going to affect the errors of the Applicant of the 6th CPC for the interregnum period from 01.01.2006 till date of promotion as Wg Cdr. Hence, to prevent gross miscarriage of justice, by way of interim order directions, the Respondents be directed to act upon the instruction issued by Respondent No.1 vide letter dated 17.07.2020 to step up the pay of the Applicant from the retrospective date of his promotion to the rank of Wg Cdr w.e.f 18.06.2007 @Rs. 38530/- as per 6th CPC as granted to his batch mates/ juniors who are getting more pay than him by either accepting his option as exercised by the Applicant for fixation of pay in the 6th CPC from the date of promotion or invoking the instruction of more beneficial clause and revise his pay accordingly in accordance with the aforesaid judgments."

2. The issue raised in this application is squarely covered by our judgment dated 8th July, 2022 passed in OA 1923/2017 in the case of Wg Cdr Bharat Malik Vs. Union of India and Ors.

3. In the light of the above, we therefore, allow this OA and direct the respondents to:-

(a) Review the pay fixed of the applicant on promotion to the rank of Wg Cdr in 18.06.2007 under the 6th CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Re-fix the applicant's pay in subsequent ranks and on transition into 7th CPC as on 01.01.2016, in the most beneficial manner, while ensuring that the applicant is not drawing less pay than his juniors.

(c) Pay the arrears within three months of this Order and submit a compliance report.

4. No order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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