

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

44.

OA 666/2015

Gp Capt (Retd) A K Mathur Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Md Mujeeb, Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
13.11.2024

The applicant vide the present OA makes the following prayers:-

“(a) To direct the respondents to grant the applicant, the benefit of pay fixation due to him with effect from the date he was cleared for promotion to the rank of Group Captain (Select), that is 14.10.2005.

(b) To direct the Respondent to pay interest on his loss of salary @ 18% per annum from date of accrual till date of payment.

(c) To direct the Respondents to pay such compensation as the Hon'ble Tribunal deems fit in respect of his sufferings and loss of pay.

(d) Any other relief the Hon'ble Tribunal deems fit to be granted to the applicant in the circumstances enumerated herein above.”

2. Submissions have been addressed on behalf of either side.
3. The applicant was commissioned in the Indian Air Force on 15.06.1979 in the Logistics Branch and was considered for promotion to the rank of 'Group Captain' in the years 2002-03

and was placed at serial no 10 for the same but was not granted promotion. He was subsequently, again considered for promotion in 2003-2004 but did not make it to the select list despite being awarded a Commendation by the AOC in C HQs CAC in the same year and despite a VishishtSeva Medal given in the year 2001.

4. Subsequently, the applicant submitted a statutory complaint dated 04-02-2005 in relation to the stated adverse remarks against him. Vide PO No. 337 dated 14-10-2005, the applicant was informed that he had been selected for promotion to the rank of 'Group Captain (Select)' by putting him in the extended reserve list, but no date of promotion was given. Vide Air HQ/C 21901/15754 /753/PO-4 (B) dated 26.10.2005, the applicant was informed that his statutory complaint against the adverse remarks made against him was rejected for reasons contained therein.

5. According to the applicant, he was granted the rank of Group Captain (TS) on 15-06-2005 and his pay was fixed in the rank of Group Captain (TS), which he submits was lesser than that of Group Captain (Select).

6. The applicant was finally promoted to the rank of Group Captain (Select) on 20-03-2006 and has submitted that he was to be paid an additional increment, and his salary was to be fixed accordingly, and his salary continued in the pay scale of Group Captain (TS) and was never revised.

7. The applicant has further submitted to the effect that in the month of September 2014, whilst finalizing his pension papers, before his pending retirement on 30.09.2014, he realized that his salary was lesser than the rest of his peer group, who were drawing a higher salary and other retirement benefits.

8. A representation dated 26.09.2024 was submitted by the applicant asking for proper pay fixation and payment of arrears of salary due to him due to improper fixation of pay. The applicant was issued with a Pension Payment Order no 08/14/A/0169 of 2015 vide which pay in band was fixed at Rs 59580/- and the Residual Pension was fixed at Rs 18570/- per month.

9. The applicant has thus submitted that the denial of an equal opportunity to him has scuttled his rights of a bright career and chances of future growth within the organization.

10. On behalf of the respondents vide their counter affidavit dated 22-04-2016, it has been categorically averred vide para 3 & 4 of the Preliminary Submissions thereof to the effect:-

“3. It is submitted that the Applicant was promoted to Group Captain (Select) only with effect from 20.03.2006 as is also admitted by the Applicant himself. Hence, the Applicant's pay cannot not be fixed for the said rank from 15.06.2005 because at the pertinent time he was promoted to the rank Group Captain (TS) and not Group Captain (Select).

4. It is submitted that the Applicant was promoted to Group Captain (Select) with effect from 20.03.2006. It is further submitted that as per the Sixth Central Pay Commission recommendations, the pay fixation for those who were promoted between 02.01.2006 to 30.06.2006,

was to be carried out on 01.07.2006. Accordingly, the Applicant was granted one annual increment along with one increment for his promotion, making it a total of two increments. As a result, the Applicant's pay was revised from 43,390/- to 46,530/-. The arrears amounting to Rs. 87,687/- have been paid to the Applicant along with IRLA balance in April, 2015. A copy of the pay fixation proforma is annexed herewith and marked as Annexure R2. It is evident from records that pay fixation has been done by the Respondents duly taking into account the Applicant's promotion."

11. It has been submitted on behalf of the respondents that in relation to the averments made by the applicant to the effect that he has not been paid the additional increment and salary of the rank of Group Captain (Select), to which he was finally promoted on 20.03.2006, though there was a delay in relation thereto, nonetheless, all arrears qua the same have been paid in terms of the recommendations of the Sixth Central Pay Commission, as has been depicted in Paras 3 and 4 of the Preliminary Submissions of the Counter Affidavit already adverted to hereinabove in para no 10.

12. It is essential to observe that the applicant vide the present OA is seeking the grant of the benefit of pay fixation and the grant of promotion to the rank of Group Captain Select from the date 14-10-2005, **when in fact he was not so an incumbent of the rank of Group Captain (Select) on the date 14-10-2005 and has held the same position only for the short term only with effect from the date 20.03.2006.** Apparently, a person not holding a post cannot be granted the benefits of the pay fixation and any

other consequential benefits of a post which he does not hold, which is well settled vide the order of the coordinate Bench of this Tribunal dated 23.02.2023 in the case of *Sub D Subramani vs Union of India & Ors. etc (MA 2376/2022 in OA 808/2019 etc.)*, whereby the Tribunal recalled the order passed earlier in the OA which was allowed and the claimant was granted pay fixation from the date of ante-date seniority. The relevant observations in that order dated 23.03.2023 are reproduced as under:-

“13.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”
(emphasis supplied)

It has also been held by this Tribunal in OA 1703/2019 titled as *Hav M Kumar vs Union of India & Ors.* vide para 14 thereof to the effect:-

“Therefore, the pay and allowances have rightly been fixed by the respondents from the date of the applicant’s physical assumption of the rank of Hav i.e. 16.04.2012 and not from the date when ante-date seniority was granted to him i.e. 01.08.2010.”
(emphasis supplied)

13. In view thereof, there is no merit whatsoever in the
OA 666/ 2015, which is thus declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

AP
13.11.2024