

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

68.

MA 42/2023 in OA 1836/2022

Sub Clk (SD) Rajbir Singh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Aseem Kumar Sahay, Advocate

CORAM

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

O R D E R
13.09.2024

MA 42/2023

OA 1836/2022 was disposed of by this Tribunal on 29.08.2022 following the law laid down in the case of Wg Cdr Bharat Malik Vs Union of India and Ors. (OA 1923/2017) decided on 08.07.2022. We had directed the respondents to review the pay fixation of the applicant on promotion to the rank of Nk on 01.01.2004 under the 6th CPC and further on transition to 7th CPC in the most beneficial manner while inferring that he has not drawing less pay than his junior. This judgment passed in the case of Wg Cdr Bharat Malik Vs Union of India & Ors. has however, been reiterated and conferred by the Bench of this Tribunal in the case of Sub M.L. Shrivastava and Ors. Vs UoI, (O.A No. 1182

of 2018) decided on 03.09.2021. However, as the respondents had the option to evaluate the matter, verify and review the case, the respondents passed a detailed speaking order on 07.03.2024 and reiterated the claim of the applicant. The claim of the applicant has been reiterated for the reasons indicated from para 5 onwards in the order passed on 07.03.2024 primarily after comparing case of the applicant with that of one of his so called junior Sub/Clk (SD) Anil Kumar and by comparing the pay fixation of the said junior employee alongwith the applicant. Reasons are given as to why the applicant cannot be granted the benefit. Reliance has been placed on judgment of the Lucknow Bench of the Armed Forces Tribunal passed on 20.09.2021 in OA 208/2022 filed by Hav Mohammad Azia Khan Vs Union of India wherein similar case was dismissed.

2. In our considered view, the respondents have totally misconstrued our order passed in the case of Wg Cdr Bharat Malik Vs Union of India & Ors. and followed in the case of Sub M.L. Shrivastava & Ors and by comparing pay fixation of the applicant with that of his junior has rejected this claim. This is not import of the law laid down in the case of Wg Cdr Bharat Malik Vs Union of India & Ors. and Sub M.L. Shrivastava Vs Union of India & Ors. While fixing pay on

transition under the 6th CPC, in the 7th CPC the respondents are duty bound to fix the pay in the most beneficial manner even if no option was submitted by the employee concerned for such fixation on transition. Respondents are not required to indicate an exercise of comparing pay with that of his junior and giving explanation as to why the junior is drawing higher pay and reject the claim of the applicant. This is not the ratio of the law laid down in the case of Wg Cdr Bharat Malik Vs Union of India & Ors. and Sub M.L. Shrivastva Vs Union of India & Ors. The ratio is very simple on the requirement of pay fixation on transition from one pay commission to another one, submission of an option. The law laid down by this Tribunal is that even if the employee does not submit the option, it is the duty of the pay fixing authority to fix the pay of the employee concerned in the most beneficial manner. This is the liberty reiterated in the case of Col Rajesh Suredia Vs Union of India & Ors. (OA 2857/2021) decided on 24.08.2022.

3. Keeping in view the aforesaid, we are of the considered view that the speaking order passed by the respondents on 07.03.2024 is highly misconstrued and cannot be accepted. We allow this application, quash the speaking order passed on 07.03.2024 and remand the matter back to the competent

authority to grant pay fixation to the applicant on transition by fixing his pay on the most beneficial option which was available to him in accordance to the law laid down in the case referred to hereinabove and take a decision and confer the benefit to the applicant within a period of three months as the original order was passed by in the OA on 29.08.2022 and this MA is pending since 2022, we direct the respondents to pay interest @ 8% to the applicant on pay fixation w.e.f. 29.08.2022 till payment. Payment be made within three months.

4. Accordingly the MA stands disposed of.
5. Let a copy of this order be given '*DASTP*'.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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