

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

48.

MA 5471/2024 in OA 1031/2020

Col Anoop Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ankit Rana, proxy for
Mr. S S Pandey, Advocate

For Respondents : Mr. Y P Singh, Advocate

CORAM

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

19.12.2024

MA 5471/2024 has been filed by the applicant seeking implementation of the order dated 30.05.2023 in OA 1031/2020 whereby vide para-9 thereof, it was directed to the effect:-

“9. In the light of the above consideration, the OA is allowed. We find that the applicant is entitled to the relief as under and we, therefore, direct the Respondents to:

(a) Review the pay fixed of the applicant on promotion to the rank of Lt Col in Dec 2004 under the 5th 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 on transition into 6 CPC and subsequent promotion with the most beneficial option, while ensuring that the applicant does not draw less pay than his junior.

(c) Re-fix the applicant's pay on transition into 7th CPC and retirement accordingly.

(d) Issue Corrigendum PPO to the applicant and pay the arrears within three months from the date of receipt of copy of this order.”

2. On behalf of the respondents whilst accepting notice of the application, copy of communication of the letter no. LW/17/113/176863K dated 26.09.2023 has been submitted whereby vide para-2 thereof, it is stated to the effect:-

“2 In the light of the Hon'ble Tribunal's direction as mentioned above, pay fixation case of the applicant has been reviewed and examined in detail, on promotion to the rank of Maj. Lt. Col, and Col in 5th CPC, 6th (ih) CPC and 7th CPC and the following is intimated:

(a) After implementation of AV Singh Committee Report vide GoI, MoD letter No. 18(1)/2004-D(GS-1) dated 21 Dec 2004, the reckonable commissioned service for promotion to the rank of Lt Col was reduced from 16 years to 13 years w.e.f. 16/12/2004. As a result of which, all the Officers in the rank of Major having length of service 13 years or more were promoted to the rank of Lt Col w.e.f. 16/12/2004

(b) Pay fixation of all these Officers were carried out according to Pay Scale applicable to Lt Col in 5th CPC. The Pay Scale for Lt. Col in 5th CPC was Rs. 13500- 400-17100. Therefore, minimum basic pay authorized to an Officer of the rank Lt. Col was Rs. 13,500/-. Accordingly, Basic Pay of all the Officers of the rank Lt. Col whose basic pay was less than Rs.13,500/- was re-fixed at minimum Basic Pay entitled in 5th CPC i.e. at Rs. 13,500/-

(c) Further, there was a provision of exercising Option by the Officers at the time of promotion on 16/12/2004. Option was whether the Officer desired to get his Basic Pay from the Date of Promotion (DOP) or from the Date of Next Increment (DNI) The DNI option was more beneficial to only those Officers who were promoted to the rank Lt. Col with basic pay which was exceeding the minimum pay prescribed for Lt. Col in 5th CPC Pay Scale i.e.13,500/- and DNI was falling between 01/01/2005 and 30/06/2005. Therefore, all the Officers in the rank of Major whose basic pay on 01/06/2004 (i.e on DNI) was Rs. 12,900/-, their basic pay on promotion to the rank of Lt Col had to be fixed to Rs. 13,500/- as per 5th CPC Order.

(d) The basic pay of the Officer was Rs. 12900 after granting increment in April 2004 in the rank of Major. Thus his regular increment in the 5th pay commission was in the month of April. The Officer was promoted to the rank of Lt Col on 16.12.2004 and thereby the basic pay for Lt Col was fixed to Rs.13500/- as per 5th CPC Order on the date of promotion, which was most beneficial option and subsequently in the 6th pay commission.

e) Even if, DNI option was applied as requested in the OA 1031/2020, the basic pay fixation on 01.04.2005 (DNI) would have

been Rs.13500/- only which would not be beneficial for the officer because the basic pay on 01.04.2005 in the rank of Major would have been Rs. 13225/- (Rs. 12900/- + increment of Rs.325/-) and then also the pay would have been fixed to Rs. 13500/- only as it is less pay than to minimum or equal to the rank of Lt Col i.e. Rs. 13500/-. Accordingly, as on 01.01.2006. the pay would have been fixed at Rs.38530/- in the 6th CPC. The provision of addition additional increment for the pay fixation on option of DNI was not available to the Army Officers in the 5th CPC as they were drawing Rank Pay in addition to the Basic pay. A table for explaining the fixation of promotion of the above officer on DNI option in the 5 CPC is given below:

<i>Date</i>	<i>Pay fixation from promotion</i>	<i>Pay fixation from DNI</i>	<i>Remarks</i>
<i>01.04.2004</i>	<i>12900+1200</i>	<i>12900+1200</i>	<i>Incr. in major</i>
<i>16.12.2004</i>	<i>13500+1600</i>	<i>12900+1600</i>	<i>Pay fixation from the date of promotion.</i>
<i>01.04.2005</i>	<i>13500+1600</i>	<i>13500+1600</i>	<i>DNI option (12900+325)</i>
<i>01.12.2005</i>	<i>13900+1600</i>	<i>813500+1600 (after addition of one additional incr as per 6 CPC- 13900/-)</i>	<i>Incr. in Lt Col</i>
<i>01.01.2006</i>	<i>38530+8000</i>	<i>38530*+8000</i>	<i>6TH CPC Fixation</i>

**Fitment pay for both Rs. 13500/- and Rs. 13900/-”*

3. Copy of the same has been supplied counsel for the applicant who seeks time to seek instructions.
4. Re-list the matter on 20.02.2025.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(REAR ADMIRAL DHIREN VIG)
MEMBER (A)**

