

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
12.

O.A. No. 495/2011

Nb Sub Chanchal Sen

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With OA No.278/2011 ✓

For petitioner: Mr. S.S. Pandey, Advocate (OA No.495/2011)
Mr. Rohit Pratap, Advocate (OA No.278/2011)

For respondents: Mr. Anil Gautam proxy for Mr. S.K. Sethi Advocate (OA
No.495/2011
Mr. J.S. Yadav, Advocate (OA No.278/2011)

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

18.07.2013

1. Both these petitions involves similar question of law and facts, therefore, they are disposed off by this common order. For convenient disposal of both these petitions, facts of OA No.495/2011 Nb Sub Chanchal Sen is being taken as the lead case for consideration.

2. The petitioner was inducted in the Indian Army in the Corps of EME on 17.12.1993 as Soldier (Technical). Thereafter, he was promoted to the post of Havildar on 14.12.2004 and Nb Subedar on 29.04.2008. Meanwhile, the recommendations of Vth Pay Commission were implemented w.e.f. 01.01.1996 and in that, an anomaly was created amongst the three services at the entry level and thereafter this issue was referred to the VIth Pay Commission and this anomaly was set right in VIth Pay Commission as

recommended in para 2.3.24, and the relevant extract of the same is reproduced below:-

“.....Defence Forces joint memorandum to the Commission has proposed common pay scales for various trade groups in the three Defence Forces. This is in modification of the present situation where the trade groups in the three Defence Forces are different. The Commission is of the view that placing personnel in same trade groups in different Defence Forces in an identical pay scale is justified because the trade groups are classified as per the skill requirements. Therefore, the amount of skill required in an identical trade group, whether in Army, Navy or Air Force would be same. Accordingly, a similar pay scale has to be given for PBORs in the same trade group irrespective of whether they are serving in the Army, Navy or Air Force. The joint memorandum proposed series of meetings with the officers of the three forces. During the course of these meetings, the issue of further reduction in the existing trade groups was also discussed. Officials of the Army, which has maximum number of personnel in the Z trade group, favoured merger of the Y and Z trade groups. Air Force has very few categories in the Z trade group. Officials of the Navy had no objection in case the existing three trade groups were reduced to two with the lowest trade group (Z) being merged with the next higher trade group (Y). The Commission is of the view that the merger of Y and Z trade groups is necessary keeping in view the general principle being followed for civilian pay scales where all posts in Group D have been upgraded with the existing incumbents being placed in Group C pay scales.”

3. In pursuance of this, Government has already issued an order accepting the recommendations of the VIth Pay Commission vide order No.1/S/2008 New Delhi dated 11.10.2008 and para 13 of the same is reproduced below:-

"13. Fixation of Pay in the Revised Pay Structure of PBOR Recruited on or after 01st January 2006.

(a) The entry level pay of direct recruits to a particular rank carrying a specific Grade Pay will be fixed on or after 1st January 2006 as per table given below:-

ENTRY PAY IN THE REVISED PAY STRUCTURE FOR DIRECT RECRUITS APPOINTED ON OR AFTER 1.1.2006

PB-1 (Rs.5200-20200)

Grade Pay	Pay in the Band	Total
2000	6460	8460
2400	7510	9910
2600	8560	11360

PB-2 (Rs.9300-34800)

Grade Pay	Pay in the Band	Total
4200	9300	13500
4600	12540	17140
4800	13350	18150

(b) This will also be applied in the cases of those recruited between 1st day of January 2006 and the date of issue of this instruction. In such cases, where the emoluments in the pre-revised pay scale(s)

i.e. [Basic Pay in the pre-revised pay scale(s) plus Dearness Pay plus Dearness Allowance applicable on the date of joining] exceeds the sum of the pay fixed in the revised pay structure and the applicable Dearness Allowance thereon, the difference shall be allowed as Personal Pay to be absorbed in future increments in pay.

(c) Grade pay, Group 'X' pay, MSP, Classification Allowance and GCB pay where applicable, will be payable additionally."

4. Therefore, the anomaly which exists prior to this has been set right and it has now been decided that from 01.01.2006 entry level pay of direct recruits of a particular group will be fixed on or after 01.01.2006 as per the table given above.

5. In pursuance of this, the grievance of the officers with regard to the anomaly in the pay scales at the entry level in all the three services have been made uniform and the long pending demand has been rectified.

6. In this background, the petitioner has prayed that a direction be given to the respondent to ensure that the pay in the pay band of the petitioner should be equal to the pay in the pay band of same group and same trade and rank persons of Air Force and Navy in terms of the recommendations of the VIth Pay Commission as accepted by the Government. It is also prayed to quash and set aside the paras 8 and 14 of the SAI 1/S/2008. It is further prayed that a direction may be given to the respondents to recalculate the revised pay and allowances of the petitioner after fixing the pay in terms of prayer (a) or in the alternative (b) and direct the respondents to make payment including all arrears within a period of three months.

7. The respondents have filed their reply and contested the matter. It has been submitted that the issue with regard to fixation of pay of these persons alongwith Air Force and Navy has already been receiving consideration of the Government and at number of times necessary exercise has been taken place. Our attention was invited to the various correspondence exchanged between the Army HQ and Ministry of Defence where Air Force has also projected that this anomaly should be rectified and Government has rectified the same w.e.f. 01.01.2006. But the question is how to benefit the petitioner and his class who have suffered this disparity in the entry level. The Government has taken necessary steps to consider the matter at various levels and the matter is still under consideration. So far this part of the prayer is concerned, we can only say at the moment that since the Government is ceased of the matter, we do not wish to issue any direction in this regard. However, the Army itself has projected that the persons who have been recruited between the Vth Pay Commission and VIth Pay Commission stand to lose and they should be adequately compensated on account of this anomaly in the entry level amongst the Tri-services.

8. We hope and trust that Government will look in to the matter and will take a decision expeditiously to rectify the grievance of this class of personnel.

9. Now the next question is fixation of pay of the petitioner in the pay scale as per VIth Pay Commission recommendation. The petitioner is already serving as Nb Subedar from 29.04.2008 and his grievance is that he has not been given the pay of Nb Subedar as is given to other personnel who were Nb Subedar as on 01.01.2006. The respondents have admitted that VIth Pay Commission has partially accepted the demand by recommending common

pay scales of recruits enrolled on or after 01.01.2006 but the PBOR enrolled earlier were not given the common pay scale which resulted in disparity. Special Army Instruction 1/S/2008 were issued and in that the status of equal pay for equal qualification, trade and group in tri services are maintained. However, the respondents have submitted that the personnel drawing more pay as on 01.01.2006 have now been re-fixed in higher pay scale than a newly promoted person belonging to the same trade, same rank and same group. It is submitted that the common pay scale for in-service PBOR is under active consideration of the Government as would be clear from the MOD letter dated 23.02.2012. But so far as the pay of petitioner is concerned, he is not getting the same pay scale as other persons of his rank are getting and the same is glaring on the face of it. The person who has been recruited on or after 01.01.2006 as Nb Subedar is getting higher pay scale where a person like petitioner who have been inducted in service prior to 01.01.2006 is getting a lower scale as Nb Subedar. However, though it may be glaring but the fact is that the persons who are already there as a Nb Subedar, their pay will be fixed as per VIth Pay Commission and persons who have promoted subsequently, their pay will be fixed up on promotion. There is a distinction between fixation of pay of a person who are already in service and the persons whose pay has to be fixed up on promotion. The petitioner's pay on his promotion will have to be fixed in the pay band of Rs.9300-34800 at the minimum with other benefits of fixation like one increment etc. Therefore, this kind of disparity is bound to be there.

10. However, learned counsel for the petitioner has submitted that there is always an option which is mentioned in para 14 of the 1/S/2008 and no option has been sought from him resulting in loss to him. The respondents in their

reply have not stated anything whether any option has been sought from him or not. Let the petitioner may exercise his option if it is more beneficial to him. If any option has already been given by the petitioner, he will abide by the same.

11. With above observations, both the OAs stands disposed off accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
July 18th, 2013
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