

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

(Through Virtual Hearing)

**44.
OA 1082/2019**

**Sub Raheesh Prasad Yadav
Versus
Union of India and others**

..... Applicant

..... Respondents

**For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC**

**CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER
10.11.2021**

The applicant has filed this application under Sec 14 of Armed Forces Tribunal Act 2007 being aggrieved with the incorrect pay fixation in 6th Central Pay Commission, on the grounds that he had not exercised his option for pay fixation in the stipulated time and that he has not been given the benefit of the most beneficial option. The applicant has made the following prayers:

- (a) Call for the records based on which the respondents have taken a decision not to issue amendment in the policy dated 11.12.2013 in the light of judgment dated 10.12.2014 in O.A No. 113 of 2014 and quash the same;
- (b) Call for the records including the instructions based on which the respondents have cancelled the option and part II order of the applicant, recovered the pay and allowances which was revised based on his option and thereafter quash the same;

- (c) Direct the respondents to restore the Part II order published after exercise of option by the applicant in the revised pay scale based on the 6th Pay Commission from the date of his promotion on 31.01.2008 and refund the amount deducted from him in Nov 2018 and Feb 2019;
- (d) Direct the respondents to pay the applicant arrears of the difference of pay in the rank of Nb Sub and consequently in the rank of Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA, etc. earned till date along with interest @ 12% from the date it was payable till the date payment is made; and
- (e) Pass any other order/orders as deemed appropriate by this Tribunal in the facts and circumstances of the present case.

2. Brief facts of the case, according to the applicant, are that he was enrolled into the services of Indian Army on 29.12.1993. On 31.01.2008, when the recommendations of 6th CPC were yet to be implemented, he was promoted to the rank of Nb Sub. The implementation instructions for 6th CPC were issued vide SAI 1/S/2008 dated 11.10.2008. On 02.01.2014, the applicant was promoted to the rank of Sub.

3. Since the applicant was unaware of the actual methodology of implementation; the fact that he was not specifically intimated, and since he was posted in a field area, he had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008 within the stipulated time. The applicant had exercised his option

vide Part II order dated 14.10.2011 from the date of his promotion to the rank of Nb Sub i.e. 31.01.2008. This was accepted and the pay was also accordingly fixed. In Oct/Nov 2018, the applicant's basic pay was reduced from Rs.58,660/- to Rs.56,900/- and Rs.1,30,176/- was recovered. The respondents, without examining which option would be more beneficial to the applicant, had mechanically fixed his pay, which unfortunately was not the most beneficial option for the applicant, as a result of which the applicant's pay has been fixed lower than his juniors in the rank of Nb Sub and Sub.

4. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC merely on the grounds of option not being exercised in the stipulated time or applicants not exercising the option at all, and have issued orders that in all these cases the petitioners pay is to be re-fixed with the most beneficial option as stipulated in Para 14 of the SAI 1/S/2008 dated 11.10.2008. The matter of incorrect pay fixation has been exhaustively examined recently in our order dated 03.09.2021 in *Sub M.L Shrivastava and others v. Union of India and others* in O.A No. 1182 of 2018. Relevant portions are extracted below:

24. Having heard all parties at length, the main issue before us is whether the respective PAO(OR)s who are the Respondent office responsible for all matters of pay and allowances of personnel below officers' rank are justified in arbitrarily fixing the pay as on 01.01.2006, without examining the most beneficial option for each individual while fixing the pay; irrespective of whether the option was exercised or not exercised, or was exercised late.

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30. In all the three cases, the applicants have been promoted to the next rank after 01.01.2006 and prior to the issue of SAI No 1/S/2008 dated 11.10.2008. Under normal circumstances, the applicants ought to have exercised their option for pay fixation as

given in Para 8 and 14 (b) of the SAI. There is no dispute that the time laid down for exercising the option was initially three months from the date of issue of the SAI and that this was further extended to 31.03.2011 vide Corrigendum to SAI dated 21/12/2010. The period was further extended to 30.06.2011 vide MoD letter dated 11.12.2013. The letter dated 11.12.2013 was disseminated to the environment vide AG's Branch Letter dated 12.12.2013.

31. It is also undisputed that if the applicants by default, are to be in the new pay scale as fixed with effect from 01.01.2006, they would be in a disadvantageous position throughout their service tenure and on retirement/ transition to 7th CPC. Moreover, it is absolutely reasonable to assume that no sane person will knowingly put himself in a disadvantageous position in service and will refuse to accept a beneficial pay scale and opt for the new pay scale that is disadvantageous.

32. Category - A : No Option has been Exercised. In OA 1314/2018, the applicant had not exercised any option for a variety of reasons. The relevant Army Instruction stated that if no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the individual. Therefore, we do not find any force in the contention of the respondents that the applicant is not eligible for fixation of his pay from the date of his promotion since the option for switching over to 6th CPC was not exercised by him.

33. Category - B : Option has been Exercised After the Stipulated Period. In the other two cases, the applicants have exercised their option, albeit later than the stipulated period of 30.06.2011, but certainly before the issue of the letter dated 11.12.2013. In one case, the option was initially accepted and subsequently rejected resulting in recovery of pay and allowances on retirement. It is clear that the respondents, through their communication dated 11.12.2013, conveyed that the date was extended up to 30.06.2011. Unfortunately, by such an order they clearly gave the benefit on one hand by extending the time for submitting the option, and took it away by the other hand; as nobody could have anticipated that in the year 2013, that the date would be extended only upto 30.06.2011 by an order passed in 2013. Moreover, since the letter dated 11.12.2013 itself was forwarded to the environment vide the letter dated 12.12.2013, nobody before 30.06.2011, could have known that the time limit for submitting the option was extended to 30.06.2011. When the time is extended and it is not

brought to the notice of the beneficiaries then extension of time by the respondents cannot give any benefit to the bona fide claimants for such benefits. Therefore, we do not find any justification to deny the benefit of submitting the option to the applicants who have not give their option before 11.12.2013.

34. A detailed reading of SAI 1/S/2008 indicates that vide Para 21, power has been given to the competent authority for relaxing the rule in case of undue hardship. There is no denying that, the facts clearly demonstrate that it was admittedly a case of extreme hardship to the applicants that they were given less salary as compared to their contemporaries or juniors in the same rank and discharging the same duties due to a technical default/ rigid mindless application of rules. Moreover, the stand of the Respondents of giving less salary to the applicants due to their perceived omission is not only, not justified, but is against the spirit of a model employer who by this action has created serious disparity and anomalous service conditions for the service personnel in one rank itself.

35. In addition to above, we are of the considered opinion that if para 8(c) is accepted as a hurdle against providing relief to the applicants, then we cannot ignore the non-implementation of the beneficial provision given in para 14(b)(iv), which clearly mandates that PAO(OR) will regulate fixation of pay that will be beneficial (out of the two options mentioned in the scheme) to the individual. Such exercise should have been done before placing the applicants in a particular pay scale. If the PAO (OR) had any difficulty due to the restriction imposed by Para 8(c), it was then once again the duty of the respondents to relax the rule by exercising power under Para 21.

36. As seen from the records such arbitrary fixing by the PAOs has denied the applicants and many other similarly placed personnel the correct pay and allowances in various ranks and consequently, their pension and other post retiral benefits. Equally disconcerting is the fact that, those who have continued in service and have transited into the 7th CPC scale, have again transited into lower pay bands as their initial fixation of pay during transition to 6th CPC has been done in a lackadaisical manner with utter disregard to the instructions contained in the Special Army Order which stipulates that in the absence of option being exercised, the establishment (Pay & Accounts Office in the case of personnel below officers rank) was required to fix the pay on its own in a manner which was most

beneficial to the individual. Moreover, we are of the considered opinion that when there is a serious penal consequence by virtue of implementation of a particular scheme, normally such scheme should be brought to the notice of each individual. In this case we have not found any record that the scheme was brought to the notice of the individuals, or the beneficial option worked out and intimated to the applicants.

37. As seen from the documents placed on record, the reason for extending the time by which the option was to be exercised was that personnel posted to difficult areas were unaware of these instructions and could not get the knowledge of the scheme. Thus, it is the admitted position of the Respondents themselves that they extended the time for submitting the option from time to time to at least 31.06.2011. Therefore, it appears that the time limit fixed in the option was not the soul of the scheme nor was it the essence of the scheme. We find from the response submitted by certain PAO(OR) that the letter dated 30.12.2013 itself had not extended the time limit for submission of option to 30.06.2011 but this had only given direction to the establishment to process the options of the persons who may have submitted their options by 30.06.2011. We are unable to accept such a stance for the simple reason that the respondents' letter dated 11.12.2003 has unequivocally the headings "EXTENSION OF PERIOD FOR EXERCISING OF OPTION FOR PAY FIXATION IN THE REVISED PAY STRUCTURE".

38. In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out and adopted for each individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement. This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the issue for the serving soldiers, many of whom may not be knowledgeable about the intricacies of these

calculations, in the full knowledge that that no one will ever knowingly opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.

39. In view of the above, the three OAs under consideration are allowed and we direct the Respondents to:-

(a) Review the pay fixed of the applicants and after due verification re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.

(b) Thereafter re-fix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.

(c) Re-fix all pensionary and post retiral benefits accordingly.

(d) Issue all arrears and fresh PPO where applicable, within three months of this order and submit a compliance report.

40. In view of the fact that there are a large number of pending cases which are similarly placed and fall into Category A or B, this order will be applicable in rem to all such affected personnel. Respondents are directed to take suo motu action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.

5. In view of the foregoing, we allow this O.A directing the respondents to:

(a) Review the pay fixed of the applicant on his promotion to Nb Sub in the 6th CPC, and after due verification, re-fix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors;

(b) Thereafter re-fix his pay in all subsequent ranks and on transition to 7th CPC.

- (c) Issue all arrears, including the amount recovered, if any, within three months of this order.


(RAJENDRA MENON)
CHAIRPERSON


(P.M. HARIZ)
MEMBER (A)

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