COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video-Conferencing)

27.
OA 470/2020

Sub/Jene Somnath Samanta (Retd) ... **Applicant**
Versus
Union of India and others ... **Respondents**

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

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

O R D E R
29.11.2021

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) Direct the respondents to accept the option of the applicant with further direction to fix the pay of the applicant in the 6th CPC from the date of his promotion to the rank of Nb Sub i.e. on 01.01.2008 and accordingly re-fix the pay in the rank of Nb Sub and consequently in the rank of Sub as granted to all other persons whose option was accepted by following the ratio of the judgment dated 10.12.2014 passed in O.A No. 113 of 2014 in Chittar Singh and others;
>
> (b) Direct the respondents to pay the applicant arrears of the difference of pay in the rank of Nb Sub and 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

(c) 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 are that the applicant was enrolled into the services of Indian Army on 27.10.1989. He was promoted to the substantive rank of Naik on 01.07.2003. On 01.08.2007, when the recommendations of 6th CPC were yet to be implemented, he was holding the rank of Havildar. On 01.01.2008, the applicant 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 01.03.2012, the applicant was promoted to the rank of Sub and discharged from service with effect from 31.10.2019 after rendering 30 years and 05 days of service.

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 exercised the option vide Part II order dated 11.03.2013 to fix his pay as per the 6th CPC from the date of his promotion to the rank of Nb Sub i.e. 01.01.2008. 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 in *Sub M.L Shrivastava and others v. Union of India and others* (O.A No. 1182 of 2018 decided on 03.09.2021).

5. Based on the aforesaid, the Controller General Defence Accounts, vide Letter No. Army/BR/Pay/Ors/3500/Legal/E-1027 dated 08.11.2021, has advised all PCsDA/ CsDA and the CDA, IT&SDC, Secunderabad to take necessary/ timely action in the matter. IHQ of MoD (Army) has also been requested to issue necessary instructions to all concerned for submitting the cases of stepping up at par with their junior duly enclosing the requisite documents as per orders on the subject. This letter is extracted below:

No. Army/BR/Pay/Ors/3500/Legal/E-1027 *Date:08.11.2021*

To

1. *All PCsDA/CsDA*
2. *CDA IT&SDC Secunderabad*

Subject: *Pay Fixation on transition to 6th CPC scales from date of promotion: AFT (PB) New Delhi orders dated 03.09.2021 in OA No.1182/2018, 1314/2018 & 892/2019.*

Reference: *IHQ of MoD letter No.C/7021/Pay/SAPCS/2021 dated 17.09.2021 and 04.1.2021 (copy*

enclosed).

Please find enclosed AFT (PB) New Delhi order dated 03.09.2021 in OA No.1182/2018, 1314/2018 & 892/2019 regarding ay fixation on transition to 6th CPC scales from date of promotion in a manner that is most beneficial to the applicants.

2. It is advised to issue suitable directions to all concerned for taking necessary/timely action as pronounced at Para 39 & 40 of ibid AFT order.

3. Further, a monthly progress/compliance report in this regard may be furnished to this HQrs. Office.

This issues with the approval of CGDA.

Sd/- Adury Srinivas
Accounts Officer (Army)

Copy to:

1	*IHQ of MoD (Army)* *ADGPS / AG's Branch* *SAPCS Brassey Avenue,* *Church Road,* *New Delhi 110001*	*For information w.r.t. your office letter cited above. It is requested that necessary instructions may be issued to all concerned for submitting the cases of stepping-up at par with their junior duly enclosing the requisite documents as per orders on the subject*

Sd/- Adury Srinivas
Accounts Officer (Army)

6. It is seen from CGDA's letter dated 08.11.2021 that IHQ of MoD (Army) has been requested to issue necessary instructions to all concerned to submit cases for stepping up at par with their juniors, duly enclosing the requisite documents as per orders on the subject.

7. This Tribunal has examined the issue of fixing the pay of personnel in the most beneficial manner applicable to the individual and has held that this is an institutional/organizational responsibility. The PAO was directed to *suo motu* examine the cases and provide the most beneficial option. The relevant paragraphs of the order in *Sub M.L Shrivastava* (supra) are reproduced below:

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.

8. With regard to the letter dated 08.11.221 issued by the CGDA, the respondents are directed to issue necessary instructions to all

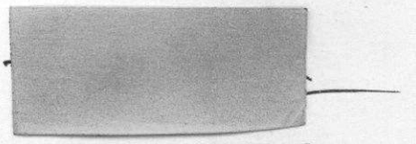
PCsDA/CsDA that all cases be examined by the PAO (OR) without calling for any fresh representations/additional inputs and that such cases be examined with the available information held with respective PAO (OR), utilizing the pay and allowances management system (Dolphin).

9. In view of the foregoing, we allow this O.A and direct the respondents to:

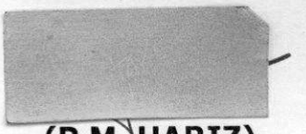
(a) Review the pay fixed of the applicant on his promotion to Nb Sub in the 6th CPC and after due verification, re-fix his pay in a manner that is most beneficial to him, while ensuring that he does not draw less pay than his juniors;

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

(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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