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

38.

MA 4953/2023 IN OA 1787/2019

Lt Col Harsh Raghuvanshi ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. S.S.Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

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

ORDER
24.11.2023

MA 4953/2023

This is an application under Rule 45 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking early hearing of the matter. For the reasons stated in the application, the same is allowed. MA stands disposed of.

OA 1787/2019

2. OA is taken on board.

3. The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant being aggrieved by the incorrect pay-fixation of his pay in the 6th Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage. The applicant has made the following prayers:

"(a) *Call for the records wherein the respondents have issued such discriminatory clarification dated 11.12.2013 as well as vide letter dated 04.01.2017 by restricting the benefit of re-fixation of pay in respect of only those officers who have exercised option for fixation of pay from date of promotion upto 30.06.2011 and not amending the same despite OM dated 28.09.2018 issued by MoF resulting in non consideration of request of the applicant for fixing his pay correctly from the date of his promotion i.e. 10.12.2007 as per 6th CPC and including any order/policy/guidelines based on which the applicant has been denied the benefit and thereafter quash the same including Para 3 of the policy dated 11.12.2013 as well as policy of 04.01.2017.*

(b) Direct the respondents to step up the pay of the applicant from the retrospective date of his promotion to the rank of Lt Col w.e.f. 10.12.2007 as per 6th CPC and equate the basic pay of the officer equal to his bath mates who are getting more pay than him by invoking the instruction of more beneficial clause by either amending the policy or otherwise in the light of the judgments referred above without insisting for the Option Certificate as a mandatory requirement from the affect officers whether it was exercised in past or wrongly exercised or not exercised at all resulting in less pay and accordingly grant him all such consequential benefits including arrears on such fixation of pay with the penal interest @ 18%.

(c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."

4. The applicant was commissioned in the Indian Army on 10.12.1994 and he was holding the Rank of Maj on 01.01.2006 while the recommendations of the 6th CPC were yet to be finalized. Finally, the recommendations of the 6th CPC were accepted on 11.10.2008 and implemented by the Government of India w.e.f. 01.01.2006 in terms of SAI 02/S/2008 in the case of officers. It is the case of the applicant that the fixation of pay was not done as was beneficial to the applicant from the date of promotion and the pay

of the applicant was fixed for lack of option w.e.f. 01.01.2006 in the rank of **Maj** as the same was based on exercise of option for which the time limit was stipulated but due to lack of instructions, he was unable to exercise option within time and was denied the benefit of the fixation of pay in the 6th CPC from the date of promotion which was more beneficial to the applicant and thus his pay was fixed as a **Maj** w.e.f. 01.01.2006, instead of from the date of promotion to the Rank of **Lt Col**, i.e., from **10.12.2007** which was more beneficial to the applicant, which resulted in him receiving lesser pay than his batch mates and even his juniors. The applicant was promoted to the rank of Lt Col on **10.12.2007** and such pay disparity continued due to initial wrong fixation of pay. The applicant further submits that the respondents on 21.12.2010 amended the SAI 2/S/2008 and Para 6(d) which reads to the effect:

> ***"the option once exercised shall be final"*** was substituted by the following:
>
> ***"All Officers...can revise their option upto 31.03.2011 if the option is more beneficial to them"***

and that the respondents again in terms of order dated 11.12.2013 modified the time limit for re-exercise of option till 30.06.2011 but did not provide the fresh opportunity to revise the option.

5. The applicant further submits that the respondents did not accept the request of the applicant for fixation of his pay based on the option to ensure that more beneficial pay scale is given to the affected persons

on the ground that the same could not be done after 30.06.2011. The applicant submits that some of the affected persons filed the OA No.113 of 2014 and this Tribunal while allowing the said OA observed that the respondents ought to have granted the benefit of pay fixation in terms of Para 12 of SAI 2/S/2008 and even, in case, the option was exercised till 11.12.2013, the same cannot be rejected by the respondents.

6. The applicant submits that despite directions passed by ADG PS, i.e., the Pay Commission Section dated 04.08.2020 and the CGDA letter dated 08.11.2021, the respondents have not re-fixed the pay of the applicant as per the recommendations of the 6th CPC in a way that was more beneficial to the applicant. The applicant submits that the denial of the revised pay scale to him is against the mandate of equality and equal pay for equal work and is contrary to the ratio of judgment dated 29.04.2019 passed in the case of ***Lt Col Vivek Singh*** Vs. ***Union of India*** (OA 1701 of 2016) by the Armed Forces Tribunal having a binding force in law.

7. The applicant places reliance on the order dated 05.08.2022 in OA 868/2020 titled ***Lt Col. Karan Dusad*** Vs ***Union of India & Ors*** wherein the Armed Forces Tribunal(AFT), New Delhi directed the respondents to review and verify the pay fixation of all those officers whose pay has been fixed as on 01.01.2006 including those who have retired and re-fix their pay with the most beneficial manner with all

consequential benefits including re-fixing of their pay in the 7th CPC and the pension, wherever it is applicable.

8. The learned counsel for the respondents fairly does not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

9. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC in respect of Officers/JCOs/ORs 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 the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect pay-fixation and providing the most beneficial option in the case of JCOs/ORs has been exhaustively examined in the case of ***Sub M.L. Shrivastava and Ors*** *Vs.* ***Union of India*** *[O.A No. 1182 of 2018] decided on 03.09.2021.*

10. Similarly, in the matter of incorrect pay fixation in the 7th CPC, the issue has been exhaustively examined in ***Sub Ramjeevan Kumar Singh*** *Vs.* ***Union of India*** *[O.A. No.2000/2021] decided on 27.09.2021.* Relevant portions are extracted below:

> *"12. Notwithstanding the absence of the option clause in 7th CPC, this Bench has repeatedly held that a solider cannot be drawing less pay than his junior, or be placed in a pay scale/band which does not offer the most beneficial pay scale, for the only reason that the solider did not exercise the required option for pay fixation, or exercised it late. We have no hesitation in concluding that even under the 7th CPC, it remains the responsibility of the Respondents; in particular*

the PAO (OR), to ensure that a soldier's pay is fixed in the most beneficial manner.

13. In view of the foregoing, we allow the OA and direct the Respondents to:-

(a) Take necessary action to amend the Extraordinary Gazette Notification NO SRO 9E dated 03.05.2017 and include a suitable 'most beneficial' option clause, similar to the 6th CPC. A Report to be submitted within three months of this order.

(b) Review the pay fixed of the applicant on his promotion to Naib Subedar in the 7th CPC, and after due verification refix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors.

(c) Issue all arrears within three months of this order and submit a compliance report.

(d) Issue all arrears within three months of this order and submit a compliance report."

11. In respect of officers, the cases pertaining to pay-anomaly have also been examined in detail by the Tribunal in the case of *Lt Col Karan Dusad Vs. Union of India and others [O.A. No. 868 of 2020 and connected matters]* decided on 05.08.2022. In that case, we have directed CGDA/CDA(O) to issue necessary instructions to review pay- fixation of all officers of all the three Services, whose pay has been fixed on 01.01.2006 in 6th CPC and provide them the most beneficial option. Relevant extracts are given below:

"102 (a) to (j) xxx xxx xxx

(k) The pay fixation of all the officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006 merely because they did not exercise an option/ exercised it after the stipulated time be reviewed by CGDA/ CDA(O), and the benefit of the

most beneficial option be extended to these officers, with all consequential benefits, including to those who have retired. The CGDA to issue necessary instructions for the review and implementation.

Directions

103. xxx xxx xxx

104. We, however, direct the CGDA/CDA(O) to review and verify the pay fixation of all those officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006, including those who have retired, and re-fix their pay with the most beneficial option, with all consequential benefits, including re-fixing of their pay in the 7th CPC and pension wherever applicable. The CGDA to issue necessary instructions for this review and its implementation. Respondents are directed to complete this review and file a detailed compliance report within four months of this order."

12. In the light of the above considerations, the OA 1787/2019 is allowed and we direct the respondents to :

(a) Review the pay fixed of the applicant on his promotion to the rank of Lt Col on 10.12.2007 in the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Thereafter, re-fix the applicant's pay on transition to 7th CPC and also subsequent promotion(s) accordingly.

(c) Pay the arrears within three months of the receipt of copy of this order.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER(A)

/vks/