COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

79.

MA 5013/2023 in OA 685/2023

Sub/M Tech (B Veh) Sudhir Kumar (Retd) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Sheetal Raghuvanshi, Advocate

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

ORDER
29.11.2023

MA 5013/2023

MA for early hearing is allowed. OA is taken up for disposal.

MA 2856/2023

Counter affidavits has been filed. There being delay in filing the same, this application has been filed seeking condonation of delay. Delay is condoned. Counter affidavits are taken on record. MA stands disposed of.

OA 685/2021

Present OA has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 feeling aggrieved by the incorrect pay fixation under 6th Central Pay Commission (CPC), which resulted in continuous financial loss and disadvantage to him including on transition to 7th CPC and even after retirement.

2. The applicant was enrolled in the Indian Army on 09.09.1986. The applicant was promoted to the rank of Havildar Major Technician on 09.09.2004. On 13.03.2008, while the recommendations of 6th CPC were yet to be implemented, 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. However, due to wrong fixation of his pay by the respondents under 6th CPC, the applicant has suffered continuous financial loss and disadvantage and in receipt of lesser pay than his juniors. Thereafter the applicant was promoted to the rank of Sub on 01.10.2014.

3. The respondents have contended that the option form of 6th CPC was never received by them within the stipulated time and at this belated stage it could not be acted upon. They further submitted that they never received any queries from the applicants with regard to re-fixation proforma.

4. Be that as it may, the matter of incorrect pay fixation has been exhaustively examined by this Tribunal 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.*** Relevant

paras for the purpose of decision in this matter are quoted 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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> *xxx xxx xxx*
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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.***
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> ***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 to 37 xxx xxx xxx

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 moto 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 the light of the above consideration, we allow this OA and direct the Respondents to :

(a) Review the pay fixed of the applicant on his promotion to the rank of Nb Sub on 13.03.2008 under the 6th CPC and after due verification re-fix their pay in a manner that is most beneficial to him while ensuring that the applicant is not drawing less pay than their juniors.

(b) Re-fix the applicant's pay on subsequent promotion and on transition into 7th CPC in the most beneficial manner.

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

(d) Pay all arrears and issue fresh PPO within three months from the date of receipt of copy of this order.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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