

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

77.

OA 1060/2022 with MA 3957/2022

In the matter of :

Sub (AIG) Jai Singh (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S S Pandey, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

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

ORDER
04.09.2023

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 in 2016 and even after retirement.

2. The applicant was enrolled in the Indian Army on 23.05.1997. He was promoted to the rank of Havildar on 16.05.2006. On 07.08.2008, when the recommendations of 6th

CPC were yet to be implemented, the applicant was promoted to the rank of Havildar. Thereafter, the applicant was granted MACP of Nb Sub on 15.07.2013 and promoted to the rank of Nb Sub on 10.01.2015. He was again promoted to the rank of Sub on 01.06.2017. The implementation instructions for 6th CPC were issued vide SAI 1/S/2008 dated 11.10.2008. However, respondents without accepting the same and fixed his pay wrongly under 6th CPC, due to which the applicant has suffered continuous financial loss and disadvantage including on transition to 7th CPC.

3. The respondents have contended that the option form of 6th CPC was never received by them 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.

xxx

xxx

xxx

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 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 and the fact that the same considerations are applicable for pay fixation of officers and men of all the three services, we find that the applicant *prima facie* has a good case and balance of convenience is also in his favour. We, therefore, allow this OA and direct the Respondents to :

- (a) Review the pay fixed of the applicant on his promotion to the rank of Havildar on 16.05.2006 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.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

/sm/

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

73.

MA 4023/2023 in OA 1060/2022

Sub (AIG) Jai Singh (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Ms. Shreya Gulati, Advocate for
Mr. S S Pandey, Advocate

For Respondents

: Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

25.09.2023

This application has been filed by the applicant under Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking amendment/modification in the order passed on 04.09.2023 in OA 1060/2022. It is stated that in Para 5, there are some typographical error in the order dated 04.09.2023 in as much as in para 5(a), the rank of the applicant is Nb Sub and the date of promotion should be 07.08.2008.

We have seen the oroder in question and we find that there is typographical error in the order dated 04.09.2023 as mentioned above. Accordingly, we allow the application and direct that clause (b) of Para 5 of the order dated 04.09.2023 passed in OA 1060/2023 be read as under:-

Review the pay fixed of the applicant on his promotion to the rank of Nb Sub on 07.08.2008 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.

With the aforesaid, MA No. 4023/2023 stands disposed off.

This order shall be read conjointly with the original order passed on 04.09.2023 in OA No. 1060/2022.

[RAJENDRA MENON]
CHAIRPERSON

[C.P. MOHANTY]
MEMBER (A)

/sm/