

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

B..

OA 1338/2017

Nb Sub Muruganandam S

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

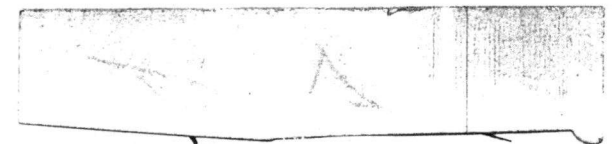
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

ORDER

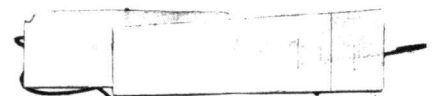
19.12.2023

Vide our detailed order of even date, we have allowed the main OA No. 1338/2017. Faced with this situation, learned counsel for the respondent makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondent and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



[LT. GEN. P.M. HARIZ]
MEMBER (A)

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ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a serving Nb Sub and is aggrieved by the incorrect fixation of pay in 6th CPC due to which he is drawing less pay than his coursemates and juniors. The applicant has made the following prayers:-

- (a) Quash and set aside the impugned letter No LG-III/Stepping Up/Misc dated 23.05.2017
- (b) Direct respondents to step up the pay of the applicant at par with his counterpart/ junior and make payment of due arrears after re-fixing of pay and allowances with effect from the date his junior are getting more pay with interest @ 12% per annum.

(c) Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case mentioned above.

Brief Facts of the Case

2. The applicant was enrolled into the Indian Army on 21.02.1995. He was promoted to the rank of Nk on 01.03.1999; Hav on 01.12.2002 and was granted MACP financial upgrade in the rank of Nb Sub on 01.12.2010. Later he was physically promoted to the rank of Nb Sub on 02.03.2015 with ante date seniority 01.03.2015.

It is the applicant's case that consequent to the implementation of 6th CPC, he was drawing less pay than his colleagues. The applicant then submitted an application dated 08.08.2016 regarding incorrect pay fixation. The PAO(OR) RRRC vide their letter dated 08.09.2016 (Annexure A-2) intimated that no stepping up was admissible where a junior got more pay than a senior on account of MACP financial upgradation. Hence, the application was rejected.

3. The applicant then submitted a detailed comparative statement indicating details of four JCOs who were junior to him and were drawing more pay vide his letter dated 18.10.2016. This was further clarified vide the applicant's letter dated 16.11.2016 (Annexure A-3). However, this detailed case too was rejected vide PAO(OR) RRRC

letter dated 16.03.2017 (Annexure A-4). Vide this letter, PAO(OR) intimated that in the case of the applicant, there was no entry in the sheet roll regarding MACP upgrade as on 01.10.2012 and that since he had drawn the financial benefit, the excess payment would be recovered. This letter also mentioned that the pay of the three JCOs whose pay and allowances had been compared had been incorrectly fixed.

4. Subsequently, a case was taken up vide letter dated 19.04.2017 (Annexure A-5) in which details of 40 JCOs junior to the applicant, who were drawing more pay than him was forwarded. This letter also mentioned that the basic pay of the applicant had been incorrectly fixed @ Rs.7,630/- instead of fixing it @ Rs.8,560/- from 01.01.2006 as per the provisions of Para 13 (a) of SAI 1/S/2008. However, this case too was rejected vide PAO(OR) RRRC letter dated 23.05.2017 (Impugned Order at Annexure A-1). Vide this letter PAO(OR) had reiterated that the applicant was not entitled to fix his pay as per Para 13 (a) of SAI 1/S/2008 since this provision was only applicable to those personnel who had been directly recruited after 01.01.2006. Aggrieved by all this, the OA had been filed.

Arguments by the Counsels

5. The counsel for the applicant took us through the various cases initiated seeking correction in pay fixation and emphasised the reluctance on the part of the respondents to examine the issue in detail and identify the reason as to why the applicant was getting less pay than his junior and then correct the anomaly. The counsel then reiterated that it was possible that the incorrect pay fixation was a legacy of the 6th CPC and urge that this aspect to be examined.

6. The counsel for the respondents emphasised the instructions given in SAI 1/S/2008 and vehemently asserted that the applicant's pay had been fixed in 6th CPC as on 01.01.2006. He further emphasised that the applicant's plea that his pay in 6th CPC ought to be fixed @ Rs.8,560/- under the provisions of Para 13 (a) of the SAI 1/S/2008 was entirely misplaced as this provision was applicable only to those who were directly recruited after 01.01.2006.

Consideration of the case

7. We have examined the pay fixation records provided by PAO(OR) RRRC in respect of the applicant. The details are reproduced below:

ADVANCE LPC

Army No - JC 471591K
Name - MURUGANANDAM S

21 RR
D.O Disch - 28-Feb-23

		Classification Date		Promotion Date		
Group	D	Class IV	15 Jun 96	Nk	01 Mar 99	
Dt of Enrolment	21 Feb 95	Class III	24 Oct 96	Hav	01 Dec 02	
Dt of Attestation	10 Aug 96	Class II	24 Oct 98	Nb Sub	01 Dec 10	ACP
		Class I	10 May 03	Sub	01 Apr 19	
				Sub Maj		
				Hony Lt		
				Hony Capt		

Rank	Date	B Pay	G Pay	Rank	Date	B Pay	MSP Pay
	10 Aug 96	3000			01 Jan 16	42300	
	01 Aug 97	3055			01 Jul 16	43600	
RPR	10 Oct 97	3250			01 Jul 17	44400	
	01 Oct 98	3320			01 Jul 18	46200	
Nk	01 Mar 99	3425		Sub	01 Apr 19	47600	
	01 Mar 00	3510			01 Jan 20	49000	
	01 Mar 01	3595			01 Jan 21	50500	
	01 Mar 02	3680			01 Jan 22	52000	
Hav	01 Dec 02	3800			01 Jan 23	53600	5200
	01 Dec 03	3900					
	01 Dec 04	4000					
	01 Dec 05	4100					
	01 Jan 06	7360	2800				
	01 Jul 06	7950	2800				
	01 Jul 07	8280	2800				
	01 Jul 08	8620	2800				
	01 Jul 09	8970	2800				
	01 Jul 10	9330	2800				
Nb Sub ACP	01 Dec 10	9700	4200				
	01 Jul 11	10120	4200				
	01 Jul 12	10550	4200				
	01 Jul 13	11000	4200				
	01 Jul 14	11460	4200				
	01 Jul 15	11930	4200				

8. We have no hesitation in upholding the respondents stand that the provision of Para 13 (a) of the SAI are not applicable to the applicant. The applicant here was recruited prior to 01.01.2006 and

as migrated from the 5th CPC to 6th CPC, thus, his pay fixation is governed by the Para 9 of the SAI and not by Para 13 (a).

9. However, from the records produced, it is seen that the applicant was promoted to the rank of Nk on 01.03.1999 and his pay on promotion was fixed from 01.03.1997. Thus, his subsequent annual increments have been granted in Mar 2001 and Mar 2002. The applicant was then promoted to the rank of Hav on 01.12.2002, and here it is seen from the records that his pay in the rank of Hav on promotion has been fixed from the date of promotion, i.e., 01.12.2002. Under the 5th CPC, there was a provision to fix the pay on promotion from the date of next increment and thus, the applicant here had an option to fix his pay on promotion to the rank of Hav on 01.03.2003, the date of his next increment. As per the instructions in 5th CPC, personnel were required to exercise an appropriate option for fixing their pay on promotion in this manner. In this case, if the applicant's pay on promotion to the rank of Hav was fixed on 01.03.2003, the subsequent increments would be admissible on 01.03.2004 and 01.03.2005. Thus, on transition into the 6th CPC, his pay could have been fixed from the date of his next increment, i.e., 01.03.2006. With this, based on the instructions issued for implementation of 6th CPC he would have had the benefit

of an additional increment. Thus, his subsequent pay on promotion to MACP Nk Sub and Sub would have been fixed correctly. Thus fixing his pay on his promotion to the rank of Hav in the 5th CPC from the date of his next increment would have given him the most beneficial option and financial benefit in fixing his pay subsequently in 6th CPC.

10. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC in respect of Officers/ JCO/OR 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 Ors** Vs. **Union of India and Ors.,** OA No.1182 of 2018 decided on 03.09.2021. Relevant portions are extracted 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 suomotu 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.

11. 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 and Ors.** 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 soldier 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 soldier 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 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.
- (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.

12. Also in our order dated 05.08.2022 in **Lt Col Karan Dusad Vs. Union of India and others [O.A. No.868 of 2020 and connected matters]**. In that case, we have directed CGDA 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) xxxxxx

(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. xxxx.

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.

13. This specific issue of 5th CPC has already been settled in our order dated 08.07.2022 in OA 1579/2017 **Gp Capt AVR Reddy & Anr Vs. Union of India and Ors.** and order dated 24.08.2022 in OA 2857/2021 **Col Rajesh Suredia (Retd) Vs. Union of India and Ors.**, wherein, we have examined the same issue and have directed the respondents to review the pay fixation on

promotion in 5th CPC and re-fix the pay with the most beneficial option. This is equally applicable to JCOs/ORs too. Details of difference in pay are well illustrated in Para 9 of OA 2857/2021, **Col**

Rajesh Suredia (Retd) (supra) which is reproduced below:

9. On examination of the pay fixation details of the applicant it is seen that on being promoted to the substantive rank of Major on 16.01.2000, the applicant's pay was fixed at Rs 11,600 + Rs 1200 (Grade pay) and was paid four increments from 2001 to 2004. Subsequently on promotion to the rank of Lt Col on 16.12.2004, his pay was fixed from the date of promotion at Rs 13,500 + 1600 along with one increment as on 01.12.2005. Thus on transition to 6th CPC, the applicant's pre revised pay was therefore Rs 13,900 + 1600. In the 6th CPC the applicant's pay was again fixed as on 01.01.2006 at Rs 38,530 + 8000, as per the fitment table for PB-4 issued vide the amendment to SAI 2/S/2008 dated 21.04.2009. He continued to draw increments commencing 01.07.2006 to 01.07.2015, when he was promoted to Col (TS) on 16.12.2015, and then transitioned to 7th CPC with pay at Rs 1,70,400. In the light of this actual pay fixation, the pay details if the pay had been fixed from the date of his next increment on 01.02.2005, the details would be as under, where the applicant stood to a more financial advantage.

(a) On 16.12.2004 the applicant would have continued with the pay of Major + rank pay of Lt col at Rs 13,225 + Rs 1600.

(b) On fixing his pay from the date of next increment on 01.02.2005 his pay would have been fixed at Rs 13900 + 1600.

(c) On transition to 6th CPC, prior to actual transition he would have got another increment in the pre revised scale as per letter of MoD dated 01/08/2012 and his pre revised pay now would have been Rs 14,300 + 1600.

(d) Thus on transition into 6th CPC as per the fitment table for PB-4, his pay would have been Rs 39,600 + 8000; an increase of Rs 1160 from the pay actually fixed.

(e) Subsequently earning increments commencing from 01.07.2006 to 01.07.2015, on promotion on 16.12.2015 his pay would have been Rs 58,050 + 8700.

(f) This would then automatically make a difference in his pay on transition to 7th CPC, which would now be Rs 1,75,500 as compared to Rs 1,70,400 that was actually fixed; a difference of Rs 5100.

14. In view of the above consideration, the OA is partially allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant in the 5th CPC on his promotion on the rank of Hav in Dec 2002 and re-fix his pay with the most beneficial option.

(b) Subsequently, re-fix his pay in the 6th and 7th CPC with the most beneficial option.

(c) Review his last drawn pay and re-fix his retiral benefits accordingly.

(d) Issue corrigendum PPO accordingly and pay the arrears within three months of this order, failing which, pay 6% interest on the arrears till the date of payment.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 19/12 day of December, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

Neha