

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1904/2023

SGT Dhiraj Kumar(Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Tatsat Shukla & Mr Ashish Kumar
Advocates

For Respondents

: Mr. Y P Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG MEMBER (A)

ORDER

28.07.2023

MA 2739/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 375 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UOI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 2739/2023 is allowed and the delay of 375 days in filing the OA 1904/2023 is thus condoned. The MA is disposed of accordingly.

OA 1904/2023

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, who is aggrieved by the incorrect 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) To direct the respondents to review the pay fixed of the applicant under the 6th CPC and after due verification re-fix the pay in a manner that is most beneficial to him,

(b) Direct to respondents to Re-fix the applicant's pay on transition into 7th CPC as on 01 Jan 2016 in the most beneficial manner by changing the date of increment to 01 Jan from 01 July every year while ensuring that the applicant is not drawing less pay than his juniors and issue fresh/corrigendum PFO to the applicant.

(c) To pass any other order or direction in favour of applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.”

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant was enrolled in the Indian Air Force on 17.06.2002 as Airman and was discharged from service on 30.06.2022 after rendering 20 years of service with all retirement benefits. During the course of service, the applicant was promoted to the rank of CPL on 24.06.2007 and was again promoted to the rank of Sergeant on 24.06.2015. It is the submission of the applicant that he has got less basic pay due to wrong fixation of the annual increment on 01 July every year. The applicant submits that he could not submit his option form for the change of the date of the annual increment which led to financial loss and he came to know from his seniors that the fresh option could be submitted for the change of the date of annual increment from

01 July to 01 January every year. Accordingly, the applicant approached the respondents through CPGRAMS Grievance No.DOPPW/E/2023/0010519 dated 15.03.2023 for change of option to opt the next date of increment and consequent award of notional increment w.e.f. 01 January every year. In response to the request made by the applicant, the respondents advised the applicant to provide service particulars of his junior(s) to scrutinize the matter. Accordingly, the applicant submitted particulars of his junior on 06.04.2023 with request to re-fix his pay, but the respondents did not respond.

4. The applicant submits that he is entitled for correct fixation of pay by changing the date of increment from 01 July to 01 January every as per recommendations of the 7th CPC wherein option to all employees was given to opt either 01 January or 01 July whichever is most beneficial to the employee.

5. The applicant places reliance on the order dated 03.09.2021 in OA 1182/2018 titled *Sub M L Srivastava & Ors Vs Union of India & Ors.* wherein the Armed Forces Tribunal has opined that it is the responsibility of the respondents and the service authority to look after the interests of its own subordinate personnel and directed the respondents to review the pay and allowances of the applicants therein after due verification and re-fix their pay under the 6th CPC in a manner that is most beneficial to the applicants and thereafter re-fix the pay in all subsequent ranks and on transition to 7th CPC.

6. The respondents fairly do 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.

7. 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 Para 14 of the SAI 1/S/2008 dated 11.10.2008. The matter of incorrect fixation of pay 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. 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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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.*

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- 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.*

8. The issue pertaining to pay fixation in 6th CPC in respect of Officers/JCO/OR has been examined in numerous cases by this Tribunal.

Similar considerations were applicable for pay fixation of officers(*Lt.Col. Karan Dusad Vs Union of India & Ors(OA No.868 of 2020 and connected matters)* decided on 05.08.2022.

9. In *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346 the Hon'ble Supreme Court has laid down that service jurisprudence postulates that all the persons similarly situated should be treated similarly.

10. In the light of the above consideration, we allow this OA and direct the respondents to:

(a) Review and fix the pay of the applicant by granting annual increment w.e.f. January every year under the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to him.

(b) Re-fix the applicant's pay on transition into 7th CPC as on 01.01.2016 in the most beneficial manner while ensuring that the applicant is not drawing less pay than his juniors.

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

11. No order as to costs.

(REAR ADMIRAL ~~CHHREN VIG~~)
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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