

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

135.

OA 221/2022 with MA 321/2022

Sub Vijay Kumar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate  
For Respondents : Mr. Vijendra Singh Mahndiyani, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER  
13.09.2023

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant claims revision of his pay to Group 'X' Pay & grant him classification allowance as per revised higher rate of pay @ 6200/- per month w.e.f. 01.01.2016 and re-fix his Pay and Pension post 7<sup>th</sup> CPC in accordance to the principles laid down by the Bench of this Tribunal in the case of *Sub ML Shrivastava (Retd.) Vs. Union of India and Others*. It is the case of the applicant that he is a JCO (Ex Sub), Master Tech (Gun) of 'X' Group pay and was discharged from service on 31<sup>st</sup> March 2018. PPO was issued to him but his Pension was not properly fixed in comparison to his course mate or other similarly situated person in the Technical Group X-Pay and this having not been done he has invoked the jurisdiction of this Tribunal.

2. It is the case of the applicant that he was awarded a Diploma in Armament/Production Technology after completion of DAE-122 course conducted by the Department from 6<sup>th</sup> July 1998 to 21<sup>st</sup> August 1999 which was recognized under the authority of Government of India, Ministry of Education and Special Welfare vide letter dated 4<sup>th</sup> September

1978 and by bringing on record the Diploma Certificate Annexure –A3 and the documents collectively as Annexure – A3. It is the case of the applicant that the higher rate of Group ‘X’ Pay has not been granted to him as part of the basic pay for the purpose of calculation of retiring pension. In Para 4.5, applicant points out the case of three individuals who have been granted Group ‘X’ Pay @ 6200/- who are his course mates or senior and who possess the same Diploma as is possessed by the applicant. The copies of the PPO of these persons have been filed collectively as Annexure A-4 to say that the applicant is being discriminated against the name of the three persons are:-

- (a) JC757220P Sub C Kaspar discharged on 31 July 2016
- (b) JC751239L sub BBKS Kumar discharged on 31 July 2016
- (c) JC 757543 Sub Girish Chandra discharged on 30 Apr 2017

3. Inter alia contending that based on the Diploma Certificate granted, applicant is entitled to the benefit, this application has been filed. Respondents have filed a detailed counter affidavit and it is their contention that the applicant was discharged from service and all legitimate dues as are payable to the applicant have been paid including technical allowance and pension for life. As regards grant of Group ‘X’ Pay, it is the case of the respondents that it is covered under the provisions of Para 5(3)(ii) of Army Pay Rules 2017 published in the Gazette of India vide S.R.O. 9(E) dated 03.05.2017, and the Group ‘X’ Pay @ 6200/- is regulated as under:-

(a) Group X Pay @ Rs. 6200/-

A higher rate of Rs. 6200/- for Group X trades which require a qualification equivalent to a diploma recognized by All India Counsel for Technical Education (AICTE) shall be admissible.

(b) Group X Pay @ Rs. 3600/-

A lower rate of Rs. 3600/- for other Group X trades not having a technical qualification recognized by All India Counsel for Technical Education (AICTE) shall be admissible.

4. According to the respondents as the Diploma Certificate obtained by the applicant is not recognized by the All India Counsel for Technical Education (AICTE) is being paid Group Pay @ 3600/-, the respondents have clearly indicated in Para 11 of the counter affidavit that the case of the applicant was taken up with the Headquarter of Ministry of Defence, (Army) vide letter dated 31.05.2021 to issue direction to the concerned Officers for accepting those diploma as per qualification achieved by the officer concerned and based on the same, it has come to the notice of the competent authority that Group X Pay in the higher group can be granted only to such of the officers who have obtained a diploma certificate recognized by the AICTE. However, those who obtained a diploma not recognized by AICTE will get Group X Pay in the lower group i.e. Rs. 3600/- per month. Respondents have filed a copy of the communication received from the AICTE vide Annexure R-1 dated 13.3.2009, which indicate that the diploma approved by the AICTE and Column No. 3 of Annexure A-1 does not contain the subject diploma received by the applicant i.e. Diploma in the trade of Armament/Production Technology.

It is the case of the respondents that only such diploma issued by the AICTE in the subjects and trades mentioned in Column 3 of the letter dated 13.03.2009 are approved for grant of Group X Pay in the higher grade of 6200/- and as the applicant's diploma is neither approved by the AICTE nor does it fall within the category stipulated, the applicant is not entitled to any relief.

5. We have heard learned counsel for the parties at length and perused the record. Admittedly, grant of Group X Pay in the grade 6200/- or @ of 3600/- is governed by the policies and circulars issued in this regard by the Government of India and from the documents that have come on record, it is crystal clear that for the purpose of getting Group X Pay @ 6200/-, the incumbent has to hold a Diploma Certificate as stipulated in the policy which mandates the diploma to be recognized by the AICTE and also in the course and trade as indicated in the policy and the circular of the AICTE dated 13.03.2009 (Annexure R-1). Admittedly, the applicant does not possess the diploma in accordance to the requirement of the scheme and that being so, the respondents have correctly granted the Group X Pay to the applicant in the lower grade of 3200/- and not 6200/- to which the applicant is not entitled to. That being so, we are in agreement with the contention of the respondents through the counsel Dr. Mahndiyan and we see no reason to take a different view. However, one issue which remains to be considered is the contention of the applicant that the three persons named hereinabove who are similarly situated are granted the Group X Pay even though they are holding the same diploma as is being held by the applicant. The



avermment made by the applicant in Para 4.5 in this regard has been denied by the applicant. That apart, merely because a benefit is illegally or incorrectly been granted to a person, the applicant cannot claim the same benefit and the principles of negative equality prevents us from issuing any direction for granting benefit to the applicant to which he is not legally entitled to. If the respondents have incorrectly granted benefit to certain persons who are not entitled to the same, it is for the respondents to take note of the same and correct if there is any illegality in grant of benefit to the said persons in case they are not entitled to the same. In this regard, reference may be made to a Supreme Court judgment in the case of *South Eastern Coalfields Ltd. Vs. Prem Kumar Sharma, 2006 All India AIR SCW Page 372* wherein it has been clearly laid down by the Hon'ble Supreme Court that wrong decision or benefit incorrectly or illegally granted to another employee cannot be a ground to claim parity. Parity can be claimed only on the ground of a legally and forcible right and not on the basis of a right which is not available to a person. This principle of negative equality has been recognized by the Hon'ble Supreme Court time and again in various cases and therefore, on the grounds canvassed in comparison to persons as alleged granted benefit beyond their entitlement, we cannot grant parity to the applicant. Accordingly, in the facts and circumstances, finding no case made out for granting any benefit, the application is dismissed.

[RAJENDRA MENON]  
CHAIRPERSON

[C.P. MOHANTY]  
MEMBER (A)