

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

90.

OA 2233/2022 with MA 4198/2022

In the matter of :

Nb Sub Gursahib Singh (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Manoj Kr. Gupta, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

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

O R D E R
09.05.2023

M.A. No. 4198 of 2022 :

Counter affidavit has been filed by the respondents. There being delay in filing the same, this application has been filed praying for condonation of delay and placing the counter affidavit on record. We allow the prayer and condone the delay. Counter affidavit is thus taken on record. MA is accordingly disposed of.

O.A. No. 2233 of 2022 :

Present OA has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 feeling aggrieved by the incorrect fixation of pay/pay disparity which

resulted in continuous financial loss and disadvantage to him as he was getting lower pay than his juniors counterpart.

2. The applicant was enrolled in the Indian Army on 25.10.1993. He was granted 1st ACP rank of Nk on 25.10.2003. It is the case of the applicant that under the 6th CPC which was applicable with effect from 01.01.2006, the basic pay was revised, however, the fixation was done wrongly and his pay was fixed at Rs. 7,490/- instead of Rs. 7,610/- and this resulted in pay disparity causing financial loss to him. Thereafter, the applicant was granted financial upgradations under the ACP/MACP schemes and promotion from time to time. The grievance of the applicant is that his basic pay was fixed lower than his junior, which is arbitrary and unjust. The applicant was discharged from service on 31.10.2021. The applicant stated that although he was promoted to the substantive Nb Sub on 01.01.2018 and held the rank for three years, whereas his junior of 2 years, whose service tenure was lesser than the applicant and who retired as MACP Nb Sub, they both are drawing equal pension as the basic pay was fixed at par in the 7th CPC. The applicant

made a request for review of his basic pay and stepping up of his pension, however, the respondents denied the same.

3. *Per contra*, the respondents have justified the pay fixation and submitted that the basic pay of the applicant was fixed at Rs. 7,610/- as on 01.01.2006 and not Rs. 7,490/- whereas his junior was drawing basic pay as on 01.01.2006 as Rs.7,490/-; that as on 01.07.2015, basic pay of the applicant was fixed higher than his junior and it is only in the 7th CPC transition w.e.f. 01.01.2016, the basic pay of the applicant and his junior was fixed in the equal slab by multiply factor as per 7th CPC norms. It has been thus contended by the counsel for the respondents that the applicant's basic pay was fixed correctly and, therefore, present OA deserved to be dismissed.

4. Be that as it may, the issue in question is no more *res integra* as the matter was looked into depth by the Tribunal in the case of **Sub Chittar Singh Vs. Union of India & Ors.** [O.A. No. 113 of 2014 and connected matters] decided on 10.12.2014 wherein it was held that the applicant is entitled for his pay fixation in the manner which is most beneficial to him in accordance with the rule of equity in the pay scale of

the person in the same ranks. The issue raised in this OA is also squarely covered by the decision of AFT, RB, Chennai dated 21.03.2019 in the case of **Wg Cdr Harendra Singh Vs. Union of India and Ors.** (OA 254/2018) and the order passed on 08.07.2022 passed in the case of **Wg Cdr Bharat Malik Vs. Union of India & Ors. [O.A. No. 1923/2017]**, wherein, after taking note of the order dated 03.09.2021 in the case of **Sub M.L. Shrivastava and Ors. Vs. Union of India** (OA 1182/2018), it was held that even if the option for pay fixation under the 6th CPC was not exercised or exercised belatedly, the pay of the individual has to be fixed in a most beneficial manner.

5. Further the issue of incorrect fixation of pay under 7th CPC has been dealt with again by this Tribunal in the case of **Sub Ramjeevan Kumar Singh Vs. Union of India and Ors.** (OA 2000/2021) vide its order dated 27.09.2021. The relevant paras of the judgment reads thus, wherein it was held that :

“10. On examination of the rules for implementation of the 6th and 7th CPC it is seen that both CPC implementation instructions mandate that individuals are required to make an option for pay fixation. Where an individual is promoted and an option had not been exercised, 6th CPC implementation instructions has a clause for providing the most beneficial option to the individual, the responsibility of which is with the establishment; Para

14 (b) (iv) of SAI 1/S/2008. Strangely such a clause has been omitted from the implementation instructions of 7th CPC issued vide Extraordinary Gazette Notification No SRO 9E dated 03.05.2017. Para 14 (b) (iv) of SAI is extracted below.

(iv) If no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options mentioned above is allowed to the PBOR. Pay on promotion may be fixed in the following manner if it is more beneficial:-

(aa) In case promoted between 02 Jan and 30 Jun, the fixation, on promotion will be done from the date of his next increment i.e 01 Jul.

(ab) In case promoted between 02 Jul and 01 Jan, the fixation on promotion will be done on the date of the promotion of the PBOR.

11. Army personnel are often deployed in far flung field and operational areas, where these implementations instructions invariably reach late. Moreover, considering the technicalities involved in understanding and working out options for pay fixation; evaluating the most beneficial option is invariably a difficult task for an average soldier. However, the respective PAOs which deal with pay and allowances are imminently suitable and equipped to undertake such evaluation and inform the soldier. Thus, it is imperative that the 7th CPC implementation instructions too has a suitable clause, as in 6th CPC, where the establishment is made responsible for working out options and informing the soldier, so that he can make a well-considered choice.

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."

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

(a) Review the pay fixed of the applicant and after due verification, re-fix the pay under 6th CPC in the most beneficial manner while ensuring that the applicant is not drawing less pay than his batch-mates/juniors.

(b) Thereafter, re-fix the applicant's pay on all subsequent promotion/upgradation and on transition to 7th CPC in a manner which is most beneficial to him while ensuring that he is not getting lesser pay than his juniors.

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

(d) Issue all arrears and fresh PPO within three months of the receipt of copy of this order.

7. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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