

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

30.

OA 2675/2023 WITH MA 3795/2023 AND MA 3796/2023

Col Pankaj Sharma (Retd) & Ors.

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. 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
15.09.2023

MA 3796/2023

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

MA 3795/2023

3. By this application filed under Rule 4(5) of the Armed Forces Tribunal (Procedure) Rules, 2008 the applicants seek to file one OA for redressal of their grievances. For the averments made in the application and in the interest of justice, we allow this application and applicants are permitted to file one single application.

4. MA stands disposed of

OA 2675/2023

5. This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by nine applicants being aggrieved by incorrect pay-fixation of their pay in the 5th Central Pay Commission (CPC)

resulting in continuous financial loss and disadvantage to them. Details in respect of each one of them are given in the table herein below:-

S. N o.	Name and Rank of Applicant	Date of commissioning	Date of Promotion (Lt Col)	Date of Promotion (Col)	Date of Retirement
1	Col Pankaj Sharma (Retd.(IC- 46262P)	20.08.1988	16.12.2004	18.04.2015	28.02.2019
2	Col Barinder Singh Sahni (Retd). (IC-46229X)	20.08.1988	16.12.2004	18.04.2015	30.06.2019
3	Col Amit Bhardwaj (Retd.) (IC- 46258M)	20.08.1988	16.12.2004	18.04.2015	31.07.2020
4	Col Harindra Vyas (Retd) (IC- 46281A)	20.08.1988	16.12.2004	18.04.2015	31.08.2019
5	Col Manoj Kumar Joshi (Retd.) (IC- 46288K)	20.08.1988	16.12.2004	18.04.2015	30.06.2019
6	Col Ajay Kapil (Retd.) (IC- 4617Y)	20.08.1988	16.04.2004	18.04.2009	28.02.2018
7	Col Krishna Kant Gupta (Retd) (IC- 46208F)	20.08.1988	16.12.2004	18.04.2015	30.11.2020
8	Col Sathyanarayana Naresh (Retd.) (IC- 46257K)	20.08.1988	16.12.2004	18.04.2015	31.01.2017
9	Col Amit Kumar Srivastava (Retd.) (IC- 46269Y)	20.08.1988	16.12.2004	18.04.2015	31.12.2016

6. The applicants were promoted to the rank of Lt Col and Col on the dates mentioned against their names in the table above. However, because of the wrong fixation of pay, their pay was fixed much lower than their juniors and this pay disparity continued in the 6th and 7th CPC as well and on account of the fact that the applicants had not exercised the option how their pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008 within the stipulated time.

7. The respondents have submitted that the core issue due to which there was a disparity of pay of the applicants with their batch mates, though they all got promoted to the rank of Lt Col on the same date (16.12.2004), was because the applicants did not exercise the option to fix their pay on promotion from the date of next increment in the lower rank. Thus, in the absence of the requisite option, the pay of the applicants were fixed correctly from the date of promotion itself i.e. 16.12.2004.

8. With regard to the implementation of 5th CPC, the MoD letter No. 01.(26)97/D(Pay/Services) dated 08.05.2003 stipulates that Armed Forces Officers (Serving/Retired) who were promoted on or after 1 January, 1996 shall have the option, to get their pay fixed in the higher rank from the next date of increment in the lower rank. In relation to implementation of 6th CPC, MoD letter No. 1(5)/2012/D(Pay/Services) dated 01.08.2012 stipulates that, the MoF/DoE OM No 10/02/2011-E.III/A dated 19.03.2012 will be *mutatis mutandis* applicable for armed forces personnel. Accordingly, all services HQs had issued letters

advising individuals affected by the MoD letter dated 01.08.2012 to review and re-exercise their option for award of additional increment with effect from 01.01.2006 with certain stipulations.

9. We have also 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 within the stipulated time or applicant not exercising the option at all, and have issued orders that in all these cases the applicants' pay is to be re-fixed with the most beneficial option as stipulated in Para 12 of the SAI 2/S/2008 in respect of officers and Para 14 of the SAI 1/S/2008 in respect of JCO/OR, both dated 11.10.2008.

10. The matter of incorrect pay-fixation 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* (OA No. 1182/2018) decided on 03.09.2021. 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* (OA No. 2000/2021) decided on 27.09.2021. In respect of officers, the cases pertaining to pay-anomaly have also been examined in detail by the Tribunal in the case of *Lt Col Karan Dusad Vs. Union of India and others* (OA No. 868/2020 and connected matters) decided on 05.08.2022..

11. This Tribunal has also examined numerous cases related to the anomaly in the pay fixation under the 5th CPC wherein, officers promoted in this CPC regime whose pay was not fixed in the most beneficial manner, have had to forego an additional increment on their

transition to CPC due to them between Jan-Jun 2006, resulting in the continuous financial loss during the 6th CPC and 7th CPC, and on retirement. This specific issue has already been settled by our order dated 08.07.2022 in OA 1579/2017 Gp Capt AVR Reddy & Anr Vs. Union of India & Ors. and order dated 24.08.2022 in OA 2857/2021 Col Rajesh Suredia Vs. Union of India & Ors. wherein we have exhaustively 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. The details of difference in pay are well illustrated in Para 9 of the OA passed in OA 2857/2021 Col Rajesh Suredia (Supra) which reads as under:-

“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 transited 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 o 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 pay now 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."*

12. It is evident from the above details that there indeed is a financial advantage to the applicants has their pay on promotion in Dec 2004 been fixed from the date of their next increment in the first half of 2005. This would then also have resulted in appropriate financial advantage on transition to the 6th and 7th CPC too. In this case, this advantage has been denied only on the ground that the applicants had not exercised their option. This Tribunal is of the firm opinion that irrespective of whether an officer rendered his option or not, the organization and in particular the implementing agency and the paying agency are beholden to advise an officer and ensure that the most beneficial option in pay fixation is given to him. Merely because the provisions are there in the instructions, is inadequate methodology to

ensure that all officers/men got the most beneficial advantage from the way their pay is fixed. Even if the applicants had not exercised their option, we do not find any record that the respondents did advise the applicant on the implications of pay fixation from date of promotion/DNI apart from issuing a letter and holding the officer responsible. *There is just no reason to believe that anyone will knowingly opt for a less beneficial pay fixation option.* Thus, whether the applicants have exercised or not exercised the option in the absence of full knowledge of the implication of their action, in our opinion it was the responsibility of the paying authority to ensure the fixation of a beneficial pay option. The contention that as per the implementation instructions the paying office was not required/barred from *suo moto* taking such necessary steps/initiatives cannot be sustained.

13. In the light of the above considerations, the OA is allowed and direct the respondents to:

- (a) Review the pay fixed of the applicants on their promotion to the rank of Lt Col on 16.12.2004 in the 5th CPC, on the dates as mentioned in the table abovementioned and after due verification re-fix their pay in a manner that is most beneficial to them
- (b) Thereafter, re-fix the applicants' pay on transition to 6th CPC and also subsequent promotion(s) accordingly.
- (c) To revise pension and issue a corrigendum PPOs accordingly.

- (d) To pay the arrears within three months of the receipt of
copy of this order.

11. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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