

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2729/2023

Sub(JENE) Bawa Ram Saini
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Ms Shruti Rawat, proxy for Mr. S S Pandey,
Advocate
For Respondents : Mr. Sarwan Kumar, Advocate

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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG MEMBER (A)

ORDER
18.09.2023

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) Call for the records based on which the respondent No.1 has taken a decision not to issue amendment in the Policy dated 11.12.2013 in the light of judgment of this Hon'ble Tribunal dated 10.12.2014 in OA 113/2014 and judgment dated 05.10.2017 in OA 1092 of 2017 by extending the benefit of pay fixation from the date of promotion instead of 01.01.2006 by applying Para 14 of 1/S/2008 thereby denying the applicant his rightful claim of equal pay for equal work for want of exercise of option by the applicant and thereafter quash the same.

(b) Direct respondents to extend the benefit of option of fixation of pay in the 6th CPC from the date of promotion of

the applicant to the rank of Nb Sub w.e.f. 01.09.2008 being more beneficial and thereafter direct the respondent to revise the pay of the applicant accordingly in the rank of Sub w.e.f. 01.09.2012.

(c) Issue further directions to the respondent upon such pay fixation in each rank to grant the applicant arrears of the difference of pay in the rank of Nb Sub and Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA etc earned till date along with interest @12% from the date it was payable till the date of payment is made.

(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."

2. The applicant was enrolled in the Indian Army on 26.04.1996. The applicant submits that he was promoted to the Rank of Havildar on 01.01.2008 and Nb Subedar on 01.09.2008. The applicant submits during the period under which the applicant was in the rank of Nb Subedar, the respondents accepted the recommendations of the 6th Pay Commission and accordingly, a Special Army Instruction(SAI) was issued on 11.10.2008 applicable w.e.f. 01.01.2006. The said SAI had a provision for fixation of pay from the date of promotion to all those persons who were granted promotion after 01.01.2006 based on the option to continue in the pre-revised scale till the date till the date of next promotion and get their pay fixed from the date of promotion instead of w.e.f. 01.01.2006. The applicant submits that this decision was never notified to the individual personally nor they were advised what is more beneficial to them and thus his pay was fixed in the new pay scale without carrying out this exercise.

The applicant submits that due to his failure to exercise the option, he was put by default in new scale w.e.f. 01.01.2006 without it being informed to him by the respondents as to what would be more beneficial to him to enable the applicant and other situated persons getting less pay in the Rank of Naib Sub and Subedar by putting him in new pay scale w.e.f. 01.01.2006 by default and thus due to the application of wrong policy, the pay of the applicant was fixed at a level much lower than his juniors in the Rank of Naib Subedar and Subedar and when he was promoted to the Rank of Subedar on 01.09.2012, his pay was fixed much lower than his juniors even in the rank of Subedar. The applicant submits that though the respondents had given time for three months to exercise the option which was extended till 30.06.2011 in terms of the order dated 11.12.2013 and even though some of the affected persons exercised their option they were not given the benefit of their option only on the grounds that the option was not received prior to 30.06.2011. The applicant submits that some of the affected persons who did not exercise their option sought the benefit of pay fixation at par with their junior by invoking the clause of more beneficial provision and this Tribunal in OA 1092/2017 decided on 05.10.2017 held the applicant therein entitled to the said benefits. The applicant submits that in view of the mandate of the law instead of putting the onus on the affected person, the respondents were required to reach out to such persons with regards to fixation of their pay in more beneficial manner. Further, the

applicant submits that the matter bearing financial implications needs the indulgence of this Tribunal to direct the respondents to amend the policy dated 11.12.2013 in the light of the order dated 10.12.2014 in OA 113/2014.

The applicant submits that despite making several representations and visiting the concerned authorities nothing was done by the respondents and thus deprived the applicant to get his pay fixed as per the recommendations of the 6th CPC which was more beneficial. The applicant inter alia submits that as per rule once the option was submitted and accepted by the respondents, he is entitled for stepping up of his pay in comparison to his juniors. The applicant submits that he has been denied the benefit of pay fixation only on the ground that the applicant failed to submit the option for retaining old pay scales benefits. The applicant places reliance on the order dated 10.12.2014 in OA 113/2014 titled *Sub Chittar Singh & Ors Vs Union of India & Ors* of the Armed Forces Tribunal(PB).

3. 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.

4. Be that as it may, 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.*

5. 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.

6. 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 on promotion to the rank of Naib Subedar on 01.09.2008 and thereafter to revise the pay of the applicant in the rank of Subedar w.e.f. 01.09.2012 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 due within three months of this order.

7. No order as to costs.

(REAR ADMIRAL DHIREN VIG) //
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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