

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA 54/2020
WITH
OA 316/2020
WITH
OA 321/2020 with MA 401/2020
WITH
OA 542/2020**

Sub Baikuntha Barik **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

WITH

Sub Santosh Kumar Singh **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

WITH

Sub Lalit Mohan Singh Bisht **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

WITH

Sub Priyadarshi Khuntia **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

*OA 54/2020 with OA 316/2020,
OA 321/2020 and OA 542/2020*

ORDER

MA 401/2020 IN OA 321/2020

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in **Union of India and Others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

**OA 54/2020, OA 316/2020, OA 321/2020
AND OA 542/2020**

3. These four applications have been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicants who are JCOs in Corps of EME and are aggrieved by the incorrect fixation of pay in the 6th CPC on their promotion to the rank of Nb Sub after the transition period with ante date seniority as on 01.10.2008 which falls within the transition period. All the four applicants here had filed OA at the Armed Forces Tribunal, Principal Bench in 2018 seeking fixation of their pay from the date of their ante date seniority. These OAs were disposed of vide order dated 09.01.2019 with the directions that the applicants should make a representation

to the competent authority and in case such a representation was made, the same shall be decided by the respondents within a period of four months and that in case the applicant was entitled to the relief sought, the same be granted to him without insisting the applicant to approach the Tribunal for an appropriate order. Consequent to this order, all the four applicants submitted their respective applications in the month of Feb/Mar 2019 which were then considered and rejected vide detailed Speaking Orders in respect of all these JCOs.

4. In the current OAs here, the JCOs have impugned their respective Speaking Orders which have rejected their plea for fixation of pay as per ante date seniority. During this process, the Army HQ had issued provisional sanctions in respect of 41 similarly placed JCOs vide their letter dated 15.05.2019. However, in the case of applicants in OA 316/2020 and OA 542/2020, the provisional sanctions were subsequently cancelled vide Army HQ letter dated 17.09.2019. Thus, in the case of these two applicants based on the provisional sanction, the respondents had re-fixed their pay on transition to 6th CPC from the date of their ante date seniority, i.e., 01.10.2008 and also paid them the arrears thus due to them. However, due to the cancellation of the sanction, their pay in

the revised pay scale of 6th CPC was fixed as on 01.01.2006 and pay on promotion to the rank of Nb Sub in 6th CPC was fixed from the date of physical assumption of the appointment. In the light of the above, the applicants in OA 316/2020 and OA 542/2020 have made the following prayers :-

- (a) Quash and set aside the respective impugned Speaking Orders dated 15.11.2019 and the letter dated 31.10.2019 issued by PAO (OR) EME, Secunderabad to OIC EME Records, Secunderabad, intimating the cancellation of sanction earlier accorded vide Army HQ dated 15.05.2019.
- (b) Direct the respondents to revise the applicants' pay as per 5th CPC and restore their salary as it was restored in 2019 with all monetary benefits and refund the amount deducted and pay the arrears with 12% interest per annum.
- (c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

5. The applicants in the other two applications, i.e., OA 54/2020 and OA 321/2020 have made the following prayers:

(a) Quash and set aside the Speaking Orders dated 09.07.2019 and 18.06.2019.

(b) Direct the respondents to revise the applicants' pay as per 5th CPC and restore their salary as it was restored in Aug 2011 with all monetary benefits and refund the amount deducted and pay the arrears with 12% interest per annum.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

6. All the four applicants here, the applicants in OA 54/2020 and OA 316/2020 have since retired whilst the applicants in OA 321/2020 and OA 542/2020 continue to be in service.

Brief Facts of the Case

7. The following are the details in respect of the applicants:

Sr. No.		OA 54/2020	OA 316/2020	OA 321/2020	OA 542/2020
1.	DOE	28.02.1995	28.02.1995	28.02.1995	28.02.1995
2.	Promotion to the rank of Hav	In 5 th CPC regime	In 5 th CPC regime	In 5 th CPC regime	In 5 th CPC regime
3.	Promotion to the rank of Nb Sub	19.10.2008	01.11.2008	17.10.2008	16.12.2008

*OA 54/2020 with OA 316/2020,
OA 321/2020 and OA 542/2020*

4.	Ante date seniority on promotion to the rank of Nb Sub	01.10.2008	01.10.2008	01.10.2008	01.10.2008
5.	Previous OA filed	OA 867/2018	OA 1175/2018	OA 831/2018	OA 869/2018
6.	Individual application filed based on order in previous OA	03.03.2019	18.02.2019	22.02.2019	Feb 2019
7.	Speaking Order	09.07.2019 Rejected	15.11.2019 Rejected	18.06.2019 Rejected	15.11.2019 Rejected

8. The details of the case pertaining to OA 542/2020 are being examined here as the lead case for disposal of this bunch of cases.

9. The brief facts of the case are that the applicant was enrolled into the Army on 28.02.1995 and was promoted from time to time. He was promoted to the rank of Nb Sub on 16.12.2008 with ante date seniority as on 01.10.2008. The applicant had earlier filed OA 869/2018, with the prayer that his pay in the revised pay scale of 6th CPC be fixed on his promotion to the rank of Nb Sub from the date of ante date seniority as on 01.10.2008. The OA was disposed of vide order dated 09.01.2019 with directions that the applicant should make a representation to the competent authority, and in case such a representation was made, same shall be decided by the respondents within a period of four months. And that, in case the

applicant was entitled to the relief sought, the same shall be granted to him without insisting that the applicant approaches the Tribunal for an appropriate order.

10. The applicant accordingly submitted an application in Feb 2019 requesting that his pay in 6th CPC be fixed from the date of his promotion to Nb Sub as per his ante date seniority of 01.10.2008. In the meanwhile, Army HQ (AGs Branch/PS) vide their letter No. B/37933/Court Case/AG/PS-3(B)/41 EME Pers dated 15.05.2019 granted necessary sanction in respect of 41 JCOs, including the applicant here who had filed cases in the AFT to fix their pay with the most beneficial option. Accordingly, necessary Part II order was published re-fixing the pay in 6th CPC from 01.10.2008. However, this Part II Order was subsequently cancelled vide order dated 17.09.2019 and vide PAO(OR) EME letter dated 31.10.2019 (Annexure A-1 Colly), it was intimated that the applicant's name had been deleted from the sanction earlier accorded vide letter dated 15.05.2019.

11. The competent authority also rejected the applicant's application dated Feb 2019 through a detailed Speaking Order dated 15.11.2019 (Annexure A-1). The application was rejected on the grounds that since pay and allowances are due from the date of

physical assumption of appointment, the pay can only be fixed from 16.12.2008, and therefore, since this date was beyond the transition period of 01.01.2006 to 11.10.2008, he was not entitled to fix his pay in the revised pay scale of 6th CPC as prayed for.

12. In this OA, the applicant has challenged the cancellation of the earlier sanction accorded by Army HQ vide letter dated 31.10.2019 and the rejection of his application of Feb 2019 vide the Speaking Order dated 15.11.2019.

Arguments by the Counsel for the Applicant

13. The counsel briefly recapitulated the case filed in OA 869/2018 and the directions of the AFT(PB) dated 09.01.2019 and the representation made by the applicant to the competent authority. The counsel then took us through the sanction accorded vide Army HQ letter dated 15.05.2008 and then emphasised that this sanction had been arbitrarily cancelled vide PAO(OR) EME letter dated 31.10.2019, denying the applicant the benefit of fixing his pay with the most beneficial option, thus, resulting in immense financial loss. The counsel also then elaborated that based on the initial sanction, the applicant's pay had been correctly fixed and the basic pay had been revised from Rs.52,000/- to Rs.58,600/- in the month of Jun 2019 and that due to the cancellation of the sanction,

in the month of Oct 2019, his basic pay was reduced to Rs.52,000/- and arrears paid earlier was recovered.

14. The counsel then explained that though the order for promotion to the rank of Nb Sub from 01.10.2008 had been issued in Aug 2008 itself, the reason for the delay in physical assumption was due to the fact that the applicant had been transferred in the intervening period and, thus, there had been a delay in initiation of the applicant's CR required to implement the promotion. The counsel then vehemently asserted that this delay had been caused by the organisation and that the applicant was being incorrectly penalised for the delay and, therefore, the pay ought to be fixed as on 01.10.2008. The counsel then drew our attention to Para 21 of SAI 1/S/2008 and stated that the competent authority was vested with the powers to relax rules in case of extreme hardship and that these powers should have been exercised by the competent authority to grant relief to the applicant as prayed for. The counsel then vehemently stated that such deprivation of legitimate entitlements was in violation of Article 14 of the Constitution of India. The counsel then relied upon the judgement of the Apex Court in the case of **DS Nakara and Ors. Vs. Union of**

India [1983 SCC (1) 305] and the AFT (PB) order dated 10.12.2014 in OA 113/2014, **Sub Chittar Singh** Vs. **Union of India and Ors.**

Arguments by the Counsel for the Respondents

15. The counsel explained that based on the directions given in the AFT Order dated 09.01.2019 in OA 869/2018, the applicant had submitted an application which was fairly considered by the competent authority, who rejected it with a detailed Speaking Order dated 15.11.2019. The counsel then elaborated that PAO(OR) EME had correctly fixed the applicant's pay in the rank of Havildar as on 01.01.2006 as per provisions of Para 9(a)(i) of SAI 1/S/2008. The counsel then drew our attention to Para 7 (b) and 8 (a) of SAI 1/S/2008 and explained in detail the options available to a soldier to switch over to the revised pay scale of 6th CPC from the date of promotion, if promoted during the transition period between 01.01.2006 and 11.10.2008. The counsel then elaborated that by the end of the transition period, all those in service should have been brought into the revised pay scale of 6th CPC, and that pay fixation of subsequent promotion were to be carried out as per the provisions of Para 14 of the SAI with the individual already in the revised pay scale of 6th CPC.

16. The counsel then vehemently asserted that the applicant was not eligible to switch over to 6th CPC from the date of his promotion to the rank of Nb Sub on 16.12.2008 as this date was after the transition period that had terminated on 11.10.2008. He further added that neither could the applicant seek to switch over from the date of ante date seniority of 01.10.2008, since pay and allowances were only admissible from the date of physical assumption of the appointment which in this case was on 16.12.2008. He further added that the judgement in the case of **Sub Chittar Singh** (supra) does not help the applicant as that case pertained to individuals who were promoted between 01.01.2006 and 11.10.2008.

17. Referring to the initial sanction granted by Army HQ vide their letter dated 15.05.2019 in respect of 41 JCOs including the applicant and its subsequent cancellation, the counsel elaborated that 41 JCOs of EME had filed cases in the AFT (PB) to fix their pay in the revised pay scale of 6th CPC with the most beneficial option and that the AFT vide order dated 09.01.2019 had directed that the applicants may make representations which were to be decided in a time bound manner based on the ratio of the AFT order in OA 113/2014, **Sub Chittar Singh** (supra). The competent authority

on examining these representations concluded that they were similar to the case of **Sub Chittar Singh** (supra) and, therefore, decided to grant requisite sanction for initiating the process of re-fixing and payment. Accordingly, sanction was granted vide letter dated 15.05.2019. The counsel then drew our attention to Para 5 of the letter dated 15.05.2019 and emphasised that the sanction was a provisional sanction based on which PAO(OR) was required to submit an Audit Report in each case to Army HQ/PS-3 through EME Directorate for issuance of 'Charged Expenditure'. Thus, on detailed examination, it was established that the three JCOs including the applicant here in were not eligible for the said relief and, accordingly, the sanction in respect of these three JCOs, including the applicants here in OA 316/2020 and OA 542/2020 was cancelled. This was then intimated by PAO(OR) EME to EME Records vide their letter dated 31.10.2019.

18. The counsel concluded by emphasising that as per SAI 1/S/2008, the most beneficial option for fixing pay in the revised scale of 6th CPC was only admissible to those who were promoted/upgraded in the transition period from 01.01.2006 to 11.10.2008. Also that, pay and allowances on promotion were admissible only from the date of physical assumption. Thus, the

applicant here was not entitled to the relief prayed for since he physically assumed the appointment of Nb Sub on promotion only on 16.12.2019; beyond the transition period.

Consideration of the Case

19. We have heard both parties at length and the only issue for consideration is whether the applicant is entitled to have his pay and allowances fixed in the revised pay scale of 6th CPC on promotion to the rank of Nb Sub fixed on 01.08.2008, the ante date of seniority granted to the applicant, whereas he physically assumed the appointment of Nb Sub on 16.12.2008.

20. We have examined numerous cases where officers/JCOs/OR had been denied the most beneficial option due to option not being exercised, or option being exercised after the stipulated period. In all such cases the AFT has issued directions that the applicants' pay and allowances in the revised pay scale of 6th CPC be reviewed and re-fixed, granting the most beneficial option. 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 and Ors.** (OA No.1182 of 2018 decided on 03.09.2021).

21. 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). Relevant portions are extracted below:

"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.

13. In view of the foregoing, we allow the OA and direct the Respondents to:-

(a) Take necessary action to amend the Extraordinary Gazette Notification NO SRO 9E dated 03.05.2017 and include a suitable 'most beneficial' option clause, similar to the 6th CPC. A report to be submitted within three months of this order.

(b) Review the pay fixed of the applicant on his promotion to Naib Subedar in the 7th CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors.

(c) Issue all arrears within three months of this order and submit a compliance report.

(d) Issue all arrears within three months of this order and submit a compliance report."

22. 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 Ors.,** (OA No.868 of 2020 and connected matters decided on 05.08.2022). In which, we have directed CGDA/CDA(O) to issue necessary instructions to review pay fixation of all officers of all the three Services, whose pay has been fixed on 01.01.2006 in 6th CPC and provide them the most beneficial option. Relevant extracts are given below:

"102 (a) to (j) xxx

(k) *The pay fixation of all the officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006 merely because they did not exercise an option/ exercised it after the stipulated time be reviewed by CGDA/ CDA(O), and the benefit of the most beneficial option be extended to these officers, with all consequential benefits, including to those who have retired. The CGDA to issue necessary instructions for the review and implementation.*

Directions

103. xxx

104. *We, however, direct the CGDA/CDA(O) to review and verify the pay fixation of all those officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006, including those who have retired, and re-fix their pay with the most beneficial option, with all consequential benefits, including re-fixing of their pay in the 7th CPC and pension wherever applicable. The CGDA to issue necessary instructions for this review and its implementation. Respondents are directed to complete this review and file a detailed compliance report within four months of this order."*

23. The issue pertaining to date of promotion reckoning from the date of physical assumption and the relevance of grant of ante date seniority has been examined by the AFT, Regional Bench, Jaipur, in OA 18/2018. The applicant in OA 18/2018 too was promoted to the rank of Nb Sub on 06.11.2008 (date of physical assumption) with ante date seniority of 05.10.2008 and had prayed that his pay in 6th CPC be fixed from 05.10.2008, by granting him the most beneficial option. The AFT, RB, Jaipur, vide its order dated 15.04.2021 held that the applicant was only entitled to pay and allowances from the date of physical assumption and not from the date of ante date seniority. Relevant portion of the order is reproduced below:-

"3. Heard and considered the submissions of Learned Counsels for the parties and perused the material placed on record. The question that falls for consideration is whether the Applicant is entitled to get pay and allowances in the revised pay structure from the date of promotion to the rank of Nb Sub with ante-date seniority on 05.10.2008 or from the date of physical assumption of the rank on 06.11.2008.

4. Perusal of the material on records shows that the Applicant physically assumed the rank of Nb Sub on 06.11.2008 with ante-date seniority of 05.10.2008. In the reply statement, the Respondents submitted that since the Applicant assumed the promotion physically on 06.11.2008, i.e., after publication of Notification on 11.10.2008, his pay has been correctly fixed from the date of physical assumption of promotion in terms of **IHO of MoD (Army) letter dated 12.03.2001** (Annexure R/3), which reads as

"1. A unit has represented that promotions are issued by Records retrospectively without anti-date seniority, in case of late passing of mandatory mil edn, as a result junior become senior and indl loses pay and allowances in between date of prom notified in the prom order as well as physical assumption of prom.

2. This trend has shown an alarming increase in the recent past from some Line Dtes, where a large number of cases of such prom received, which leads to the only logical inference that there is some intrinsic infirmity in planning which has given spurt to such cases.

3. It is clarified that promotion can be legally enforced on an individual on the first vac as per his seniority subject to fulfillment of QR. However, prom will be notified in the Pt II order from date of physical assumption and pay & allces will be regulated accordingly. In the case of lacking mil ed due to various reasons and it is not possible to reserve vac due to administrative difficulties for a particular indl who is senior, junior will be promoted on the first vac. Consequent to passing of mandatory mil edn, former one will be illegible for prom on the next vac and he will be given anti-date seniority from date of passing of lacking edn, irrespective of whether Junior is senior or otherwise, to maintain their inter-se-seniority."

5. Careful perusal of Para 1 and 3 of the above letter makes it amply clear that the Part II Order for promotion has to be notified from the date of physical promotion and pay and allowances will be regulated from the date of physical promotion and not from the date of seniority. In terms of the above letter, the Applicant should have exercised option for pay fixation from the date of physical assumption of the rank, i.e. 06.11.2008 and not from the date of seniority of promotion, i.e. 05.10.2008. Therefore, the Respondents have not erred in rejecting the Part II Order dated 24.09.2011. Moreover, as per Para 7 (b) of SAI 1/S/2008, in cases where a PBOR has been placed in a higher pay scale between is day of January 2006 and the date of notification of this instruction (i.e., 11.10.2008) on account of promotion, upgradation of pay scale etc., the individual may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc. In the present case, the Applicant physically assumed the rank of Nb Sub on 06.11.2008, and in fact no window was available to exercise option for pay fixation after 11.10.2008.

6 to 7 xxxxx

8. In view of the above reasons, we are of the considered opinion that the Applicant physically assumed the rank of Nb Sub on 06.11.2008, i.e. after the date of publication of the notification on 11.10.2008. Hence, he is entitled for the pay and allowances in the revised pay scale as per Para 9 and 13 of SAI 1/S/2008 and not from the date of seniority of promotion, i.e., 05.10.2008. Thus, the Original Application lacks merit and hence stands dismissed."

24. Implementation instructions of 6th CPC for PBOR of the Army were issued vide SAI 1/S/2008 dated 11.10.2008. As per the

provisions of Para 7 of the SAI, those promoted to a higher rank/upgraded between 01.01.2006 and 11.10.2008 (issue of instructions) had the option to get their pay fixed in the revised pay structure of 6th CPC from the date of promotion/date of next increment/01.01.2006, whichever was most beneficial. Each individual was required to exercise the option within the stipulated period and forward the same to the concerned PAO. In cases where an option was not exercised or was exercised beyond the stipulated period, the pay in the revised pay structure was fixed as on 01.01.2006. Thus, anyone who is promoted/upgraded after 11.10.2008, has already been brought into the revised pay structure of 6th CPC and his pay now on promotion/upgradation is to be fixed as per the provisions of Para 14 of the SAI, which is reproduced below:-

"14. Fixation of Pay On Promotion on or after 1st January 2006. In the case of promotion of a PBOR from one grade pay to another in the revised pay structure, the fixation of pay in the running pay band will be done as follows:-

(a) One increment equal to 3% of the sum of the pay in the pay band, existing grade pay and Group 'X' pay (if any) will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band, The grade pay corresponding to the promoted rank, will thereafter be granted in addition to this pay in the pay band, In cases where promotion involves change in the pay band also, the same methodology will be followed.

However, If the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will 'be stepped up to such minimum.

(b) On promotion from one rank to another/financial upgradation under ACP, PBOR has an option to get his pay fixed in the higher post either from the date of his promotion or from the date of his next increment, viz 01 Jul of the year. The pay will be fixed in the following manner in the revised pay structure:-

(i) In case PBOR opts to get his pay fixed from his date of next increment then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher rank will be granted. Further re-fixation will be done on the date of his next increment i.e. 01 Jul. On that day, he will be granted two increments; one annual increment and the second on account of promotion. While computing these two increments, Basic Pay prior to the date of promotion shall be taken into account. To Illustrate, if the Basic Pay prior to the date of promotion was Rs 100, first increment would be computed on Rs 100 and the second on Rs103.

(ii) In case a PBOR opts to get his pay fixed in the higher grade from the date of his promotion he shall get his first increment in the higher grade on the next 01 Jul, if he was promoted between 02 Jul and 01 Jan. However, if he was promoted between 02 Jan and 30 Jun of a particular year, he shall get his next increment on 01 Jul of next year.

(iii) PBOR will have the option to be exercised within one month from the date of promotion to have his pay fixed from the date of such promotion or to have the pay fixed from the date of his next increment, Option once exercised shall be final. Form of option is given at Appendix 'D' to this SAI.

(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.

(v) As a one time measure, PBOR promoted on or after 01 Jan 2006 and before publication of this instruction, may exercise their option afresh within three months of the issue off this instruction. Form of option is given at Appendix 'D' to this SAI.

(c) In case of promotion to Hony Captain/Lieutenant rank on or after 1st January 2006, One additional increment will be given as in all other cases unless this amount is less than Rs 15600 i.e minimum of PB-3 then the pay will be stepped up to Rs 15600. In addition Grade Pay and MSP as indicated in the table below Para 13 will be admissible."

25. It is the applicant's case that Army HQ had initially accorded sanction in respect of 41 JCOs including the applicants who had filed cases in the AFT regarding pay fixation with the most beneficial option, which in the case of the applicant was subsequently

cancelled. That based on this initial sanction the applicant's pay had been fixed on promotion as on 01.10.2008, and arrears paid. And that subsequently on cancellation of this initial sanction granted to the applicant the pay was re-fixed and arrears paid were recovered. That this has caused substantial financial loss to the applicant and had been done with mala fide intent.

26. We have examined the records. The initial sanction was accorded vide letter dated 15.05.2019. As seen from the contents of this letter, initial sanction has been accorded to 41 JCOs including the applicants in OA 316/2020 and OA 542/2020, on the premise that all of them were covered by the ratio of the AFT order in OA 113/2014, **Sub Chittar Singh** (supra). Relevant portions are extracted below:-

*Integrated HQ of MOD(Army)
Adjutant General's Branch
Addl Dte Gen Pers Services
Room No. 16, Plot No. 180(West)
Brassey Avenue, Church Road
New Delhi - 110001*

B/37933/Court Case/AG/PS-3(B)/41 EME Pers

15 May 2019

OIC Records

EME Records

PIN - 900453, C/O 56 APO

**IMPLEMENTATION OF HON'BLE AFT(PB) NEW DELHI ORDER DT 09.01.2019 IN
VARIOUS OAs FILED BY EME PERSONNEL V/S UOI & ORS**

"ORDERS CALLING FOR AUDIT REPORT"

1. Whereas, the Applicants had filed their respective OAs in the Hon'ble AFT(PB) New Delhi as per details given at Appendix attached to this letter, and wherein Hon'ble Tribunal vide order dated 09 Jan 2019, directed that the said Applicants may make Representation to the Respondents and the same be decided in a time-bound manner in the light of the judgment passed in OA 113/2014 in Sub Chittar Singh Vs UoI & Ors dated 10.12.2014.

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OA 321/2020 and OA 542/2020*

2. Whereas, the said Applicants have submitted their respective representation in compliance of the abovementioned order.

3. On examination of the said Representation, it emerges that their respective cases are exactly similar to the case of Sub Chittar Singh's and Others wherein, it was directed by the Hon'ble Tribunal to grant all monetary benefits, treating them as having opted as per relevant Para of SAI 1/S/2008 which is more beneficial to them. In the said order, Hon'ble Tribunal further directed that the same shall be implemented within a period of three months from the date of receipt of a copy of Tribunal Order, (falling which) the petitioners will be entitled to interest @ 12% p.a. The said Order of the Hon'ble Tribunal has already been complied with and also has been implemented in all such similar cases as well. Thus, the Representations of the above mentioned Applicant, seeking similar and beneficial option have merit and the relief sought therein needs to be granted in terms of Sub Chittar Singh's case.

4. Now, therefore, under the powers delegated vide MoD letter No MoD/IC/1027/32/AS(J)/6864/2006 dated 01 Sep 2006, the Competent Authority has accorded sanction to grant all monetary benefits, treating the Applicants as having opted as per relevant Para of SAI 1/S/2008 which is more beneficial to them. The instant Order shall be implemented within a period of three months from the date mentioned above, failing which the Applicants shall be entitled to interest @ 12% p.a. with effect from the said date.

5. The PAO(OR) concerned shall, in accordance with this Order, issue a consolidated Audit Report Interest, payable shall also be calculated upto a futuristic date in order to cater for the time taken to meet the procedural requirement. The said Audit Report shall be forwarded to this Dte through EME Pers for issuance of 'Charged Expenditure' sanction before making payment to the aforementioned Applicants.

xxx

xxx

xxx

sd/-
(Asha Manoj)
Dy Dir, AG/PS-3(B)
For Adjutant General

27. Consequent to the issue of sanction vide letter dated 15.05.2019, PAO(OR) EME vide their dated 14.06.2019 intimated the EME Records that of the 41 JCOs for whom the Army HQ had granted sanction, three of them including the applicants here in OA 316/2020 and OA 542/2020 were not eligible for the provisions of most beneficial option since they were physically promoted after the transition period and therefore instructed EME Records to initiate a case with Army HQ for deleting the names of these three JCOs from the list of 41. EME Records

OA 54/2020 with OA 316/2020,
OA 321/2020 and OA 542/2020

then initiated a case with Army HQ for deletion of the names of the three JCOs who were not eligible for the fixing their pay with the most beneficial option. Consequent to this, Army HQ vide their letter dated 17.09.2019 promulgated the Corrigendum to their letter dated 15.05.2019. Thus, the Army HQ correctly cancelled the earlier sanction accorded vide their letter dated 17.09.2019 since the applicants in OA 316/2020 and OA 542/2020 here were not eligible for the most beneficial option for the initial fixation of pay in the revised pay scale of 6th CPC from the date of ante date seniority (01.10.2008) as they had physically assumed the appointment on promotion on 16.12.2008; after the transition period during which the beneficial option was available. Since all ranks have to compulsorily transit into the 6th CPC scale by the end of the transition period, the respondents have correctly fixed the pay in the revised pay scale of 6th CPC, for all the four applicants here, in the rank of Hav as on 01.01.2006, and having transited into the 6th CPC pay scale, fixed their pay on promotion, from the date of their physical promotion to the rank of Nb Sub as per Para 14 of the SAI. Thus, we find no mala fide in the action of the respondents in deleting the name of the two applicants from the list of 41 JCOs who were initially granted sanction vide letter dated 15.05.2019.

Thus, we also do not find any mala fide in the respondents action in cancelling the initial wrong fixing of pay in 6th CPC, re-fixing the pay as on 01.01.2006 and recovering the arrears. PAO(OR) EME letter dated 14.06.2019 and Army HQ Corrigendum dated 17.09.2019 are extracted below:

(i) PAO(OR) EME letter dated 14.06.2019:

No.B-tech/138/Court Case/Misc/2019

Dt: 14/06/2019

To
The OIC
Court Case Cell
EME Records,
Secunderabad.

Sub:- Implementation of the Hon'ble AFT(PB) New Delhi order dated:09.01.2019 passed in OAs filed by 41 EME Pers Vs UOI and others.

1. Ref:- 1.IHQ Lr.No.B/37933/Court Case/AG/PS-3(B)/41 EME Pers,dt:15.05.2019
2.EME Records Lr.No.2802/Gen/P&A/T-C/Court Case Cell,dated:23.05.19.
3.EME Records Lr.No.JC762976/T-C/Court Case Cell, dt:13.06.2019.

2. Please refer to your office letter No. JC762976/T-C/Court Case Cell, dt:13.06.2019 addressed to Dte Gen of EME (EME Pers), IHQ of MoD, New Delhi-110105 with a copy to this office among others. In this context it is brought to your notice that as per the implementation order from IHQ of MoD cited above reference(1) out of which 41 applicants under mentioned three(03) applicants were promoted after 01/10/2008 i.e., after the implementation of 6th CPC date. Whereas, option is available to only for applicants who are promoted between 01/01/2006 to 11/10/2008. In the light of the above reference 3 cited above, the undermentioned applicants may also be taken with IHQ of MoD for perusal.

3. List of cases is mentioned as under

S.No.	Army No.& Name	OA No.	Promotion date
4.	JC762975W, Sub Priyadarshi Kuntia	869/2018	16/12/2008
5.	JC762973L, Sub Santosh Kumar Singh	1175/2018	01/11/2008
6.	JC763210F, Sub Rajesh Kumar Yadav	1332/2018	11/11/2008

7. In view of the above, you are requested to take up the matter with IHQ of MoD to delete the above named applicants from Govt sanction and also intimate further decision/course of action to this office at the earliest.

Sd/-
(K.Krishna Murthy)
Sr.Accounts Officer(G-Tech)

(ii) Army HQ Corrigendum dated 17.09.2019:

Integrated HQ of MOD(Army)
Adjutant General's Branch
Addl Dte Gen Pers Services
Room No. 16, Plot No. 108(West)
Brassey Avenue, Church Road
New Delhi – 110001

B/12048/5175/Gen/EME Pers /AG/PS-3(B)

17 Sep 2019

OIC Records,
EME Records 1
PIN – 900453, C/O 56 APO

CORRIGENDUM

IMPLEMENTATION OF THE HON'BLE AFT(PB) NEW DELHI ORDER
DT 27 SEP 2018 IN OAs FILED BY EME PERSONNEL V/S UOI & OTHERS

1. Reference IHQ of MoD (Army) letter No B/12048/5509/Gen/EME Pers/AG/PS-3(B)/41 EME Pers dated 15 May 2019.
2. Following details listed at Appendix attached to above mentioned letter may be deleted:-

Sl. No.	OA No	Army No, Rank & Name
39	869/2018	JC-762975W Sub Priyadarsi Khuntia
40	1175/2018	JC-762973L Sub Santosh Kumar Singh
41	1332/2018	JC-763210F Sub Rajesh Kumar Yadav

3. This issues with the concurrence of IFA(Army-Q) vide their UO No 20866/IFA(Army-Q)/AG/CJ/3821/2197 dated 12 Sep 2019.
4. Speaking Order to the above mentioned applicants at Para 2 may be issued at the earliest.

Sd/-
(Asha Manoj)
Dy Dir, AG/PS-3(B)
For Adjutant General

28. Accordingly, we also uphold the respective Speaking Orders of all the four applicants, wherein, detailed reasons have been advanced regarding the ineligibility of the applicants to fixing their pay as on 01.10.2008, when they physically assumed the appointment subsequently. Thus in the case of the applicants in OA 316/2020 and OA 542/2020, the respondents have, therefore, corrected the error of having initially erroneously fixed the pay as

on 01.10.2008 and, therefore, recovered the arrears which the applicants clearly are not entitled to.

29. This Tribunal has examined similar cases and had held that JCO/OR are entitled to fix their pay on promotion in the revised pay scale of 6th CPC only where such promotion/upgradation is in the transition period between 01.01.2006 and 11.10.2008. And also that pay fixation is admissible only from the date of physical assumption of the appointment. In the cases, where the physical assumption date is beyond the transition period and the ante date seniority was granted in the transition period, pay fixation is only admissible from the date of physical assumption. Thus, in the cases of **Sub D Subramani Vs. Union of India and Ors., MA 2376/2022 in OA 808/2019 WITH RA 33/2022 with MA 3199/2022 in OA 808/2019** and **Sub/M Tech (NW) Hari Shankar (Retd) Vs. Union of India and Ors., MA 2751/2022 in OA 385/2021 WITH RA 37/2022 with MA 3545/2022 in OA 385/2021**, where applicants were initially granted pay fixation from the date of ante date seniority were reviewed, earlier OAs recalled and the original OAs dismissed. Relevant portion is extracted below:-

"13. Thus, as seen from the above consideration, there are two errors in the order dated 08.11.2021 passed by this Tribunal in OA 808/2019. One, that the date of ante date seniority has been incorrectly mentioned as 01.10.2008, whereas, the correct ante date is 01.08.2008. This error itself would not have warranted a review of the order, as this could have been corrected through a Miscellaneous Application.

However, the fact that the order granted the option of the most beneficial option for fixing the respondent's (applicant in OA) pay from the ante date seniority of 01.10.2008 (or even if it was 01.08.2008) is patently an error on the face of the record since the respondent (applicant in OA) was not entitled to this since the pay and allowances on promotion are to be fixed only from the date of physical assumption and not from the ante date seniority. And in this case, the respondent (applicant in OA) was physically promoted on 18.10.2008, beyond the stipulated period in which the beneficial option was applicable.

14. In the light of the above consideration, RA is allowed, our order dated 08.11.2021 in OA 808/2019 is hereby recalled and OA 808/2019 is hereby dismissed being bereft of any merit.

15. In view of the consideration in the RA, MA 2376/2022 stands disposed of."

30. On perusal of the records, it is seen that in all the four cases, now the pay of the applicants in the revised pay scale of 6th CPC has been fixed as on 01.01.2006. Their pay on the promotion to the rank of Nb Sub while in 6th CPC pay scale has been fixed on their physical assumption. We have no hesitation in upholding the action of the respondents in their interpretation of SAI 1/S/2008 and having correctly fixed the pay of the applicants here.

31. We, therefore, conclude that the applicants are not eligible to fix their pay in the revised pay scale of 6th CPC from the date of ante date seniority granted to them on their promotion to the rank of Nb Sub after the transition period. Thus, we uphold the Speaking Orders dated 15.11.2019, 18.06.2019 and 09.07.2019. And in the case of the applicants in OA 316/2020 and OA 542/2020 we also uphold the actions taken by the respondents in cancelling the initial re-fixing of pay from the date of ante date seniority based on the

initial sanction accorded, publication of necessary Part-II Orders to correct the error and recovering the pay and allowances paid on the basis of the initial sanction.

32. The OAs are, accordingly, dismissed being bereft of merit.

33. No order to costs.

34. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this ^{SL}31 day of October, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

Neha