

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

25.

OA 114/2024

Col Mahesh Kumar Nain (Retd)

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. S S Pandey, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

ORDER

12.01.2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant being aggrieved by the incorrect pay-fixation of his pay in the 6<sup>th</sup> Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage.

2. The applicant in this OA was commissioned in the Indian Army on <sup>06-3-1993</sup> ~~10.12.1994~~. On 04.11.2006, when the recommendations of 6<sup>th</sup> CPC were yet to be implemented, the applicant was promoted to the rank of Lt Col. The implementation instructions for 6<sup>th</sup> CPC were issued vide SAI 2/S/2008 dated 11.10.2008. However, because of the wrong fixation of pay, his pay was fixed much lower than his juniors on account of the fact that the applicant had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008 within the stipulated time.

① Amdt vide order  
dt 15-10-2024

3. We have examined numerous cases pertaining to the incorrect pay fixation in 6<sup>th</sup> 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 12 of the SAI 2/S/2008 dated 11.10.2008. 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 [O.A No.1182 of 2018] decided on 03.09.2021.

4. Similarly, in the matter of incorrect pay fixation in the 7<sup>th</sup> CPC, the issue has been exhaustively examined in Sub Ramjeevan Kumar Singh Vs. Union of India [O.A. No.2000/2021] decided on 27.09.2021. Relevant portions are extracted below:

*"12. Notwithstanding the absence of the option clause in 7<sup>th</sup> 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 7<sup>th</sup> 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 6<sup>th</sup> 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 7<sup>th</sup> 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."*

5. 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* [O.A. No. 868 of 2020 and connected matters] decided on 05.08.2022. In that case, 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 6<sup>th</sup> 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 7<sup>th</sup> 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."*

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

(a) Review the pay fixed of the applicant on his promotion to the rank of Lt Col on 04.11.2006 in the 6<sup>th</sup> CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Thereafter, re-fix the applicant's pay on transition to 7<sup>th</sup> CPC in a most beneficial option.

(c) To revise the applicant's pension and issue a corrigendum PPO accordingly.

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

7. No order as to costs.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[LT. GEN. P.M. HARIZ]  
MEMBER (A)

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

86.

MA 1252/2024 in OA 114/2024

Col Mahesh Kumar Nain (Retd)	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Mr. S S Pandey, Advocate
For Respondents	:	Mr. V Pattabhi Ram, Advocate

WITH

87.

MA 3884/2024 with OA 114/2024

Col Mahesh Kumar Nain (Retd)	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Mr. S S Pandey, Advocate
For Respondents	:	Mr. V Pattabhi Ram, Advocate

CORAM

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

ORDER  
15.10.2024

MA 1252/2024 & MA 3884/2024

These applications alongwith an affidavit has been filed u/s 25 of AFT (Procedure) Rule 2008, by Mr. S.S Pandey, learned counsel for the applicant in the Armed Forces Tribunal (PB) New Delhi seeking modification of the order dt 12.01.2024 passed in OA 114/2024.

2. Learned counsel for the applicant states that these applications have been filed for correcting certain typographical error which is said to have occurred in the order passed by this

Tribunal in OA 114/2024 on 12.01.2024. In the order passed by this Tribunal, we had indicated the Date of Commissioning of the applicant as 10.12.1994 instead of 06.03.1993. Even though this is not a typographical error but it is a date as mentioned by the applicant in the pleadings filed in the OA and for the same we had granted time to the applicant to amend the pleadings for which MA 3884/2024 has been filed. Accepting the same, we direct that the Date of Commissioning of the applicant indicated as 10.12.1994 in the order passed by this Tribunal in OA 114/2024 dt 12.10.2024 be corrected and read as 06.03.1993. With the aforesaid both the MA applications stand disposed of.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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