

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

22.

OA 2104/2018 with MA 2356/2018

JC-760627W Retd Sub/M Tech(SA) Aswani Kumar ... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Srilina Roy, Mr Davesh Vashishta,
Mr. Pradeep Yadav, Advocates
For Respondents : Gp Capt Karan Singh Bhatti, SCGSC

CORAM

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

ORDER
24.10.2024

MA 2356/20218

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay 260 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 2356/2018 is allowed and the delay of 260

days in filing the OA 2104/2018 is thus condoned. The MA is disposed of accordingly.

OA 2104/2018

The applicant JC-760627W Retd Sub/M Tech(SA) Aswani Kumar vide the present OA has made the following prayers:

- "(A) To set aside communication dated 03.10.2017 by IDAS, Office of Additional, CDA, PAO(ORS), EME, Secunderabad vide letter No.LG-30/RTI/JC 760627W/P629 which is contradictory in nature and against the law settled on the subject; and*
- (B) To direct to respondent No.4 to restore his 6th CPC option and the benefits accrued thereof and settle outstanding dues of the applicant.*
- (C) To direct the respondent that arrears shall be paid to the applicant with 12% interest.*
- (D) Any other just and equitable order in the interest of justice may kindly be passed"*

2. The applicant submits that he joined the Indian Army on 23.03.1988 and after successful completion of training he was attested to the force on 14th September, 1989 and on 17th September, 2001 he was mustered to Group X Grade Ist. He was promoted to the rank of Subedar/Master Tech (SA) on 01.10.2012. The applicant further submits

that in the year 2008, the Government decision of the 6th CPC was implemented by the Indian Armed Forces in view of the Policy decision dated 11.10.2008 vide SAI No.1/S/2008 dated 02.08.2008 and the benefit of pay fixation was made available to the personnel of the Armed Forces and as he was posted in difficult terrains, he could only exercise the best option of pay fixation on 18.08.2011 and after a lapse of 05 years i.e. on 05.06.2016, the benefit of 6th CPC was arbitrarily cancelled without any prior intimation or notice to the applicant and it came to the knowledge of the applicant only when his pay slip of the month of May 2016 reflected that ACTORR from 31st December, 2005 for Rs.8,02,200/- has been Credited and Rs.11,08,783/- had been debited to the IRLA. The applicant submits that due to this arbitrary cancellation of his INCR for the period w.e.f. Ist July, 2006 to Ist July, 2012 he was made to suffer severe financial hardship. The applicant further submits that it was only on 24.10.2016, the respondent No. 3 responded to his RTI that the Office of the PAO (ORS), EME Secunderabad (Respondent No.4) vide letter No. LG/30/RTI/JC 760627W dated 19.10.2016 that the applicant had exercised the 6th CPC option vide DOPT Order No.0/0045/005 dated 18.08.2011 after the stipulated

period of 30.06.2011 for exercising the option of 6th CPC in terms of GoI/MoD letter No.IR/HQ/99141/04/AFPCC/1697 /D(Pay/Services) dated 11.12.2013, thus his option to fix his pay as per best option was cancelled. The applicant submits that this wrongful cancellation of his 6th CPC option has caused irreparable financial loss which led to disparity of pay for equal work. It is the submission of the applicant that as he could not exercise the option for fixation of his basic pay on the implementation of the recommendations of the 6th CPC whereby his basic pay has not been fixed as per the most beneficial option in the transition period of the 6th CPC(01.01.2006 to 11.10.2008)) and thus he is receiving lesser pay than similarly placed Army personnel. The applicant submits that though he had exercised the option for fixation of his basic pay as per the SAFI guidelines, however, his option was not acted upon by the respondents on the implementation of the 6th CPC w.e.f. 01.01.2006 due to late submission of option and thus the default option resulted in wrong fixation of his basic pay. The reply dated 19.10.2016 of the respondents to the RTI dated 18.10.2016 of the applicant is to the effect:

Sub: Information under RTI Act 2005 in respect of JC 760627W Sub Aswani Kumar.

Ref: Your letter No. G Tech/RTI/JC 760627/M-1020 dated 18.10.2016

" With reference to the above cited letter regarding the less basic pay in r/o the abovesaid PBOR, it is intimated that the PBOR has exercised 6th CPC option vide DO Pt ii order No.0/0045/005 dated 18.08.2011 which was after the stipulated date of 30.06.2011 fore exercising option for 6th CPC. Hence, the 6th VPV has been cancelled."

3. The applicant further submits that no action was taken by the respondents to resolve the issue of pay fixation in the most beneficial manner and thus the action of the respondents is in violation of the Para 14(b)(iv) of SAI I/S/2008 which stipulates that if no option is exercised by the individual, the PAO(OR) had to fix the basic pay in such a manner that is most beneficial to the individual, and that it is also contrary to the principles of law laid down by the Hon'ble Supreme Court in its pronouncements. The applicant also places reliance on the order of Armed Forces Tribunal (PB), New Delhi in OA 1659/2016 titled *Sub/M Tech(NW) Darshan Singh Vs Union of India & Ors* wherein the Armed Forces Tribunal(PB) has given relief to similarly placed personnel by fixing the pay from the date of promotion that was a more beneficial

option for the applicants thereof. The applicant further submits that the Tribunal has also held in a catena of orders that if no option is exercised by the individual, the concerned authority will regulate and ensure that the more beneficial of the two options is allowed.

4. The respondents through their counter affidavit submit that as per the provision of Para (c) of SAI 1/S/2008 ' if the intimation regarding option is not received within the time mentioned in this SAI, the PBOR(Personnel Below Officer Rank) shall be deemed to have elected to be governed by the revised pay structure with effect from 1st day of January, 2006. However, in view of a catena of judgments of this Tribunal, the proposition of law and the verdicts relied upon on behalf of the applicant, the respondents now do not oppose the prayer made in the instant OA by the applicant.

5. 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.*

6. 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.

7. In *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346 the Hon'ble Supreme Court has laid down that service jurisprudence postulates that all the persons similarly situated should be treated similarly.

8. In the light of the above consideration, we allow this OA 2104/2018 and direct the respondents to:

(a) Review and re-fix the pay of the applicant under the 6th CPC after due verification in a manner that is most beneficial to him by ensuring that the applicant is not drawing less pay than his juniors.

- (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 within three months from the date of receipt of the copy of this order.
9. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(REAR ADMIRAL DHIREN VIG)
MEMBER(A)

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