

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

51.

OA 2217/2023 WITH MA 3568/2024

Sgt Anil Kumar Mauray (Retd) Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. Nawneet Krishna Mishra, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
29.08.2024

MA 3568/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 2217/2023

3. 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 6th Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage. The following prayers made by the applicant in the instant OA reads as under:-

(a) Review the pay fixed of the applicant under the CPC w.e.f. 01.01.2006 and after due verification re-fix his pay in a manner that is most beneficial to him while ensuring that he is not drawing less pay than his course-mates/juniors.

(b) Re-fix the applicant's pay in subsequent rank and thereafter on transition into 7% CPC in the most beneficial manner.

(c) To direct the respondents to pay 12% interest on the arrears accrues to the applicant.

(d) To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case.

4. Upon notice being issued, the respondents have filed the counter affidavit and in Para 4.2 (Page 39) of the same, the respondents have stated as follows:

“ That in reply to Para 4.2 of the OA it is submitted that an scrutiny of the case it is revealed that applicant's junior 912422 Sgt Sumit Ranjan Das has opted for migration to 6th CPC w.e.f. the date of reclassification to LAC, i.e., 01 Oct 2006 and his basic pay was fixed to Rs. 7,490/- as per the option submitted by him. Whereas, the applicant was migrated to 6th CPC on default w.e.f. 01 Jan 2006 and reclassified as LAC on 01 Feb 2006. Accordingly, his basic pay has been fixed to Rs. 7,050/- on 01 Jan 2006 and Rs. 7,370./- on 01 Feb 2006. Hence, no anomaly has been found in fixating of pay as per policy in vogue.”

5. From the above, it is evident that the anomaly in pay between the applicant and his junior, namely, Sgt Sumit Ranjan Das, arose at the time of transition to the 6th CPC. This occurred because Sgt Sumit Ranjan Das opted for pay fixation, whereas the applicant did not. Consequently, the

applicant's pay was fixed on default due to his non-submission of option into the transition to the 6th CPC .

6. 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 applicants' pay is to be re-fixed with the most beneficial option as stipulated in Para 7 of the SAFI 1/S/08 dated 18.10.2008. 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. 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 transitioned 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 PFO 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."

7. Even in cases where an employee does not submit an option when transiting into the 6th CPC, the respondents have a duty to fix the employee's pay in the most beneficial manner possible. Therefore, in the absence of an option, the respondents are required to determine the pay using the most beneficial method. Given that, the applicant's counsel is seeking only this limited relief and in light of the statement made by the respondents in Para 4.2 of the counter affidavit, we direct the respondents to fix the applicant's pay in the most beneficial manner as was directed in the case of *Sub M.I Shrivastava and Ors.*(supra).

8. 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 LAC on 01.02.2006 in the 6th 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 7th CPC and also subsequent promotion(s) accordingly.

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

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

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Ps
OA 2217/2023