

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

7.

OA 3295/2024 WITH MA 3562 AND 3563/2024

Sgt Arun Kumar Sharma (Retd) ..... Applicant  
Rdo Fit & Ors.

Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Aman Bhardwaj, Advocate  
Mr. Pradeep K Ohlayan, Advocate  
For Respondents : Ms. Shagun Shahi Chugh, Advocate

CORAM

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

ORDER  
03.09.2024

MA 3562/2024

For the reasons stated in this application, the same is allowed. The applicants are allowed to join together by filing one single application for redressal of their grievances.

2. The MA stands disposed of.

MA 3563/2024

3. Keeping in view the averments made in the miscellaneous 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 MA is allowed condoning the delay in filing the OA.

**OA 3295/2024**

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

5. The applicants in this OA were enrolled and promoted to the rank of LAC as per details mentioned below:

| S.No. | Particulars of the Applicant                       | Date of Enrollment | Date of Promotion to the rank of LAC |
|-------|--|--------------------|--------------------------------------|
| 1.    | Applicant No.1<br>Ex-Sgt Arun Kumar<br>Sharma      | 16.06.2003         | 01.02.2006                           |
| 2.    | Applicant No.2<br>Ex-Sgt Kalidindi<br>Sudhir Kumar | 16.06.2003         | 01.02.2006                           |
| 3.    | Applicant No.3<br>Ex-Sgt Ravi Prakash<br>Kushwaha  | 16.06.2003         | 01.02.2006                           |
| 4.    | Applicant No.4<br>Ex-Sgt Manab Jyoti<br>Das        | 16.06.2003         | 01.02.2006                           |
| 5.    | Applicant No.5<br>Ex-Sgt Balusa Sridhar<br>Kumar   | 16.06.2003         | 01.02.2006                           |
| 6.    | Applicant No.6<br>Ex-Sgt Koluguri<br>Shivanand     | 16.06.2003         | 01.02.2006                           |
| 7.    | Applicant No.7<br>Ex-Sgt Shabu K                   | 16.06.2003         | 01.02.2006                           |

and when the recommendations of 6<sup>th</sup> CPC were yet to be implemented, they were promoted to the rank of LAC. The implementation instructions for 6<sup>th</sup> CPC were issued vide SAFI 1/S/08 dated 18.10.2008. However, because of the wrong fixation of pay, their pay was fixed much lower than their juniors on account of the fact that the applicants had not exercised the option of how their pay was to be fixed on promotion during the transition period of 01.01.2006 to 18.10.2008 within the stipulated time.

6. 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 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].

7. 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.”*

8. 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."*

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

(a) Review the pay fixed of all the applicants on their promotion to the rank of LAC on 01.02.2006 in the 6<sup>th</sup> CPC, and after due verification re-fix their pay in a manner that is most beneficial to the applicants.

(b) Thereafter, re-fix the applicants' pay on transition to 7<sup>th</sup> CPC and also subsequent promotion(s) accordingly.

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

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

10. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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