

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

OA 648/2023 WITH MA 952/2023

JWO AK Tripathi ..... Applicant

Versus

Union of India & Ors. .... Respondents

For Applicant : Mr. Dhiraj Kumar, Advocate and  
Mr. Tatsat Shukla, Advocate

For Respondents : Mr. Sundeep Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 952/2023

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. The applicant, a JWO Clk/GD, is aggrieved by the incorrect pay fixation under 7<sup>th</sup> Central Pay Commission (CPC), which resulted in continuous financial loss and disadvantage to him.

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4. The applicant was enrolled in the Indian Air Force on 04.05.1995. He was promoted to the rank of LAC on 01.06.1997 and Cpl as on 08.05.2000. He was further promoted to the SGT rank on 01.12.2008 and MACP-III on 08.05.2016. The applicant opted to migrate from 6th to 7th CPC on MACP-III w.e.f 08.05.2016 which was the most beneficial option available to him. Consequently his basic pay was fixed at Rs 43,600/- w.e.f 08.05.2016. The Junior of the applicant also migrated from 6th to 7th CPC on MACP-III on 07.08.2016.

5. It is the case of the applicant that his junior is drawing more pay than the applicant from July 2022. The applicant raised a query in this regard on 05.12.2022 vide ID No. 2022121230054 which was replied to by the applicant by AFCAO dated 16.12.2022. Aggrieved by the reply in the aforementioned AFCAO the applicant filed the present OA.

6. The issue raised in this OA is squarely covered by the decision of AFT, RB, Chennai dated 21.03.2019 in the case of Wg Cdr Harendra Singh Vs. Union of India and Ors. (OA No.254/2018).

7. Further the issue of incorrect fixation of pay has been dealt with by this Tribunal in the case Col. Rajesh Suredia Vs. Union of India and Ors. (OA No.2857/2021) vide its order dated 24.08.2022 and affirmed by the Hon'ble High Court of Delhi vide W.P. (C) No. 5477 of 2024 and also in Sub Ramjeevan Kumar Singh Vs. Union of India and Ors. (OA No.2000/2021) vide its order dated 27.09.2021. The relevant Paras of the judgment read thus:

*"10. On examination of the rules for implementation of the 6<sup>th</sup> and 7<sup>th</sup> CPC it is seen that both CPC implementation instructions mandate that individuals are required to make an option for pay fixation. Where an individual is promoted and an option had not been exercised, 6<sup>th</sup> CPC implementation instructions has a clause for providing the most beneficial option to the individual, the responsibility of which is with the establishment; Para 14 (b) (iv) of SAI 1/S/2008. Strangely such a clause has been omitted from the implementation instructions of 7<sup>th</sup> CPC issued vide Extraordinary Gazette Notification No SRO 9E dated 03.05.2017. Para 14 (b) (iv) of SAI is extracted below.*

*(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.*

*11. Army personnel are often deployed in far flung field and operational areas, where these implementations instructions invariably reach late. Moreover, considering the technicalities involved in understanding and working out options for pay fixation; evaluating the most beneficial option is invariably a difficult task for an average soldier. However, the respective PAOs which deal with pay and allowances are imminently suitable and equipped to undertake such evaluation and inform the soldier. Thus, it is imperative that the 7<sup>th</sup> CPC implementation instructions too has a suitable clause, as in 6<sup>th</sup> CPC, where the establishment is made responsible for working out options and informing the soldier, so that he can make a well-considered choice.*

*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."*

8. We may, however, note the same considerations as dealt with by this Tribunal in the case Sub M.L. Shrivastava and Ors. Vs. Union of India (OA No.1182/2018 decided on 03.09.2021) are applicable for fixation of pay of officers and men of all the three services.

9. In the light of the orders passed in Wg Cdr Harendra

Singh and Sub Ramjeevan Kumar Singh (supra), we allow the present OA and direct the respondents to:

- (a) Review the pay fixed of the applicant under the 7<sup>th</sup> CPC on grant of MACP-III (JWO) w.e.f. 01.07.2016 and after due verification re-fix his pay in a manner that is most beneficial to him.
- (b) To revise the applicant's pension and issue a corrigendum PPO accordingly.
- (c) Pay the arrears within three months of receipt of a copy of this order.

10. No order as to costs.

Pronounced in the open Court on 13 day of September, 2024

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Akc