

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1600/2023

HFL Devender Singh ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. R.S. Chillar, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has claimed the following reliefs:-

- (a) *Issue pass an order or direction of appropriate nature to the respondents to Review and fixed of the applicants Pay under 6 CPC and further on transition to 7 CPC in a manner that is most beneficial ensuring that not drawing less pay/pension than his juniors in terms of Law upheld in Sub ML Srivastava (Retd) and Wg Cdr Rajesh Suredia (Supra); and/or*
- (b) *Issue pass an order or direction of appropriate nature to the respondents to re-fix the Basic pay of the applicant with effect from 01 May 2008 and subsequent fixation accordingly during migration to 7 CPC so than he will not be drawing less pay than his junior ie, 702136 HFL RK Chaudhary; and/or*
- (c) *Direct the Respondents to fix the Applicant Pension as per his revised Basic Pay @ Rs. 74,400/pm instead of Rs. 69,000/pm and arrears as well as difference in retiral benefits with 10% interest; and/or*

- (d) *Quash and Set aside the recovery action initiated by the Respondents vide impugned Order (Annex-A1) by declaring it arbitrary and illegal being contrary to the settled Law by the Hon'ble Apex Court in Syed Abdul Qadir (Supra) and State of Punjab vs Rafiq Masih (Supra) as well as Thomas Denial (Supra) relied upon by this Hon'ble AFT in squarely covered Order placed at Annex-A3; and/or*
- (e) *Ad-interim Ex-parte direction to the respondent, not to proceed with recovery action till pendency of this OA; and/or Any other further relief as deemed appropriate in the case considering the excessive action by Bank against veteran in the interest of justice.*

2. The applicant was enrolled in the Indian Air Force on 14.07.1984 and was released from service on 31.05.2023. He was promoted to the rank of Cpl w.e.f 20.02.1998 and subsequently to the rank of Sgt w.e.f 01.02.1999. He received MACP w.e.f 01.02.2007 and was promoted to the rank of JWO w.e.f 01.05.2008, in the terms reproduced as under:

Rank	Date
Cpl	20.02.1989
Sgt	01.02.1999
MACP-III	01.02.2007
JWO	01.05.2008
WO	01.02.2012
MWO	01.06.2016
HFO	15.08.2022
HFL	26.06.2023

Submissions on behalf of the Applicant

3. It is the case of the applicant that as per the e-Pay Slip for the month of April 2023, the IRLA credits reflect an opening balance of Rs. (-) 1,94,413. After deducting the gross entitlements of Rs. 1,59,243, the total credit is shown as Rs. (-) 35,170. The applicant contends that, subsequent to 31.12.2005, his pay was incorrectly fixed, resulting in his juniors receiving higher pay than him. He is further aggrieved by the unilateral recovery made in this regard.

4. It is submitted by the learned counsel for the applicant that pay of the applicant was wrongly fixed in the 6th CPC as well as 7th CPC w.e.f 01.01.2006 and 01.01.2016, and due to such wrong fixation of increment, the applicant is drawing less pay than his juniors, and has been financially deprived of his legitimate entitlement of pay and allowances.

5. Referring to the pay slips, it is submitted by the learned counsel for the applicant that according to the salary slip dated April 2023 the applicant is drawing a basic pay of Rs. 69,000/- pm whereas his junior MWO Rajesh Kumar Chaudhary is drawing a basic pay Rs.75,200/- pm, thereby, causing huge loss to the applicant.

6. It is argued by the applicant that the respondents have ignored the settled law as held by AFT (PB), New Delhi in O.A. No. 13 of 2014, *Sub Chittar Singh Vs Union of India & Ors* [OA 13/2014; AFT PB; Date of decision: 10.12.2014] wherein it has been settled that it will be the duty of the PAO (OR) to ensure that out of the two options, the more beneficial option be given and, therefore, if one has not submitted the option, even then, it was the duty of the PAO (OR) to at least offer the beneficial provision's option and that fixing of the time limit itself cannot deny the benefit of applicability of beneficial provision to the petitioners.

7. With respect to recovery, it is submitted by the applicant that the recovery action initiated by the respondents should be stopped, and the recovered amount be refunded back to the applicant.

Arguments by the Counsel of the Respondents

8. Per contra, it is submitted by the respondents that the applicant was enrolled on 18.07.2024, and the applicant's basic pay was reduced to Rs. 69,000/- pm as the JCDA(AF) objected to the fact that the applicant cannot be imparted the

simultaneous application of MACP and 6th CPC from the same date.

9. It is the case of the respondents that the grant of MACP on 01.01.2006 is only applicable after migration to 6th CPC. Hence the pay fixed as per option of migration to 6th CPC after grant of MACP has not been accepted by the JCDA(AF), hence the recovery of excess payment was initiated and the basic pay of the applicant was reduced.

Consideration

10. We have given our balanced consideration to the submissions of both parties and have gone through various documents/circulars brought on record. The only issues remain for consideration are whether the applicant's pay has been incorrectly fixed and whether the recovery action initiated by the respondents was justified or not.

11. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the pay of the applicant post the objection of JCDA(AF), which is reproduced as below:

Date	Basic Pay (HFL Devender Singh)
01-JAN-96	3690
01-FEB-96	3760
01-FEB-97	3830
10-OCT-97	3900
01-OCT-98	3970
01-FEB-99	4320
01-FEB-00	4450
01-FEB-01	4490
01-FEB-02	4575
01-FEB-03	4660
01-FEB-04	4745
01-FEB-05	4830
01-JAN-06	9150 (FIXATION)
01-JUL-06	9510
01-JUL-07	10260 (INC+MACP)
01-JUL-08	10700
01-JUL-09	11150
01-JUL-10	11610
01-JUL-11	12090
01-JUL-12	13090
01-JUL-13	13620
01-JUL-14	14170
01-JUL-15	14740
01-JUN-16	52000 (OPTION) (PROMOTION)
01-JAN-17	53600

01-JAN-18	55200
01-JAN-19	56900
01-JAN-20	58600
01-JAN-21	60400
01-JAN-22	62200
15-AUG-22	63100 (Promotion)
01-JAN-23	67000 (Promotion)
26-JAN-23	69000 (Promotion)

12. A cursory look at the aforesaid table, based on the information provided by the respondents, we observe that the pay fixation of the applicant under the 6th CPC was done with effect from 01.01.2006, whereas, the applicant received the benefit of MACP with effect from 01.02.2007. Thus, the objection of JCDA holds no valid ground per se, as the applicant has not been imparted the benefit of fixation of pay under 6th CPC and grant of MACP from the same date, with the same being factually incorrect, as per the records of the respondents itself. Hence, we are of the opinion that the applicant is entitled to his correct fixation of pay.

13. With respect to the comparison of the pay of the applicant vis-a-vis his junior, MWO Rajesh Kumar Chaudhary, we observe that the while the applicant was

granted MACP w.e.f 01.02.2007 and was subsequently promoted to the rank of JWO w.e.f 01.05.2008, the junior with whom the applicant is comparing his pay scale was promoted to the rank of JWO earlier than the applicant w.e.f 01.05.2005. Thus, as far as the case of the applicant with respect to his junior getting higher pay than the applicant is concerned, we find no legal ground to support the aforesaid contention of the applicant, and hence, the contention is legally untenable.

14. Moving further, with respect to the recovery, we find that the applicant was engaged in the trade of ACHGD, which, as per MoD Letter No. 1(4)/2012/D(Pension/Policy) dated 08.03.2018, is categorized under Group IV. This group was subsequently equated to Group Y. The relevant provisions of the said letter are extracted below:

2. It has been brought to the notice of the Ministry that revision of pension in respect of three trades of Air Force viz. ACH GD, Catering Assistant and MT Driver is being carried out in Group Z instead of Group Y inspite of upgradation of these trades w. e. f. 10.10.1997.

3. The anomaly raised by Air HQ has been examined by the Ministry and it is decided that revision of under-mentioned trades be carried out as per pension revision tables meant for Group Y under this Ministry's letter No. PC:

Trade	w.e.f 10.10.97
ACHGD, Catering Asst and MTD	Pay Group IV equated to Group Y

15. At this moment, we find it pertinent to refer to the observations of the Hon'ble Apex Court judgment in the case of *State of Punjab vs Rafiq Masih*, [(2014) 8 SCC 883], reproduced as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery, if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover." (emphasis supplied)

16. On a perusal of the aforesaid observations of the Hon'ble Supreme Court in *Rafiq Masih (supra)*, we are of the

opinion that the recovery in question could not be affected, and in contravention of the principles laid down in *Rafiq Masih (supra)*, thus, the respondents are obligated to refund the amount recovered from the applicant's account, specifically with no fault being attributed to the applicant in the instant case.

17. On a perusal of the records pertaining to fixation of pay, we find that the applicant's pay upon transition under the 7th CPC has also not been fixed in the most beneficial manner. It is relevant to note that this Tribunal in a catena of judgements concerning incorrect pay fixation under the 6th CPC for Officers/JCOs/ORs, often arising due to the non-exercise of the option within the stipulated time frame or the failure to exercise the option altogether, has consistently directed that the applicants' pay to be re-fixed in accordance with the most beneficial option, as outlined in Para 7 of SAFI 1/S/08 dated 18.10.2008.

18. The issue of incorrect pay fixation and ensuring the most beneficial option for JCOs/ORs has been comprehensively addressed in the case of *Sub M.L. Shrivastava and Ors. v. Union of India [AFT PB; O.A. No.*

1182/2018; Date of decision: 03.09.2021] Similarly, the issue of incorrect pay fixation in the 7th CPC has been exhaustively examined in *Sub Ramjeevan Kumar Singh Vs. Union of India [AFT PB; O.A. No. 2000/2021; Date of decision: 27.09.2021]*.

19. Concluding in the light of the aforesaid observations, we issue following directions to the respondents:

- (a) Respondents shall stop the recovery with immediate effect from the date of this order, if continuing.
- (b) Respondents shall refund the recovered amount to the applicant.
- (c) Review the pay of the applicant and re-fix the same on transition to 6th and 7th CPC, along with all subsequent promotion(s) after due verification in a manner that is most beneficial to the applicant.
- (d) The applicant's pension shall be revised and a corrigendum PPO issued accordingly, which shall include arrears.

20. Consequently, the aforesaid OA 1600/2023 is allowed in terms of aforesaid direction, and the directions shall be

given effect to within three months of pronouncement of this order, failing which applicant shall be entitled to an interest of 8% per annum, on the recovery amount as well as the arrears.

21. No order as to costs.

22. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on ^H16 day of December, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN C.P. MOHANTY)
MEMBER (A)**

/Akc/