

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

137.

OA 1652/2020 WITH MA 375/2021

Ex Sgt Rajesh Kumar Gupta ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

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

ORDER  
16.10.2024

MA 375/2021

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. MA stands disposed of.

OA1652/2020

2. Being aggrieved of the order of the respondents by placing him in lower pay band causing financial loss to him, the applicant by invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal, has filed this application and the reliefs claimed in para 8 read as under:

- (a) *To direct the respondents to fix the anomaly in the basic pay of the applicant as per option beneficial to the applicant.*
- (b) *To direct the respondents to step up the basic pay of applicant at par with his course mates and fix the salary accordingly.*

- (c) *To direct respondents to step up the basic pay of applicant at par with his course mates and fix the pension accordingly.*
- (d) *To direct the respondent to pay 12% interest on the arrears accrue to the applicant."*

2. However, today when the matter is taken up, learned counsel for the applicant submitted that the applicant would only be pressing for the relief as contained in prayer Clause 8(a) of the OA. It is further submitted by learned counsel for that the applicant was discharged from service on 31<sup>st</sup> December, 2018.

3. A perusal of the pleadings indicates that the benefit of pay fixation in 7<sup>th</sup> CPC was not granted to the applicant on account of the fact that he did not exercise the option. This issue has already been decided by us in the case of Ramjeevan Kumar Singh Vs. Union of India and Ors. (OA No.2000/2021) decided on 27.09.2021, relevant portion of which is quoted herein 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."*

4. In the light of the above, we allow this OA and direct the respondents: -

- (a) To re-fix the applicant's pay on transition into 7<sup>th</sup> CPC as on 01.01.2016 in the most beneficial manner while ensuring that he is not drawing less pay than his juniors.

- (b) To revise the pension of the applicant and issue corrigendum PPO accordingly.
- (c) To pay the arrears within three months of this order.
5. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

/vks/