

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

**OA 1862/2019**

<b>Sgt Rash Bihari Rai (Retd) &amp; Ors.</b>	.....	<b>Applicant</b>
<b>Versus</b>		
<b>Union of India and Ors.</b>	.....	<b>Respondents</b>

<b>For Applicant</b>	:	Mr. Manoj Kumar Gupta, Advocate
<b>For Respondents</b>	:	Mr. Anil Kumar Gautam, Sr. CGSC

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicants who are retired Sgts of the Indian Air Force, and are aggrieved by the incorrect fixation of their pay in the 6<sup>th</sup> and 7<sup>th</sup> CPC resulting in their pay being fixed lower than their course-mates and juniors. The applicants have made the following prayers:

- (a) To direct the Respondent to Re-fix pension of the applicants considering his basic pay @ Rs. 41,600 as on Nov 2018; and

(b) To direct the Respondent to Re-fix the Pay of both the applicants from 01 Jan 2006 and again on 01 Jan 2016 and calculated arrears accordingly.

(c) To direct the Respondent to release the consequential admissible arrears on account of pay, pension and retiral benefits as per the revised pay and pension with 10% interest.

(d) Pass an order for incurring costs/ expenditures in any form on account of this application are to be borne solely by the respondents, which would act as a deterrent because despite several verdicts by Hon'ble Apex Court/AFTs against the similar recommendations/provisions pertaining to fixation of pension of HCOs during the regime of Sixth CPC, the same have again been enforced in Seventh CPC.

(e) Any other suitable order as deemed fit based on the merit of the case may kindly be passed.

### **Brief Facts of the Case**

2. Both applicants were enrolled in the Indian Air Force on 04.02.1999 in the trade of Clk PA and were promoted from time to time. On realising that there was a disparity in his pay fixation in the 6<sup>th</sup> CPC, applicant No.2, on 15.09.2015, raised a complaint on the Departmental website that his entry mate Sgt

Prem Kumar Clk PA was drawing more basic pay than him. The Department replied on 16.09.2015 stating that Sgt Prem Kumar was senior to the applicant in his previous rank of LAC. Applicant No.2 then submitted another online complaint dated 24.06.2017 and furnished the personal particulars of six of his entry mates who were drawing more basic pay than the applicant. The Department replied that his entry mates' pay had been stepped up as they had sought a step up earlier in comparison to one Sgt J.P. Arya which had been permitted. The Department also stated that it was, however, not possible to now step up the applicant's pay as Sgt J.P. Arya had since then benefitted from a MACP financial upgrade. Accordingly, the applicant was advised to submit the details of any junior who did not have a MACP financial upgrade and was yet getting more pay than the applicant.

3. The pay anomaly continued, and no redressal was granted in spite of repeated visits to the accounts section and raising the issue in the Departmental channels, and both applicants were finally discharged from service on 28.02.2019. After retirement, applicant No.1 submitted a representation dated 08.03.2019 (Annexure A-1) regarding the pay fixation anomaly. Aggrieved by the fact that the applicants have not received any reply, they have filed the OA.

### **Argument by the Counsel for the Applicants**

4. The counsel reiterated the service particulars of both the applicants and emphasised that due to the incorrect pay fixation in both 6<sup>th</sup> and 7<sup>th</sup> CPC, the applicants were getting less pay than their entry mates and juniors. The counsel then added that as a result of incorrect pay fixation in the 6<sup>th</sup> and 7<sup>th</sup> CPC, they now drew less pension than their entry mates and some juniors.

5. The counsel further elaborated that pay parity existed in the 5<sup>th</sup> CPC regime till 31.12.2005 and that the disparity arose during the pay fixation in the 6<sup>th</sup> CPC, when the concept of pay band had been abolished and the concept of grade pay was introduced. The counsel then took us through the two complaints dated 15.09.2015 and 24.06.2017 raised by applicant No.2 and the reply of the respondents (Annexure A-2 Colly).

6. The counsel then drew our attention to the pay slips of the two applicants and their entry mate/junior (Annexures A-3 and A-4) and elaborated that while the basic pay of the applicants was Rs.40,400/- the basic pay of the entry mate and the junior was Rs.41,600/-. He further emphasised that the disparity of Rs.1,200/- p.m. had caused major financial loss on the applicants. Further since the pension had been fixed with reference to the last pay drawn,

the applicants were getting less pension than their entry mates/juniors causing a continued financial loss to the applicants.

7. The counsel then relied on the following judgments:

(a) Apex Court judgement dated 09.09.2008 in the case of **Union of India & Another** Vs. **Maj Gen SPS VAINS (Retd) & Others**, Civil Appeal No.5566/2008, SLP (Civil) No.12357/2006..

(b) Apex Court judgement dated 06.05.2015 in the case of **Union of India & Others** Vs. **Kartar Singh**, Civil Appeal D No.39279/2013.

(c) AFT (RB), Jaipur, order dated 03.02.2016 in the case of, **Hony Lt Bharat Singh Kulhar** Vs. **Union of India & Others**, OA 85/2012 (Annexure A-5).

(d) AFT (PB) order dated 18.07.2018 in OA 811/2017, **Ex Sub & Hony Lt. Ashok Kumar** Vs. **Union of India and Others** (Annexure A-6).

### **Argument by the Counsel for the Respondents**

8. The counsel reiterated the details of the case and emphasised that the applicants were seeking re-fixation of his pay in the 6<sup>th</sup> and 7<sup>th</sup> CPC, on the premise that the incorrect pay fixation had

resulted in the applicants' basic pay being less than their entry mates and juniors.

9. The counsel then drew our attention to the two online complaints filed by applicant No.2 and the Departmental replies to these complaints. Referring to the second complaint dated 24.06.2017, the counsel elaborated that the applicant had submitted the particulars of six NCOs who were getting more pay than the applicant. Further referring to the reply to this complaint, the counsel stated that the pay of those referred to, had been stepped up earlier based on their individual representations with reference to Sgt J.P. Arya. The counsel further elaborated that Sgt J.P. Arya had since been granted a MACP financial upgrade on 06.02.2016 which was effective as on 01.09.2008 and, therefore, the applicant's pay cannot be similarly stepped up with reference to Sgt J.P. Arya. He further added that as per the MoD policy letter dated 03.06.2011, no stepping up of pay in the pay band or grade pay was admissible with regard to a junior getting more pay than a senior by virtue of a financial upgrade under MACP scheme.

10. Further elaborating on the particulars of Sgt J.P. Arya, the counsel stated that this NCO was enrolled on 17.07.1996 in a Technical trade and that due to his inability to pass the technical

exams, he had been re-mustered as a Clk PA which was a non-technical trade and finally became a soldier on 16.11.1999. He was then promoted as LAC on 01.07.2001. The counsel further elaborated that applicant No.1 had been enrolled on 04.02.1999, was attested on 15.02.2000 and later promoted LAC on 01.09.2001. He emphasised that the Sgt J.P. Arya was thus senior to the applicant in his LAC classification.

11. The counsel further added that the pay of the NCOs referred to in the complaint dated 24.06.2017 had been stepped up in Sep 2014 based on the 'Senior/Junior Performa' submitted by them in reference to the pay of Sgt J.P. Arya fixed in the rank of Corporal (Cpl) on as on 01.07.2009. He further added that the applicant too had submitted 'Senior/Junior Performa' in Jul 2014 and the requisite time bar sanction was issued in Jun 2016. However, since Sgt J.P. Arya had been granted a MACP financial upgrade in Feb 2016, the time bar sanction granted to the applicant was objected to by JCDA (AF) and was, therefore, withheld. The counsel further added that the basic pay of another retiring NCO whose pay had been erroneously stepped up in relation to Sgt J.P. Arya after he had been granted MACP had been reduced too.

12. The counsel concluded that the pay of the applicant had been correctly fixed and that their plea for revision based on comparison to another NCO who has been granted a MACP financial upgrade was not permissible. The counsel, thus, prayed that the OA be rejected.

### **Consideration**

13. We have heard both sides at length and the issue to be considered are:

(a) Whether the pay of the applicants has been fixed correctly in the 5<sup>th</sup> CPC and on transition to 6<sup>th</sup> CPC.

(b) Whether the applicants are entitled to step up of their pay as they were drawing less pay than their entry mates and juniors.

14. We are, therefore, proceeded to examine the following issues:

(a) Pay fixation in the 5<sup>th</sup> CPC and transition to 6<sup>th</sup> CPC.

(b) Stepping up of pay.

### **Pay Fixation and Transition**

15. Applicant No-1 was enrolled on 04.02.1999, was re-classified as LAC on 01.09.2001 and was subsequently promoted to the rank of Cpl on 01.03.2004. Based on the MoD letter dated 08.05.2003, armed forces personnel who were promoted on or after 01.01.1996

had an option to get their pay fixed in the higher rank from the next date of increment in the lower rank. As seen from the payment details submitted by the respondents, having been re-classified as LAC on 01.09.2001, his annual increments were subsequently paid on 01.09.2002, 01.09.2003 and at the time of his promotion in March 2004 it was due on 01.09.2004. Thus, on being promoted to the rank of Cpl, his pay in the higher rank could be fixed from the date of promotion (01.03.2004), or from the date of his next increment (01.09.2005). We have verified both options and we find that fixing his pay in the rank of Cpl from his date of promotion is more beneficial to him on his transition to 6<sup>th</sup> CPC as he is then entitled to an additional increment on his pay being fixed in the 6<sup>th</sup> CPC. The Table showing the comparative calculation is given below:

Ser	Date	Event	Pay fixation – Date of promotion	Pay fixation – Date of next increment
(a)	04.02.1999	Mustered	3250	3250
(b)	01.09.2001	Reclassification - LAC	3650	3650
(c)	01.09.2002	Increment	3710	3710
(d)	01.09.2003	Increment	3770	3770
(e)	01.03.2004	Promotion – Cpl Pay fixation in higher grade from date of promotion	3990	
(f)	01.09.2004	Pay fixation in higher grade of Cpl from DNI		3890 (3700+ two increments of Rs.60 each)

Ser	Date	Event	Pay fixation – Date of promotion	Pay fixation – Date of next increment
(g)	01.03.2005	Increment	3970	
(h)	01.09.2005	Increment if pay in higher grade on promotion from DNI		3970 (Basic of Cpl 3900 + 70 increment as Cp)
(i)	31.12.2005	Last pay in 5 <sup>th</sup> CPC	3970	3970
(j)	01.01.2006	Pay fixation – 6 <sup>th</sup> CPC	7520  3970 + one addl increment of 70 = 4040 4040x1.86 = 7514 Rounded off = 7520	7390  3970 x 1.86 = 7384 (no addl increment) Rounded off = 7390
(k)	01.07.2006	Increment	7820  (7520+GP 2400) = 9920 Increment 3% of 9920 = 297 BP=7520+297 =7817 Rounded off = 7820	7690  (7390 + GP 2400) = 9790 Increment 3% of 9790 = 293 BP = 7390+293 =7683 Rounded off = 7690

### **Stepping-up Pay**

16. Applicant No.2 had sought stepping up of his pay for the first time vide his online complaint dated 18.09.2015. This was followed by the second online complaint dated 24.06.2017, wherein the applicant No.2 had furnished the details of six NCOs who were their entry mates and were drawing more pay than the applicants. The

applicant was then informed that the six NCOs had submitted their applications for stepping up their pay in 2014 and accordingly their pay have been stepped up in comparison to a junior NCO, Sgt J.P. Arya. However, since Sgt J.P. Arya, himself had already been granted MACP financial upgrade, the applicants were now no longer entitled to seek step up of pay with respect to Sgt J.P. Arya.

17. We have examined the record pertaining to the stepping up of pay of the six NCOs and grant of MACP financial upgrade to Sgt J.P. Arya. It is seen from the records that Sgt J.P. Arya was entitled to a MACP financial upgrade as on 01.09.2008. However, due to certain administrative delays this was granted only in Feb 2016. From the records submitted it is seen that Sgt J.P. Arya was granted a MACP financial upgrade with effect from 01.09.2008 based on the authority AIR HQ/C40651/10/PA(CPC) dated 23.09.2015. This was promulgated vide Personal Occurrence Report (POR) No AIRHQ RKP\51\2015\Occ No-21 and the arrears were paid in the payslip of Feb 2016.

18. In the intervening period, the six NCOs had submitted application in Feb 2014 for stepping up of their pay in relation to Sgt J.P. Arya who was their junior, and who in Feb 2014 was drawing a basic pay of Rs.10,900/- and grade pay of Rs.2,800/-. In

comparison to this, the six NCOs who were senior to Sgt J.P. Arya were only drawing a basic pay of Rs.10,610/- and grade pay of Rs.2,800/-. Moreover, with respect to the pay drawn on the last day in the lower rank of Cpl, Sgt JP Arya as Cpl on the last day had drawn Rs.9,750/- while the six NCOs had drawn Rs.9,490/-.

19. As seen from the records since Sgt JP Arya was yet to be granted the MACP upgrade, the applications of six NCOs were admitted and their pay was stepped up to a basic pay of Rs.9,040/- as on 01.07.2009, at par with the pay of Sgt J.P. Arya by Aug 2014. It was only subsequently that in Feb 2016 that Sgt J.P. Arya was granted a MACP financial upgrade @ Rs.8,710/- as on 01.09.2008.

20. It has been fairly submitted by the respondents in their additional affidavit dated 06.10.2022 that the applicants here had submitted their applications for stepping up of their pay in Jul 2014. The comparative difference in pay between the applicants and Sgt J.P. Arya too was similar to the difference as in the case of the six NCOs. In that, in Jul 2014 the applicants as Sgts were drawing a basic pay of Rs.10,610/- and grade pay of Rs.2,800/-, where as Sgt J.P. Arya was drawing a basic of Rs.10,900/- and grade pay of Rs.2,800/-. Also that the applicants on the last day in the lower rank of Cpl had drawn Rs.9,490/-, whereas Sgt J.P. Arya as Cpl on the

last day had drawn Rs.9,750/-. The applications were processed and the time bar sanction was finally granted vide Air HQ letter No Air HQ/ 25832/1/D Accts(P&A) dated 06.06.2016. However, when the case was forwarded for financial sanction, the applicants' cases were objected to by the JCDA (AF) in terms of MoD letter dated 03.06.2011 which at Para 9 states that:

*"9. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme."*

21. It was thus in the light of this objection by JCDA (AF) that the applicants were denied stepping up of their pay at par with their entry mates, whose pay had been earlier stepped up with reference to Sgt J.P. Arya who was their junior. Though the applicants had submitted their application for stepping up in Jul 2014 itself, they were denied the step up only because their time barred sanction was inordinately delayed and was finally granted in Jul 2016, by when Sgt J.P. Arya had been granted MACP upgrade and the authorities invoked Para 9 of MoD letter dated 03.06.2011.

22. In this case it is pertinent to note that due to certain administrative oversight and delay Sgt J.P. Arya himself was granted the MACP financial upgrade due to him in Sept 2008, only in Feb 2016. It is the plea of the respondents that since time bar

sanction was only accorded in Jun 2016 after Sgt J.P. Arya had been granted the MACP upgrade, the applicants were no longer entitled for step up in relation to Sgt J.P. Arya. As admitted by the respondents, the applicants had submitted their applications in Jul 2014, merely the few months after the six NCOs had submitted their applications in Feb 2014. For unexplained reason the time bar sanction in the case of the applicants was granted only in 2016.

23. In our considered opinion, since the initial applications of the applicants had been submitted in Jul 2014, there was no reason for the Respondents to deny them the benefit of an appropriate step up only because the time bar sanction *TOOK TWO YEARS*. This, however, cannot be reason enough to deny the applicants their legitimate due. The pay of the applicants here too should have been accordingly stepped up, just as the six NCOs whose pay had been stepped up based on their applications of Feb 2014.

24. Given the complexities of pay fixation and interpretation of the pay and allowances rules, it is indeed difficult for individual soldiers to identify anomalies in their pay and allowances and seek corrective action in time. We have examined numerous cases of pay fixation and have held that it remains the responsibility of the establishments to monitor the pay and allowances of the soldiers

and *suo moto* initiate necessary action to re-fix/ step up the pay, as and when required, without waiting for individual soldiers to submit applications. In this case too, when the first step up was granted to the entry mates of the applicants, the Accounts Office should have automatically checked for anyone else who were similarly eligible for a step up, and should have taken necessary departmental action to step up their pay, without waiting for individuals to apply seeking relief. We emphasise that it is the responsibility of the Respondents Service authority to look after the interest of the subordinate personnel.

25. Accordingly, the OA is allowed and we direct the following:

(a) Respondents to step up the pay of the two applicants at par with Sgt J.P. Arya as on 01.07.2009.

(b) The subsequent pay of the applicants be re-fixed accordingly including their transition into the 7<sup>th</sup> CPC and retirement benefits, while ensuring that they are not drawing less pay than any junior.

(c) Revise the applicants' pension and issue corrigendum PPO accordingly, and pay the arrears within three months of this order, failing which, pay an interest of 6% till final payment.

(d) Respondents to review their internal process and issue necessary instructions for the Accounts Branch to automatically review pay fixation and initiate action to automatically step up/refix pay , without waiting for individuals to forward individual applications for requisite step up.

26. No order as to costs.

27. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 12<sup>th</sup> day of July, 2024.

**(JUSTICE RAJENDRA MENON)**  
**CHAIRPERSON**

**(LT GEN P. M. HARIZ)**  
**MEMBER (A)**

Neha