

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1924/2024

SGT Shiv Kumar Kharwar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Nawneet Krishna Mishra, Advocate

For Respondents

: Sgt SS Tomar, AR, Legal Cell

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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

31.05.2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, who is aggrieved by the incorrect fixation of his pay in the 6th Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage. The applicant has made the following prayers:

“(a) To direct the respondents to rectify basic pay fixation anomaly in salary of the applicant by re-fixing his basic pay as per the most beneficial option to applicant on implementation of 6th CPC and subsequent, on the principles

affirmed by Hon'ble Tribunal in OA 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors..

(b) To direct to respondents to make payment of arrear of salary accrue to him on re-fixation of his basic pay, in accordance with most beneficial option, as per Hon'ble Tribunal order in OA 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.

(c) To direct the respondents to pay interest @12%p.a. on the arrears accrue to the applicant on arrears of payments on refixation of basic pay..

(d) To pass other appropriate order or grant relief, which this Hon'ble Tribunal deems fit and proper under facts and circumstances of the case, anytime during the proceedings of this case."

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant was enrolled in the Indian Air Force on 28.06.2005 and was promoted to the rank of LAC on 01.02.2007 in the transition period of 6th CPC and was further promoted to the rank of CPL on 01.02.2010 and was again promoted to the rank of Sergeant(Sgt) on 04.07.2018. It is the submission of the applicant that he could not exercise his option for fixation of his basic pay on the implementation of the 6th CPC in time and thus his basic pay has not been fixed as per beneficial option on promotion to the rank of LAC on 01.10.2006 in the transition period of 6th CPC(01.01.2006 to 11.10.2008)) and thus he is receiving lesser pay of Rs.1400/- p.m. than his similarly placed Airmen i.e. 912609-T Sgt Jugendhar Mavudelli who had exercised Option-II. The applicant submits that his basic pay is Rs.48,200/- as

per April, 2024 pay slip, whereas the basic of his similarly placed Airman i.e. 912609-T Sgt Jugendhar Mavudelli is Rs.49,600/-. The applicant submits that his pay was wrongly fixed while implementing the recommendations of the 6th CPC as well as in the 7th CPC w.e.f. 01.01.2006 and 01.01.2016. The applicant submits that he could not exercise his option as per the policy of SAI Guidelines within the stipulated period of time and this default selection of option resulted disadvantageous to him and this arbitrary action on the part of the respondents is causing huge financial loss to him and the applicant is being deprived of his legitimate entitlement of equal pay for equal work. The reply dated 19.03.2024 of the respondents to the representation dated 08.03.2024 of the applicant is to the effect:

“ OIC Cell-APW Reply:

It is intimated that pay had been correctly fixed at all stages as per the policy in vogue. The option at the time of 6th CPC and 7th CPC was made available to all eligible air warriors. However, the applicant had not exercised the migration in 6th CPC, which has been resulted in his pay being lesser than his quoted junior. Further, exercising option is a time bound activity and no window is now open to exercise such option.”

The applicant further submits that no action was taken by the respondents to resolve the issue of pay fixation in the most beneficial manner and thus the action of the respondents is in violation of the para 14(b)(iv) of SAI 1/S/2008 which stipulates that if no option is exercised by the individual, the PAO(OR) had to fix the basic pay in which a manner that is most beneficial

to the individual and is also contrary to the principles of law laid down by the Hon'ble Supreme Court in its pronouncements. The applicant also places reliance on the order of Armed Forces Tribunal (PB), New Delhi in OA 1182/2018 titled *Sub Mahendra Lal Shrivastava Vs Union of India & Ors* wherein the Armed Forces Tribunal(PB) has given relief to similarly placed personnel by fixing the pay from the date of promotion that was a more beneficial option for the applicants thereof. The Tribunal has also held in a catena of orders that if no option is exercised by the individual, the concerned authority will regulate and ensure that the more beneficial of the two options is allowed.

4. It is essential to observe that vide the order dated 03.09.2021 in OA 1182/2018 titled *Sub M. L. Srivastava & Ors Vs Union of India & Ors.*, the Armed Forces Tribunal(PB), New Delhi has held that it is the responsibility of the respondents and the service authority to look after the interests of its own subordinate personnel and directed the respondents to review the pay and allowances of the applicants therein after due verification and re-fix their pay under the 6th CPC in a manner that is most beneficial to the applicants and thereafter re-fix the pay in all subsequent ranks and on transition to 7th CPC.

5. The respondents fairly do not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

6. We have examined numerous cases pertaining to the incorrect pay fixation in 6th 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 petitioners' pay is to be re-fixed with the most beneficial option as stipulated in Para 14 of the SAI 1/S/2008 dated 11.10.2008. The matter of incorrect fixation of pay 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. Relevant paras for the purpose of decision in this matter are quoted below:

"24. Having heard all parties at length, the main issue before us is whether the respective PAO(OR)s who are the Respondent office responsible for all matters of pay and allowances of personnel below officers' rank are justified in arbitrarily fixing the pay as on 01.01.2006, without examining the most beneficial option for each individual while fixing the pay; irrespective of whether the option was exercised or not exercised, or was exercised late.

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30. *In all the three cases, the applicants have been promoted to the next rank after 01.01.2006 and prior to the issue of SAI No 1/S/2008 dated 11.10.2008. Under normal circumstances, the applicants ought to have exercised their option for pay fixation as given in Para 8 and 14 (b) of the SAI. There is no dispute that the time laid down for exercising the option was initially three months from the date of issue of the SAI and that this was further extended to 31.03.2011 vide Corrigendum to SAI dated 21/12/2010. The period was further extended to 30.06.2011 vide MoD letter dated 11.12.2013. The letter dated 11.12.2013 was disseminated to the environment vide AG's Branch Letter dated 12.12.2013.*

31. *It is also undisputed that if the applicants by default, are to be in the new pay scale as fixed with effect from 01.01.2006, they would be in a disadvantageous position throughout their service tenure and on retirement/ transition to 7th CPC. Moreover, it is absolutely reasonable to assume that no sane person will knowingly put himself in a disadvantageous position in service and will refuse to accept a beneficial pay scale and opt for the new pay scale that is disadvantageous.*

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38. *In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out and adopted for each individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement. This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others*

who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the issue for the serving soldiers, many of whom may not be knowledgeable about the intricacies of these calculations, in the full knowledge that that no one will ever knowingly opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.

39. *In view of the above, the three OAs under consideration are allowed and we direct the Respondents to:-*

- (a) *Review the pay fixed of the applicants and after due verification re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.*
- (b) *Thereafter re-fix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.*
- (c) *Re-fix all pensionary and post retiral benefits accordingly.*
- (d) *Issue all arrears and fresh PPO where applicable, within three months of this order and submit a compliance report.*

40. *In view of the fact that there are a large number of pending cases which are similarly placed and fall into Category A or B, this order will be applicable in rem to all such affected personnel. Respondents are directed to take suo moto action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.*

7. The issue pertaining to pay fixation in 6th CPC in respect of Officers/JCO/OR has been examined in numerous cases by this Tribunal. Similar considerations were applicable for pay fixation of officers (*Lt.Col. Karan Dusad Vs Union of India & Ors*(OA No.868 of 2020 and connected matters) decided on 05.08.2022.

8. In *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346 the Hon'ble Supreme Court has laid down that service jurisprudence postulates that all the persons similarly situated should be treated similarly.

9. In the light of the above consideration, we allow this OA and direct the respondents, to:

(a) Review and re-fix the pay of the applicant under the 6th CPC after due verification in a manner that is most beneficial to him by ensuring that the applicant is not drawing less pay than his juniors.

(b) Re-fix the applicant's pay on transition into 7th CPC as on 01.01.2016 in the most beneficial manner while ensuring that the applicant is not drawing less pay than his juniors.

(c) Pay the arrears within three months from the date of receipt of the copy of this order.

10. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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