

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

OA 1926/2024

Gp Capt V N Rao  
Versus  
Union of India & Ors.

... Applicant  
... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

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 6<sup>th</sup> Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage. The applicant has made the following prayers:

*“(a) To direct the respondents to resolve the anomaly in the pay of the applicant as per most beneficial option.*

*(b) Direct to respondents to fix the basic pay of the applicant and fix pay in a manner that is most beneficial to the applicant and other allowances w.e.f. 01.01.2006(VIth CPC), 28.11.2006(Wg Cdr), 01.01.2016(VIIth CPC) & 07.01.2017(Gp. Capt)*

*(c) To direct the respondents to pay interest @12%p.a. on the arrears accrued to the applicant.*

*(d) To pass any other appropriate order or relief, which this Hon'ble Tribunal deems fit and proper anytime during the proceeding of this case."*

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

3. The applicant was commissioned in the Indian Air Force on 28.11.1994 and was promoted to the rank of Wing Commander on 28.11.2006 and later on as Group Capt. on 07.01.2017. It is the submission of the applicant that his pay was wrongly fixed while implementing the recommendations of the 6th CPC as well as in the 7<sup>th</sup> CPC w.e.f. 01.01.2006 and 01.01.2016 respectively. The applicant submits that he was not guided properly to choose the option nor was he aware of the beneficial option at the time of filling of form of implementation of Pay Commissions and even on promotion and thereby due to such wrong fixation of increment, the applicant is drawing lesser pay as compared to his coursemates and juniors. The applicant submits that he is suffering huge financial losses since 2006 and 2016 due to the fault on the part of the respondents and his representation dated 14.03.2024 requesting to resolve the issue of pay anomaly was replied by the respondents vide letter No.AFND(RC)2038/1/OPS/ACCTS/XII dated 05.04.2024 wherein the respondents have stated that due to non-exercise of Option-II by the applicant to revise his pay as per the recommendations of the 6th CPC, the applicant is drawing lesser pay as compared to his coursemates. The applicant submits

that his basic pay was fixed at Rs.2,09,600/- whereas the pay of his coursemate Gp. Capt SVK Pillai was fixed at RS.2,15,900/- and thus there is a gross difference of Rs.6,300/- p.m. 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 05.04.2024 of the respondents to the representation dated 14.03.2024 of the applicant is to the effect:

*"2. As per the provisions of SAFI 2/S/08, pay of Air Force Officers was revised with effect from 01 Jan.06, however, the orders were issued on Oct.2008. Further, an option was given to all the Officers who have been promoted to next higher rank during the intervening period from 01 Jan. 06 to Oct.2008, to submit the option form to receive the 6<sup>th</sup> CPC awards from a later date (i.e. from date of promotion) if beneficial. The late date for the receipt of such option form at AFCAO was within three months from the date of notification of SAFI 2/S/08 (i.e. 218 Oct.08)*

*3. GOI, MoD had further extended the date for submission of option to 30 Jun 2011 from 31 Mar 11 vide letter No.Air HQ/99141/AFPC/1697/D(Pay/Services) dated 11 Dec.13. However, on scrutiny of the instant case, it is revealed that, you have not submitted any Option Form to AFCAO till date to receive the stipulated 6<sup>th</sup> CPC benefits and non-submission of any Option automatically invokes implementation of Option 1 (i.e. revised pay with effect from 01 Jan.2006), whereas, Option II was opted by Gp. Capt. SVK Pillai(23357-F)AE(L), which resulted of lesser pay by you.*

*4. With regard to judgement of AFT(RB), Chennai in respect of Wg Cdr Harendra Singh (Now Gp Capt) vs LoI & Others vide OA No..254/2018, the remarks of Dte of Accts are: "it was case 'in personam' and further, on the basis of this judgement, a case was taken up with DMA to extend the relief to all cases, which DMA vide their letter No.1(14)/2019/D(pay/Services) dated 21 Jan. 21, has not been agreed upon stating that, on the basis of a few orders of AFT, the issue cannot be generalised."*

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 I/S/2008 which stipulates that if no option is exercised by the individual, the PAO(OR) had to fix the basic pay in 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 1132/2018 titled *Sub Mahendra Lal Shrivastava Vs Union of India & Ors* and on the order of the Tribunal in OA 1923/2017 in the case of *Wg Cdr. Bharat Malik 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 also held 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 08.07.2022 in OA 1923/2017 in *Wg Cdr. Bharat Malik 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 6<sup>th</sup> 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 7<sup>th</sup> 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 6<sup>th</sup> 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 Officers has been exhaustively examined in the case of *Wg Cdr. Bharat Malik Vs Union of India & Ors.* decided on 08.07.2022 in OA 1923/2017. Relevant paras for the purpose of decision in this matter are quoted below:

7. Having heard both sides at length, the only issue to be decided is whether the AFCAO, the implementing agency, even in the absence of an option certificate from the applicant, should have examined the most beneficial option and accordingly fixed the pay of the applicant.

8. The case of the applicant here is squarely covered by OA 254 of 2018, *Wg Cdr Harendra Singh Vs UoI & Ors.* (supra). Relevant extracts are reproduced below:

5. We find that the respondents have themselves admitted that the option in case of the applicant was exercised by them as per the provisions of Para 6(c) of SAFI 2/S/2008, because the applicant had failed to exercise an option despite being asked to do so repeatedly. We also find that the respondents have made no efforts to explain the short term, long term and overall financial implications of the options available to affected persons like the applicant before asking them to choose from a set of options. We are surprised, to say the least, to find that the respondents expect the members of the Armed forces who may be deployed on active borders, remote field areas, high altitude areas such as Siachen Glazier and even in peace stations where they are expected to concentrate on and focus on training and preparing for war, to make an option regarding such matters in which they may have no domain knowledge to understand the implications. It is our considered opinion that no person will knowingly exercise an option which is disadvantageous to him by way of lower pay and allowances. Natural justice demands that the concerned authorities explain the implications of various options to the armed forces personnel before asking them to exercise their option. In such cases, natural justice also demands that if the members fail to exercise an option within the time granted, the default option to be activated, will be the option which is most advantageous to the members concerned. The respondents have not made any submissions, written or oral, to place on record the reasons for their choosing the disadvantageous option as the default option on behalf of the applicant.

6. In view of the foregoing, we are of the considered opinion that the applicant's pay is required to be revised based on the more advantageous option for him viz. the option II (supra). The respondents are therefore directed to issue necessary orders and adjust the pay and allowances of the applicant w.e.f. 1.1.2006 or 17.3.2006 as applicable, as ordered herein, within a period of

*three months from the date of receipt of this order. In default thereof, the applicant is entitled to the arrears with interest at 8% per annum till the date of realization.*

9. Moreover, we have examined numerous cases pertaining to the incorrect pay fixation in 6<sup>th</sup> CPC in respect of JCO/OR 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.

10. The matter of incorrect pay fixation has been exhaustively examined in *Sub M.L Shrivastava and Ors. Vs UoI, O.A No. 1182 of 2018 decided on 03.09.2021.* Relevant portions are extracted 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.*

32 & 37. XXXXXX

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.*

11. In the light of the above consideration, and the fact that the *same considerations are applicable for pay fixation of officers and men of all the three Services*, we allow this OA and direct the Respondents to:-

(a) Review the pay fixed of the applicant on promotion to the rank of Wg Cdr in Nov 2006 under the 6<sup>th</sup> CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) 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 the applicant is not drawing less pay than his juniors.

(c) Pay the arrears within three months of this Order and submit a compliance report.

12. No order as to costs.

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(JUSTICE ANU MALHOTRA)  
MEMBER (J)

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(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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