

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

46.

OA 2034/2023 WITH MA 2944/2023

Sub Maj (JE SYS) DS Bhadauriya Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
05.08.2024

MA 2944/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 2034/2023

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application seeking grant of pay fixation in accordance to the law laid down in the case of Sub M.L. Shrivastava and Ors Vs. Union of India [O.A

No.1182/2018 decided on 03.09.2021] and the prayer made in Para 8 reads as under:

“(a) Direct to Respondents to re-fix his correct Pay & Allowance equal to the pay to his batchmate/junior wef 16.07.2007 with it all consequent benefits i.e. arrears between the period wef 16.07.2007 to the applicant accordingly and law settled by this Hon'ble Tribunal in Sub M.L Shrivastava and others Vs Union of India and others (O.A No. 1182 of 2018 decided on 03.09.2021) and release whole arrears alongwith 10% p.a. interest till the final payment.

(b) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.”

3. On notice being issued, the respondents have filed a detailed counter affidavit and in Para 3, the respondents make the following averments:

“3. That in the instant case, since the petitioner was promoted to the rank of Havildar with effect from 28 October 2006 and Naib Subedar with effect from 16 July 2007, the said provisions were applicable to him. However, the petitioner did not exercise any option for fixation of his pay from his date of promotion as per Special Army Instruction (SAI) No 1/5/2008 dated 11/10/2008. The anomaly in pay is due to non-exercising of option within the stipulated time limit. Had the petitioner exercised option within given time frame, he would have certainly been granted the benefits as per option exercised by him. As a result of which, his pay was correctly fixed by the PAO (OR), Corps of Signals with effect from 01 January 2006 as per Special Army Instruction No 1/S/2008 dated 11 October 2008.”

4. From the aforesaid, it is clear that the anomaly in pay that has risen in the case of the applicant in comparison to his batchmates is on account of the fact that he did not exercise

the option of fixing of his pay in accordance with the policy laid down within the stipulated period and, therefore, he was not granted pay fixation as per the policy.

5. The issue involved in this matter is squarely covered by the law laid down in the case of *Sub M.L. Shrivastava and Ors.* (supra) and, therefore, taking note of the same we allow this OA and direct the respondents to:

(a) Review the pay fixed of the applicant on his promotion to the rank of Nb Sub on 16.07.2007 in the 6th CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Thereafter, re-fix the applicant's pay on transition to 7th CPC and subsequent promotion(s) in a most beneficial manner.

(c) To pay the arrears within six months of this order.

6. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)