

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

OA 2107/2019

Hav/AEC Sombir  
Versus  
Union of India & Ors.

... Applicant  
... Respondents

For Applicant : Mr. Inder Sen Singh, Advocate  
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)  
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

The applicant vide the present O.A 2107/2019 has made the following prayers:-

- (a) *Direct the Respondents to fix the Applicant's basic/ minimum pay at Rs. 8,560/-, with effect from 01.01.2006, instead of 14.03.2006, in accordance with Para 9 (a) (ii) read with Para 13 (a) SAI-1/S/2008;*
- (b) *Direct the Respondents to grant first increment of Pay to the Applicant w.e.f. 01.07.2006, instead of w.e.f. 01.07.2007;*
- (c) *Direct the Respondents to calculate the monthly salary of the Applicant, including all other emoluments and allowances, on the basis of the Applicant's first pay increment under the revised pay structure w.e.f. 01.07.2006 and pay the enhanced salary and the arrears with effect from 01.07.2006 within a period of three months;*

*(d) Direct the Respondents to refund the amount already recovered from the Applicant's salary on the pretext of overpayment of Pay & Allowances;*

*(e) Direct the Respondents to pay the cost of this litigation as well as interest @ 12% per annum on the arrears of pay and allowances mentioned above; and*

*(f) Pass any other order(s) or direction(s) as deemed appropriate in the facts and circumstances of this case.*

2. The applicant was enrolled in the Indian Army on 11.03.2005 as Direct Entry Havildar. It is the case of the applicant that the Govt. Of India, Min of Defence decided to implement the 6th Central Pay Commission recommendations on 15.10.2008 with retrospective effect from 01.01.2006 vide Special Army Instruction No. 1/S/2008 (SAI-1/S/2008 for short). As per Para 13(a) of said SAI- 1/S/2008, the entry level basic pay of all Direct Havildars, including the Direct Havildars belonging to AEC, was fixed at Rs. 11,360/- (i.e. Grade Pay + pay). As per Para 9(a) (i) of SAI-1/S/2008, 'the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86. Para 9(a)(ii), further, provides to the effect that 'if the minimum of the revised pay band/pay scale is more than the amount arrived at

Para 9(a) (i) above, the pay shall be fixed at the minimum of the revised pay band/pay scale.

3. As per the applicant, in order to implement the recommendations of the 6th CPC the Controller of Defence Account (CDA), re-fixed the Applicant's basic pay at Rs. 7720/- by applying the multiplication formula (i.e. by multiplying the existing basic pay as on 01.01.2006 by the factor 1.86) as provided vide Para 9(a)(i) of said SAI- 1/S/2008, thereby completely ignoring the provisions of Para 9(a)(ii) and Para 13(a) which would have fixed the Applicant's pay at Rs. 8560/- . The CDA, in the month of March 2012 corrected their above-mentioned mistake and re-fixed the Applicant's pay at Rs. 8560/- with effect from 01.01.2006 and the Applicant was accordingly paid the arrears of the increased pay with effect from 01.01.2006.

4. It is submitted by the applicant that however, the aforementioned correction was done as a measure of 'stepping-up' of the pay instead of 're-fixation' of the pay as provided under aforesaid provisions of SAI-1/S/2008. Further, on 12.06.2012, afresh DO Part-II Order dated 15.06.2012

bearing No. 1/0148/027/2012 was issued whereby the previous DO Part-II Order was cancelled and the Applicant's stepping up of the pay from Rs. 7720/- to Rs. 8560/- was made effective from 14.03.2006 as against the earlier date of 01.01.2006.

5. Reliance was placed by the applicant on the observations made by this Tribunal in the case of *Nb Sub Ram Mehar v. UOI & Ors.*, [O.A. No. 366/2016] wherein the Hon'ble Tribunal allowed the said O.A. vide order dated 15.05.2018 and directed the Respondents to re-fix the said NCO's pay as on 01.01.2006, instead of 14.03.2006.

6. It was further contended that the Respondents have given the benefit of such re-fixation to the civilian defence employees vide their Order/Notification bearing No. AN/XM/190/Govt. dated 04.10.2018, r/w the Notification bearing No. 8-23/2017-E.III A, dated 28 Sep 2018, issued by the Govt of India, Ministry of Finance Dept of Expenditure, and have denied the same benefit to the Defence Employees (Service Personnel) and therefore, the impugned act of the Respondents

is discriminatory and violative of Art 14 and Art 16 of the Constitution of India.

7. Per contra, the learned counsel for the respondent contended that the pay account of the Direct Entry Havildar is maintained according to the Running Ledger System as per chapter 9 of the Financial Regulation, Part II. As the applicant was enrolled on 02.09.2002, he was guided by section 2 of the SAI-1/S/2008 i.e. fixation and regulation of pay of PBOR recruited prior to 01.01.2006 and his pay was also fixed accordingly. Further, anomaly regarding minimum basic pay mentioned in section II (Senior at par with the juniors appointed before, on or after 01-01-2006) arose in SAI 1/5/2008 which were rectified by Ministry of Defence Finance by issuing amendment to note 8 of SAI 1/S/2008, for stepping of pay of the Seniors as par with juniors who joined on or after 01.01.2006 and since the juniors joined in the organisation on 14.03.2006 their pay stepped up w.e.f 14.03.2006.

8. The respondents clarified that the PBOR cannot claim stepping up of their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on

or after 01-01 2006 as laid down under Rule-13 section II of SAI 1/S/2008. To increase/ enhance the pay at par with the existing juniors, necessary action i.e. Stepping up pay has been initiated by the AEC Records as and when elements of junior came to picture. Further, the pay of the applicant was stepped up w.e.f 14.03.2006 and pay was fixed to Rs 8560/- w.e.f 14.03.2006, as per rule 11 of section II of SAI 1/S/2008. The date of next increment in the revised pay structure has also been fixed from the date of increment, i.e. 1 July every year and personnel who have completed 6 months and above in the revised pay structure as on 1st July of every year, will be eligible to grant the increment. Since the applicant basic pay has been stepped up/fixed as on 14.03.2006, and he has not completed 6 months minimum period of service as on 1st July, i.e. 01.07.2006 therefore, he was declared as ineligible for increment of July 2006 and his next increment was supposed to be due on 01.07.2007 and every ensuing year in the month of July, which has already adjusted properly.

9. The primary issue under consideration is whether the applicant's pay as a direct entry Havildar could be re-fixed with effect from 01.01.2006, the date of effectiveness of the 6<sup>th</sup> CPC, in view of the fact that he was already a Havildar on that date, having been in that rank since his enrolment on 01.03.2004. The respondents have contended that effectiveness of the new pay scale would commence only after a junior would assume the same rank and start drawing the new pay scale in keeping with the 6<sup>th</sup> CPC recommendations.

10. We are of the opinion that the benefit of doubt with regard to interpretation of rules on implementation of the 6<sup>th</sup> CPC recommendations must go to the applicant as was done in the case of *Hav/SAC Manoj Kumar Vs. Union of India & Ors.*, vide AFT (PB) Order dated 15.10.2014 in MA 269/2014 with OA 94/2013 where it was ruled that the petitioner in that case, who had been directly recruited as Havildar prior to 01.01.2006, would be placed in pay scale of Rs. 8,560/- with effect from 01.01.2006.

11. We further find that in the case of *Nb Sub Ram Mehar v. UOI & Ors.*, (supra) the facts of which were in *pari materia* to

the facts of the instant case, this Tribunal relying upon the *Hav/SAC Manoj Kumar (supra)*, directed the pay of the applicant to be re-fixed to Rs. 8,560/- wef 01.01.2006.

12. In view of the foregoing, the OA is allowed. The applicant's pay scale be re-fixed as on 01.01.2006 as per 6<sup>th</sup> CPC recommendations and he is allowed to avail of consequential benefits that accrue. Due arrears to be paid within the next three months, failing which, it shall carry interest @ 8%.

13. Furthermore, it is directed that the first increment of pay be granted to the applicant w.e.f 01.07.2006, instead of 01.07.2007.

14. No order as to costs.

Pronounced in the open Court on 05<sup>th</sup> day of August, 2024.

[LT GEN CP MOHANTY]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/akc/