

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

9.

OA 2177/2024

Col. Avinash Rawat (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. H.S. Tiwari, Advocate Mr. S.S. Pandey, Advocate
For Respondents	:	Mr. Govind Narayan, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER
12.07.2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a retired Col and is aggrieved by the incorrect fixation of his basic pay in the rank of Maj due to which he is drawing less pay than his coursemates and juniors.

2. The applicant was commissioned in the Indian Army on 19.12.1987. He was promoted to the rank of Maj on 16.12.1998. On 08.05.2003, the option to fix the pay was introduced by the MoD, however, the same was never communicated to the applicant. Thereafter, on 16.12.2004, the applicant was promoted to the rank of Lt Col. MoD vide letter dated 07.10.2005 promulgated that the officers who were promoted on or after 08.05.2003 have to exercise their

options to fix their pay from the date of next increment (DNI) within a period of two months of the promotion. However, as submitted, the same was not communicated to the applicant and due to service exigencies faced by him, he was unable to exercise the option for fixation of his pay on his promotion to the rank of Maj.

3. On 16.12.2004, the applicant was promoted to the rank of Lt Col and thereafter, on 13.12.2007 he was promoted to the rank of substantive Col. As majority of officers could not exercise their option as per letter dated 08.05.2003, the respondents vide letter dated 07.10.2005 further extended the dated till 31.12.2003 and finally vide letter dated 07.08.2017 retrospectively invited to exercise the option by 06.02.2018. As contended by the applicant, the said option was available only to those officers in the rank of Lt Col who were promoted as Maj between the period from 08.03.1999 to 28.02.200 and since the applicant was promoted to the rank of Maj on 16.12.1993, he could not exercise or wrongly exercised the option which was not more beneficial and has thus suffered financial loss by fixation of his pay at a much lower stage from his promotion to Maj in 1998.

4. 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 such cases the petitioners' pay is to be re-fixed with the most beneficial option as stipulated in Para 12 of the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect pay-fixation 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. Similarly, in the matter of incorrect pay fixation in the 7th CPC, the issue has been exhaustively examined in Sub Ramjeevan Kumar Singh Vs. Union of India and Ors., decided on 27.09.2021. Also in our order dated 05.08.2022 in Lt Col Karan Prasad Vs. Union of India and others [O.A. No.868 of 2020 and connected matters]. In that case, we have directed CGDA to issue necessary instructions to review pay fixation of all officers of all the three Services, whose pay has been fixed on 01.01.2006 in 6th CPC and provide them the most beneficial option.

5. This specific issue of 5th CPC has already been settled in our order dated 08.07.2022 in OA 1579/2017 Capt AVR Reddy & Anr Vs. Union of India and Ors. and order dated 24.08.2022 in OA 2857/2021 Col Rajesh Suredia (Retd) Vs. Union of India and Ors., wherein, we have examined the same issue and have directed the respondents to review the pay fixation on promotion in 5th CPC and re-fix the pay with the most beneficial option. Details of difference in pay are well illustrated in Para 9 of OA 2857/2021, Col Rajesh Suredia (Retd) (supra) which is reproduced below:

9. On examination of the pay fixation details of the applicant it is seen that on being promoted to the substantive rank of Major on 16.01.2000, the applicant's pay was fixed at Rs 11,600 + Rs 1200 (Grade pay) and was paid four increments from 2001 to 2004. Subsequently on promotion to the rank of Lt Col on 16.12.2004, his pay was fixed from the date of promotion at Rs 13,225 + 1600 along with one increment as on 01.12.2005. Thus on transition to 6th CPC, the applicant's pre revised pay was therefore Rs 15,400 + 1600. In the 6th CPC the applicant's pay was again fixed as on 01.01.2006 at Rs 38,530 + 8000, as per the fitment table for PB-4 issued vide the amendment to SAI 2/S/2008 dated 21.04.2008. He continued to draw increments commencing 01.07.2006 to 01.07.2015, when he was promoted to Col (TS) on 16.12.2015, and he transitioned to 7th CPC with pay at Rs 1,70,400. In the light of his actual pay fixation, the pay details if the pay had been fixed from the date of his next increment on 01.02.2005, the details would be as under, where the applicant stood to a more financial advantage.

(a) On 16.12.2004 the applicant would have continued with the pay of Major + rank pay of Lt col at Rs 13,225 + Rs 1600.

(b) On fixing his pay from the date of next increment on 01.02.2005 his pay would have been fixed at Rs 15,400 + 1600.

(c) On transition to 6th CPC, prior to actual transition he would have got another increment in the pre revised pay as per letter of MoD dated 01/08/2012 and his pre revised pay now would have been Rs 14,300 + 1600.

(d) Thus on transition into 6th CPC as per the fitment table for PB-4, his pay would have been Rs 39,600 + 8000 an increase of Rs 1160 from the pay actually fixed.

(e) Subsequently earning increments commencing from 01.07.2006 to 01.07.2015, on promotion on 16.12.2015 his pay would have been Rs 58,050 + 8700.

(f) This would then automatically make a difference in his pay on transition to 7th CPC, which would now be Rs 15,500 as compared to Rs 1,70,400 that was actually fixed; a difference of Rs 5100.

6. In view of the above considerations, the OA is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant in the 5th CPC on his promotion to the rank of Maj on 16.12.1998 and re-fix his pay with the most beneficial option.

(b) Subsequently, re-fix his pay in the 6th and 7th CPC with the most beneficial option and issue corrigendum PPO.

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

7. There will be no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LICHAJ MOHANTY]
MEMBER (A)

/vks/

