

incorrect pay fixation under 6th CPC, which resulted in continuous financial loss and disadvantage to them including on transition to 7th CPC in 2016.

3. The date of promotion of the applicants to the post of LAC is mentioned hereinbelow:

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| 1. Sgt Amit Bhatt | 03.04.2006 |
| 2. Sgt Rahul Kumar | 12.02.2006 |
| 3. Sgt A.K. Singh | 12.03.2006 |
| 4. Sgt V.V. Satyanarayana N | 01.02.2006 |
| 5. Sgt V. Gadela | 01.02.2006 |

4. The respondents have contended that the option forms of the 6th CPC was submitted by the applicants were beyond the stipulated time and the same had been rejected. Accordingly, their pay was fixed w.e.f 01.01.2006 and this had been intimated to the applicants.

5. Be that as it may, a similar matter of incorrect pay fixation has been exhaustively examined by this Tribunal in the case of Sub M.L Shrivastava and Ors. vs Union of India and Ors., (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 or not exercised."

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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 aspect 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 21/12/2008. The period was further extended to 30.06.2011 vide MoE 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 accepted for each individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the AO(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 emphasize 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 if 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 in 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 accordance.

6. In the light of the above consideration and the fact that the same considerations are applicable for pay fixation of officers (Lt Col Karan Dusad Vs. Union of India and Ors [O.A. No.868 of 2020 and connected matters] decided on 05.08.2022) and thus also for men of all the three Services, we find that the applicants, prima facie, have a good case and balance of convenience is also in their favour, we therefore, allow this OA.

7. We are allowing the application being conscious of the fact that the applicants have specifically compared their pay with that of their batch mates/juniors and claim disparity and disparity is only on account of the fact that the batch mates/juniors have given their option for fixation of pay while the applicants either did not give their option or exercised less beneficial option for fixation of pay. Accordingly, respondents are directed to-

(a) Review the pay fixed of the applicants on promotion to the rank of Lt-C on the dates as mentioned in para 3 of this order under

the 6th CPC and after due verification re-fix their pay in a manner that is most beneficial to them.

- (b) Thereafter re-fix the applicants' pay on transition into 7th CPC and also subsequent promotion(s) accordingly.
- (c) To revise the pension of the applicants and issue corrigendum PPOs accordingly
- (d) To pay the arrears within three months of this order.

8. No order as to costs.

[REDACTED]
[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REDACTED]
[LT GEN C.P. MOHANTY]
MEMBER (A)

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