

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

29.

OA 2555/2024

JWO Jitendra Singh Kushwaha Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ramniwas Bansal and
Mr. Rahul Verma, Advocate
For Respondents : Mr. Varun Chugh , Advocate

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

ORDER
30.07.2024

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, who is a serving JWO in the Indian Air Force and is aggrieved by the incorrect pay fixation under 6th CPC, which resulted in continuous financial loss and disadvantage to him including on transition to 7th CPC in 2016.

2. It is the case of the applicant that he applicant was enrolled into Indian Air Force on 16.06.2003 and was promoted to the rank of LAC on 01.02.2006 and thereafter promoted to the rank of CPL on 23.06.2008; both the promotions being affected during the transition period in 6th CPC from 01.01.2006 to 11.10.2008.

3. Learned counsel for the applicant submits that since he failed to exercise the option, his Basic Pay has not been fixed as per beneficial option on promotion to the rank of LAC on 01.02.2006 and CPL on 23.06.2008, in transition period of 6th CPC. He was placed on default option of new scale w.e.f. 01.01.2006 without considering him for most beneficial option thereby the applicant drawing a pay much lesser than his junior in the rank of Airman who exercised option-II.

4. The fact is not in dispute that since the applicant failed to exercise the option, he was placed by default in new scale w.e.f. 01.01.2006 without making any effort to examine what would be more beneficial for him.

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, (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 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 SFI 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.

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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 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.

6. On examining the records and other relevant policy letters, Reference O/O CGDA UO NO. AT/1/3510/VIth CPC issued by MoD has been brought on record and same reproduced below:

Ministry of Defence

D(Pay/Services)

Subject:- Fixation of pay on revised pay structure as per 6th CPC in respect of PBOR Who got three promotions between 01/01/06 to 11/10/08 i.e. date of Notification of SAI notifying new pay structure.

Reference O/O CGDA UO NO. AT/1/3510/VIth CPC

dated 31.07.2009 on the above subject.

2. The issue regarding fixation of pay under CSS (RP) Rules, 2008 in respect of individual who got three promotions between 01/01/2006 to 11/10/2008 has been examined in consultation with Ministry of Finance. MOF vide their UO No. 10/01/2010-IC.dated 25.03.2010 (copy enclosed) has observed that as per CCS (RP) Rules, 2008 a Government servant has the option to have his pay fixed from the date of his third promotion, if he has been granted three promotions/upgradations between 1.1.2006 and 29.8.2008 in such cases, however, the Government servant concerned will not be entitled to draw any arrears of pay wef. 1.1.2006 till the date of option.

3. O/o CGDA may take further necessary action accordingly.

.s/d

(P.S. Walia)

Under Secretary

O/o CGDA, Ulan Batar Road, Delhi Cantt..

MOD ID No.1 (40)/2009/D(Pay/Services) dated 05:04 2010

Encl: As above

7. It is our well considered opinion that the instant case wherein the applicant has been promoted twice during the above period is eligible for similar benefits as per provisions of the policy letter quoted above; being the most beneficial option.

8. In the light of the above consideration, the provision of MoD letter quoted above and the fact that the *same considerations are applicable for pay fixation of officers (Lt Col Karan Dusad Vs. Union of India and others [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 applicant, prima facie, has a good case and balance of convenience is also in his favour, we therefore, allow this OA and direct the Respondents to-

- (a) Review the pay fixed of the applicant on promotion to the rank of CPL on 23.06.2008 under the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to him.

(b) Re-fix the applicant's pay on transition into 7th CPC as on 01.01.2016 in the most beneficial manner and the subsequent promotions while ensuring that the applicant is not drawing less pay than his juniors.

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

9. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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