

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

21.

OA 3782/2024

Brig Sanjay Kannoth Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Mohit Kr. Singh, Advocate

CORAM

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

ORDER
25.09.2024

OA 3782/2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a serving Brig 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 course mates and juniors.

2. The applicant was commissioned in the Indian Army on 06.12.1997 and was promoted through time scale promotion to the ranks of Capt and Major as per the policies of the Indian Army in vogue. The pay of the applicant in the rank of Major was fixed @ Rs.11,600/- which ought to have been fixed @ Rs.11,925/- The applicant was further granted promotion to the rank of Lt Col on 06.12.2010, however due to wrong fixation of his pay in the rank of Maj, his pay in the rank of Lt Col was also fixed at lesser rate and so also on being

promoted to the rank of Col on 19.01.2013. It is further contended that the respondents at a much later stage realized that the pay of the officers promoted as Maj has not been fixed correctly and, therefore, vide letter dated 07.08.2017 issued instructions to fix the pay of such officers as per pre-revised pay scale with a stipulation that such officers upon fixation of pay will have an opportunity to exercise further option for fixation of pay after promotion as Lt Col from the date of next increment as Maj instead of fixing the pay from the date of promotion in the rank of Lt Col. It is also contended that as this benefit was granted only to those officers who were promoted as Maj between 01.03.1999 to 28.02.2000, it has resulted in the applicant's getting less pay than his juniors. Further contention of the applicant is that his date of promotion to the rank of Maj and the date of increment fell on the same date and at no point of time he was intimated about the most beneficial option, therefore, he could not exercise any option. As contended, this anomaly continued in the 7th CPC even after promulgation of Pay Rules 2017. Thereafter, on 13.08.2023, the applicant was promoted to the rank of Brig.

3. The respondents have submitted that the centre issue due to which the anomaly with regard to fixation of pay of the applicant with his batch mates has occurred was because the applicant did not exercise the option to get his pay fixed on promotion from the date of next increment in the lower rank. Thus, in the absence of

the requisite option exercised by the applicant, his pay was fixed correctly from the date of promotion itself.

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 applicants' 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 Dusad 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 Gp 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 13,500 + 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 13,900 + 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 21.04.2009. 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 then transitioned to 7th CPC with pay at Rs 1,70,400. In the light of this 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 13900 + 1600.
- (c) On transition to 6th CPC, prior to actual transition he would have got another increment in the pre revised scale 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 1,75,500 as compared to Rs 1,70,400 that was actually fixed; a difference of Rs 5100.

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

(a) Review the pay fixed of the applicant on promotion to the rank of Maj under the 5th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Re-fix the applicant's pay on transition into 6th CPC and 7th CPC and subsequent promotion with the most beneficial option, while ensuring that the applicant does not draw less pay than his junior.

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

7. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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