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

16.

OA 4705/2024

Sgt Abhishek Kumar ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. J.S. Yadav, Advocate

CORAM

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

ORDER
18.11.2024

OA 4705/2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant being aggrieved by the incorrect pay-fixation of his pay in the 6th Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage.

2. The applicant in this OA was enrolled in the Indian Air Force on 29.03.2005. On 01.10.2006, when the recommendations of 6th CPC were yet to be implemented, the applicant was promoted to the rank of LAC. The implementation instructions for 6th CPC were issued vide SAFI 1/S/08 dated 18.10.2008. However, because of the wrong fixation of pay, his pay was fixed much lower than his

juniors on account of the fact that the applicant had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 18.10.2008 within the stipulated time.

3. 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 these cases, the applicants' pay is to be re-fixed with the most beneficial option as stipulated in Para 7 of the SAFI 1/S/08 dated 18.10.2008. 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*** (OA No.1182 of 2018 decided on 03.09.2021).

4. 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*** (OA No.2000/2021 decided on 27.09.2021). Relevant portions are extracted below:

> *"12. Notwithstanding the absence of the option clause in 7th CPC, this Bench has repeatedly held that a solider cannot be drawing less pay than his junior, or be placed in a pay scale/band which does not offer the most beneficial pay scale, for the only reason that the solider*

did not exercise the required option for pay fixation, or exercised it late. We have no hesitation in concluding that even under the 7th CPC, it remains the responsibility of the Respondents; in particular the PAO (OR), to ensure that a soldier's pay is fixed in the most beneficial manner.

13. In view of the foregoing, we allow the OA and direct the Respondents to:-

(a) Take necessary action to amend the Extraordinary Gazette Notification NO SRO 9E dated 03.05.2017 and include a suitable 'most beneficial' option clause, similar to the 6th CPC. A Report to be submitted within three months of this order.

(b) . Review the pay fixed of the applicant on his promotion to Naib Subedar in the 7th CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors.

(c) Issue all arrears within three months of this order and submit a compliance report.

(d) Issue all arrears within three months of this order and submit a compliance report."

5. In respect of officers, the cases pertaining to pay-anomaly have also been examined in detail by the Tribunal in the case of ***Lt Col Karan Dusad*** Vs. ***Union of India and others*** (O.A. No.868 of 2020 and connected matters decided on 05.08.2022). In that case, we have directed CGDA/CDA(O) 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. Relevant extracts are given below:

"102 (a) to (j) xxx

(k) The pay fixation of all the officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006 merely because they did not exercise an option/ exercised it after the stipulated time be reviewed by CGDA/ CDA(O), and the benefit of the most beneficial option be extended to these officers, with all consequential benefits, including to those who have retired. The CGDA to issue necessary instructions for the review and implementation.

Directions

103. xxx

104. We, however, direct the CGDA/CDA(O) to review and verify the pay fixation of all those officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006, including those who have retired, and re-fix their pay with the most beneficial option, with all consequential benefits, including re-fixing of their pay in the 7th CPC and pension wherever applicable. The CGDA to issue necessary instructions for this review and its implementation. Respondents are directed to complete this review and file a detailed compliance report within four months of this order."

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

(a) Review the pay fixed of the applicant on his promotion to the rank of LAC on 01.10.2006 in the 6th CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Thereafter, re-fix the applicant's pay on transition to 7th CPC and also subsequent promotion(s) accordingly.

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

7. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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