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

8.

OA 519/2024 WITH MA 594/2024

Sgt Vichitra Kumar Garg (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Tatsat Shukla, Advocate
For Respondents : Ms. Reetesh Agarwal, Advocate

CORAM

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

ORDER
14.02.2024

MA 594/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and Ors*** Vs ***Tarsem Singh*** 2009(1)AISLJ 371 and the reasons mentioned, the delay in filing the OA is thus condoned. The MA is disposed of accordingly.

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2. 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.

3. The applicant in this OA was enrolled in the Indian Air Force on **16th June, 2003**. On **1st February, 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 **18th October, 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 1st January, 2006 to 18th October, 2008 within the stipulated time.

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 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 18th October, 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 3rd September, 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.*
>
> *xxxx xxxx xxxxx*
>
> *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 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.*
>
> *xxxx xxxx xxxxx*
>
> *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."

5. 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*** [O.A. No.2000/2021] decided on 27.09.2021.

6. 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 1st January, 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."*

7. 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 **1st February, 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.

8. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/vks/