

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

160.

OA 703/2024

Nb/Sub Ram Kishan (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta and
Ms. Prachi Chaturvedi, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
11.11.2024

OA 703/2024

The applicant, a retired Nb/Sub, is aggrieved by the incorrect pay fixation under 7th Central Pay Commission (CPC), which resulted in continuous financial loss and disadvantage to him.

2. The issue raised in this OA is squarely covered by the decision of AFT, RB, Chennai dated 21.03.2019 in the case of Wg Cdr Harendra Singh Vs. Union of India and Ors. (OA No.254/2018).

3. Further the issue of incorrect fixation of pay has been dealt with by this Tribunal in the case of Sub Ramjeevan Kumar Singh Vs. Union of India and Ors. (OA

No.2000/2021) vide its order dated 27.09.2021. The relevant Paras of the judgment read thus:

“10. On examination of the rules for implementation of the 6th and 7th CPC it is seen that both CPC implementation instructions mandate that individuals are required to make an option for pay fixation. Where an individual is promoted and an option had not been exercised, 6th CPC implementation instructions has a clause for providing the most beneficial option to the individual, the responsibility of which is with the establishment; Para 14 (b) (iv) of SAI 1/S/2008. Strangely such a clause has been omitted from the implementation instructions of 7th CPC issued vide Extraordinary Gazette Notification No SRO 9E dated 03.05.2017. Para 14 (b) (iv) of SAI is extracted below.

(iv) If no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options mentioned above is allowed to the PBOR. Pay on promotion may be fixed in the following manner if it is more beneficial:-

(aa) In case promoted between 02 Jan and 30 Jun, the fixation, on promotion will be done from the date of his next increment i.e 01 Jul.

(ab) In case promoted between 02 Jul and 01 Jan, the fixation on promotion will be done on the date of the promotion of the PBOR.

11. Army personnel are often deployed in far flung field and operational areas, where these implementations instructions invariably reach late. Moreover, considering the technicalities involved in understanding and working out options for pay fixation; evaluating the most beneficial option is invariably a difficult task for an average soldier. However, the respective PAOs which deal with pay and allowances are imminently suitable and equipped to undertake such evaluation and inform the soldier. Thus, it is imperative that the 7th CPC implementation instructions too has a

suitable clause, as in 6th CPC, where the establishment is made responsible for working out options and informing the soldier, so that he can make a well-considered choice.

12. Notwithstanding the absence of the option clause in 7th CPC, this Bench has repeatedly held that a soldier 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 soldier 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."

4. We may, however, note that the same considerations as dealt with by this Tribunal in the case Sub M.L Shrivastava and Ors. Vs. Union of India (OA No.1182/2018 decided on 03.09.2021) *are applicable for fixation of pay of officers and men of all the three services.*


5. In the light of the orders passed in Wg Cdr Harendra Singh and Sub Ramjeevan Kumar Singh (supra), we allow the present OA and direct the respondents to:

(a) Review the pay fixed of the applicant under the 7th CPC on promotion to the rank of ACP Nb SUB on 21.01.2017 and after due verification re-fix his pay in a manner that is most beneficial to him.

(b) To revise the applicant's pension and issue a corrigendum PPO accordingly.

(c) Pay the arrears within three months of receipt of a copy of this order.

6. No order as to costs.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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