

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 730 of 2019

Lt Gen Vipin Gupta	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Ajai Bhalla, Advocate
For Respondents	:	Mr. Anil Gautam, Sr. CGSC

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

The application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who was a serving Lt Gen and has since retired, and is aggrieved by the incorrect pay fixation in the 4th, 5th and 6th CPC. He has made the following prayers:

- (a) Respondents be directed to step up the applicant's pay at par with officers of the same seniority with effect from 01.01.1986 and thereafter re-fix the same according to the 5th and 6th Pay Commission;
- (b) Be pleased to direct the respondents to pay full arrears of pay w.e.f. date of anomaly i.e. 01.01.1986 with 18% interest per annum.

(c) Direct the respondents to pay full arrears of rank pay after re-fixing of the applicant's pay with effect from 01.01.1986 based on the findings of Kerala High Court in the case of Maj Dhanapalan Vs. Union of India along with interest at 18% per annum.

(d) Grant any other/further relief.

Brief facts of the Case

2. The applicant was commissioned into Army Service Corps (ASC) on 12.06.1982. Another officer, Col (TS) Rajan Kadyan who was commissioned six months later on 24.12.1982 was also commissioned into ASC. As on 31.12.1985, the applicant was a Lieutenant with a basic pay of Rs.2,324/-. It is the case of the applicant that on implementation of 4th CPC in 1986, the basic salary of the applicant was fixed at Rs.2,600/- while the basic pay of Col (TS) Rajan Kadyan, the applicant's junior, was fixed at Rs.3,000/- (including rank pay). Though the applicant became a substantive Capt on 12.06.1987 with a basic pay of Rs.2,800/-, yet his pay continued to be lower than his junior.

3. It is also the case of the applicant that on implementation of 5th CPC the applicant's pay was fixed at Rs.11,600/- whereas the pay of the officer junior to him was fixed at Rs.11,925/-. It is the

applicant's case that though the respondents had admitted that the applicant's pay had been incorrectly fixed, the issue was not resolved. Aggrieved by a lack of response a Legal Notice dated 05.03.2017 (Annexure A-1) was served on the Defence Secretary. In response to this notice, CDA (O) vide their letter dated 12.04.2007 (Annexure A-2) had intimated that a case had already been taken up in the 2004 to step up the pay of the applicant whose promotion was delayed due to service reasons. In spite of this and prolonged correspondence to settle the issue, the pay fixation was not resolved. It is the applicant's case that he had then filed a statutory complaint dated 08.12.2016 and at the time of filing the OA, the statutory complaint had not been disposed of. Hence the present OA.

Argument by the Counsel for the Applicant

4. The counsel reiterated the anomaly in the applicant's pay fixation in the 4th CPC which, though the respondents had conceded the issue, and intimated that action to resolve it had been initiated, no action had been taken by the Respondents. In this connection, the counsel drew our attention to AG's Branch/PS-3A letter dated 18.07.2007 (Annexure-3) which stated that a case had been initiated to the MoD to issue suitable amendment to

SAI 1/S/87. The letter also intimated that the applicant's name was included in the list of officers forwarded to MoD.

5. The counsel then drew our attention to MS Branch letter dated 18.08.2011 (Annexure A-4) which confirmed that the applicant and his junior [Col (TS) Rajan Kadyan] were from the same service (ASC) and that Col (TS) Rajan Kadyan was junior to the applicant. The counsel then drew our attention to PS-3A letter dated 30.09.2011 (Annexure A-5) wherein the details of the applicant's case was forwarded to CDA (O) for resolution of the anomaly. The counsel also elaborated on the contents of the applicant's letter dated 08.12.2016 (OA Page 35) and emphasized that despite protracted correspondence, no action was taken by the respondents to resolve the anomaly in pay fixation which has resulted in huge financial loss as the anomaly continued through 5th and 6th and 7th CPC. The counsel then stated that the applicant had then filed a statutory complaint dated 08.12.2016 which was yet to be disposed of.

6. The counsel then relied on the following judgments:

(a) Punjab & Haryana High Court judgment dated 12.05.1998 in the case of **Maj Bipin Bakshi** Vs. **Union of India**, CWP No.16128 of 1997.

(b) AFT (PB), New Delhi order dated 05.12.2013 in TA No.669/2009 in the case of **Maj R R Akella & Ors** Vs. **Union of India**.

7. The counsel concluded that the anomaly of pay fixation in the 4th CPC has had a cascading effect on the pay fixation in the subsequent 5th and 6th CPC resulting in financial loss to the applicant. The counsel asserted and prayed the OA to be allowed, as has been done in numerous cases by the AFT (PB) and various Coordinate Benches.

Arguments by the Counsel for the Respondents

8. The counsel reiterated the details of the case and stated that it was not in dispute that the applicant was senior to Col (TS) Rajan Kadyan by six months. That while, Col Rajan Kadyan had been promoted to the acting rank of Capt on 10.08.1985, the applicant was promoted acting Capt only on 03.06.1986 and made a substantive Capt on 12.06.1987. The counsel drew our attention to the Seniority Certificate dated 09.01.2017 (Annexure R-1) and emphasized that both had been granted substantive rank of Capt/Maj at appropriate and relevant times and that both had been granted substantive rank of Lt Col on 16.12.2004, consequent to implementation of AVSC Report. The counsel emphasized that both

officers were Lt Col as on 01.01.2006. While the applicant then became a substantive Col on 01.03.2006, Col (TS) Kadyan became a substantive Col on 24.12.2008.

9. The counsel then stated that acting ranks could be held by officers at varying points in time irrespective of inter-se seniority depending upon the prevailing service conditions. The counsel then emphasized the fact that though Col (TS) Rajan Kadyan was junior to the applicant, he had been promoted to the acting rank of Capt on 10.08.1985 whereas the applicant was promoted acting Capt only on 03.06.1986. Thus, the pay of Col (TS) Kadyan in 4th CPC was fixed at Rs.3,000/- (Basic pay @ Rs.2,800/- + Rank pay of Capt @ Rs.200/-). However, this benefit could not be granted to the applicant as he was not holding the acting rank of Capt at that time as on 01.01.1986. The counsel then elaborated that as per Appendix A to SAI 9/S/74 an officer holding the rank of Capt in the 4th year of service would be granted pay of Rs.1,100/- w.e.f. 01.01.1986. He further elaborated that as per Para 9 of SAI 1/S/87 on implementation of 4th CPC, where a senior officer promoted to a higher rank before 01.01.1986 draws less pay in the revised pay structure than his junior, who is promoted to higher rank on or after 01.01.1986, the pay of the senior will be stepped up to the junior

pay subject to both belonging to same cadre and the rank to which they have been promoted should be identical in the same cadre. Further, the pre-revised scale of pay of the lower and higher rank in which they are entitled to draw pay should be identical. The counsel concluded that based on the rule and the fact that the applicant was a Lt while his junior was a Capt, the pay had been correctly fixed.

Consideration

10. Having heard both the parties, the only issue for consideration is whether the applicant was entitled to have his pay stepped up equal to his junior on his pay being fixed in 4th CPC.

11. The service particulars of both the applicant and his junior Col (TS) Rajan Kadyan as given in MS Branch letter dated 09.01.2017 (Annexure R-1) is reproduced below:

37852/Col(By Sel)/ P&A/MS-8A

09.01.2017

SENIORITY CERTIFICATE : IC 40597W MAJ GEN VIPAN GUPTA, ASC

1. Ref MS-14 letter No A/66043/40597/MS-14/A dated 15 Dec 2016.
2. The service particulars of the officers showing their relative seniority are as under :-

<i>Service Particulars</i>	<i>IC 40597W Maj Gen Vipin Gupta</i>	<i>IC 410020H Col (TS) Rajan Kadyan</i>
<i>Date of Commission</i>	<i>12 Jun 1982</i>	<i>24 Dec 1982</i>
<i>Date of Seniority</i>	<i>12 Jun 1982</i>	<i>24 Dec 1982</i>
<i>Subs rank of Capt</i>	<i>12 Jun 1987</i>	<i>24 Dec 1987</i>
<i>Sub rank of Maj</i>	<i>12 Jun 1993</i>	<i>24 Dec 1993</i>
<i>Sub rank of Lt Col</i>	<i>16 Dec 2004</i>	<i>14 Dec 2004</i>
<i>Sub rank of Col</i>	<i>01 Mar 2006</i>	<i>24 Dec 2008</i>
<i>Rank as on 01 Jan 2006</i>	<i>Lt Col</i>	<i>Lt Col</i>

3. You are requested to take further necessary action to rectify pay anomaly, if any, in r/o IC-40597W Maj Gen Vipin Gupta.

12. It is not in dispute that the applicant is senior to Col (TS) Rajan Kadyan by six months. It is also not in dispute that Col (TS) Kadyan had been promoted to the acting rank of Capt on 10.08.1985 and thus transited as a Capt into the 4th CPC. On the other hand, the applicant transited into 4th CPC as a Lt despite being six months senior and was promoted acting Capt only on 03.06.1986 and substantive Capt on 12.06.1987. Hence the anomaly, that as on 01.01.1986, the pay of the junior was higher than the senior (applicant). Both of them transited into 5th CPC on 01.01.1996 in the rank of Major, and transited into 6th CPC in the rank of Lt Col.

13. It is also not disputed that the case of the applicant had been taken up by Army HQ with the MoD and MoF. It is also not disputed that the applicant had submitted a statutory complaint dated 13.12.2016 and this, as per the applicant had not been disposed of. From the records it is seen that though the case was taken up, in the case of the applicant, based on the application of Fundamental Rule 22, it was turned down, since the applicant being in a lower rank than his junior could not have sought a step up. The Complaint and Advisory Board letter dated 11.09.2020 and Dept of Military Affairs letter dated 10.09.2020 are reproduced below:

CAB Letter dated 11.09.2020

Chief of the Army Staff Sectt
(Complaints Advisory Board)
Room No 219A, South Block
IHQ of MoD (Army)
New Delhi-110011

A/00111/MOD/CAB

11 Sep 2020

AddL Dte Gen of Pers Services-3(A)
Adjutant General Branch
Legal Cell
Armed Forces Tribunal (Principal Bench)

STATUTORY COMPLAINT DATED 13 DEC 2016 SUBMITTED BY
IC-40597W MAJ GEN (NOW LT GEN) VIPAN GUPTA, ASC

1. Please refer Legal Cell, AFT (Principal Bench) letter No 3546/2786/AFT/LC dt 27 Aug 2020.
2. In this connection, copy of Ministry of Defence, Department of Military Affairs D (Pay/Services) MoD letter No 30(5)2020-D(P/S) dt 10 Sep 2020 is forwarded herewith for your necessary action.

Encls: As above.

sd/-
(Shailendra Bisht)
Col
Col Coord (CAB)

DMA letter dated 10.09.2023

Ministry of Defence
Department of Military Affairs
D (Pay/Services)

Subject: Statutory Complaint dated 13.12.2016 submitted by IC- 40597W Maj Gen (Now Lt Gen) Vipan Gupta, ASC.

1. Reference CAB letter No. A/00111/MOD/ CAB dated 1.9.2020 on the above mentioned subject.
2. It is stated that the matter was examined in AHQ File No. A/38701/Stat Compl/VG/AG/PS-3(a)/01/2016 in consultation with DMA (Pers) and RoG/Stat. RoG/ Stat intimated that the serving officer should have forwarded a representation instead of Statutory Complaint as the matter does not come under the provisions mentioned in para 364 (1) of Army, Rule, 1987 Statutory Complaints which are made under the provisions of Army Act Section 26 and 27.
3. Further, DMA (Pers) opined that in view of DoPT's guidelines and Special Army Instruction No. 1 / S / 87 on stepping up of pay, the case of Maj Gen (Now Lt Gen) Vipan Gupta does not constitute anomaly and hence the stepping up is not allowed. The same has been intimated to AHQ, PS 3-(a) and file has also been returned to PS-3(a) for further necessary action at their end.
4. In view of the above, it is requested to take up the matter with AHQ, PS-3(a) for more details of the case.

sd/-

CAB, Chief of the Army Staff Secretariat
MOD ID No. 30(5)2020-D(P/S) dated 10.09.2020

14. The implementation of the 4th CPC is governed by SAI 1/S/87 dated 23.06.1987. Para 9 of the SAI which is relevant to the case at hand is reproduced below:-

Stepping up of Pay of a Senior Officer if a Junior Promoted after 01 January 1986 Draw's More Pay

9. *In cases where a senior officer promoted to a higher rank before 01 January 1986 draws less pay in the revised scale than his junior who is promoted to the higher rank on or after 01 January 1986, the pay of the senior officer should be stepped up to an amount equal to the pay as fixed for his junior in the higher rank. The stepping up should be done with effect from the date of promotion of the junior officer, subject to fulfilment of the following conditions, namely:*

(a) *both the junior and the senior officers should belong to the same cadre and the ranks in which they have been promoted should be identical in the same cadre.*

(b) *the pre-revised and revised, scale of pay of the lower and higher ranks in which they are entitled to draw pay should be identical, and*

(c) *the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or another rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower rank, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this para need not be invoked to step up the pay of the senior officer.*

'Where the pay of the senior officer has been stepped up in accordance with the above provision, he will be entitled to the next increment on completion of his required qualifying service with effect from the date of re-fixation of pay.

15. A fine reading of this clause clearly indicates that the stepping up is applicable where a junior who is promoted after 01.01.1986 draw's more pay than the senior subject to the conditions laid down. In this case the applicant and his junior belong to the same cadre. However, at the time of the transition they are both NOT of the same rank; the applicant was a Lt and the junior was a Acting Capt.

Thus, the pay fixation of the applicant in 4th CPC on 01.01.1986 was in the rank of Lt, while the junior's pay had been fixed in the rank of Acting Capt since he had already been promoted Acting Capt from 10.08.1985. Thus, the applicant's case as on 01.01.1986 is barred by Clause 9(c) which states that the anomaly needs to be directly as a result of the application of provision of Fundamental Rule 22-C, which is not the case here. The difference in pay is because the applicant was in a lower rank than the junior at the relevant time.

16. It is not disputed that the applicant was promoted to Acting Capt on 03.06.1986, thus his pay on being fixed in the rank of Acting Capt could not be fixed lower than his junior, although the junior had the benefit of higher pay since 01.01.1986. Since the applicant's pay was not stepped up, on transition to the 6th CPC, the applicant's pay was fixed at Rs.11,600/-, whereas the junior's pay was fixed at Rs.11,925/-. Clearly, since the pay anomaly was not rectified, the applicant though senior to the other officer by six months, received less pay than his junior, as his pay was not stepped up. Having examined the details, it is evident that the applicant had to suffer financial loss due to the fact that the pay difference with the junior was not corrected. This raises the issue

when should this have been corrected. As analyzed and stated earlier, the rules did not permit stepping up his pay on transition to 4th CPC on 01.01.1986 as the applicant as Lt was in a lower rank than the junior who was already an Acting Capt on 10.08.1985. The next stage which merits examination is when the applicant was promoted Acting Capt on 03.06.1986. At this juncture, a plain reading of Para 9 of SAI 1/S/87 is not helpful, as the provisions of Para 9 are relevant only where a junior who is promoted on or after 01.01.1986 draws more pay than a senior and, therefore, the senior is entitled to a step up subject to the conditions stipulated in Para 9. Here the case is unique in that the junior was drawing more pay being in a higher rank than the senior and on 03.06.1986, the senior is finally promoted to the same rank as the junior. At this juncture, we are of the view that the ends of justice will be met if the applicant's pay is stepped up to that of his junior from 03.06.1986, the day he was promoted to Acting Capt. Consequent to this, the pay fixation on transition of the applicant into 5th, 6th and 7th CPC is required to be reviewed and fixed with the most beneficial option while ensuring that he does not draw less pay than his junior.

17. We have examined numerous cases regarding the necessity of review of pay fixation of officers and men of all the three services in the 5th and 6th CPC and re-fixing it with the most beneficial option in the following cases:

- (a) **Sub M.L. Shrivastava and Ors** Vs. **Union of India**
(OA No.1182/2018 decided on 03.09.2021).
- (b) **Sub Ramjeevan Kumar Singh** Vs. **Union of India**
(OA No.2000/2021 decided on 27.09.2021).
- (c) **Gp Capt AVR Reddy & Anr** Vs. **Union of India & Ors.**
(OA No.1579/2017 decided on 08.07.2022).
- (d) **Wg Cdr Bharat Malik** Vs. **Union of India and Ors.**
(OA No.1923/2017 decided on 08.07.2022).
- (e) **Col Rajesh Suredia** Vs. **Union of India & Ors.**
(OA No.2857/2021 decided on 24.08.2022)
- (f) **Lt Col Karan Dusad** Vs. **Union of India and others**
(OA No.868/2020 decided on 05.08.2022).

18. In view of the above consideration, the OA is partially allowed and we direct the following:-

- (a) Respondents to review the pay fixation of the applicant in the 4th CPC on promotion to the rank of Acting Capt

on 03.06.1986 and fix his pay with the most beneficial option while ensuring that his pay is not less than his junior.

(b) Review the pay fixation of the applicants pay in the 5th, 6th and 7th CPC and re-fix it with the most beneficial option while ensuring that his pay is not less than that of his juniors.

(c) Review and re-fix his retiral benefits accordingly as applicable.

(d) Issue corrigendum PPO and arrears within three months of the receipt of this order failing which the applicant will be entitled to 6% interest per annum till the date of payment.

19. No order as to costs.

20. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 26th day of September, 2024.

(LT GEN P.M. HARIZ)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Neha