

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

A.

OA 809/2019

Hav/Clk (SD) Harpreet Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Mr. Shyam Narayan, Advocate
Maj A.R. Subramaniam, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
15.04.2024

Vide our detailed order of even date we have allowed the OA 809/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 809/2019

Hav/Clk(SD) Harpreet Singh **... Applicant**
Versus
Union of India & Ors. **... Respondents**

For Applicant : Mr. SS Pandey, Advocate with
Ms. Shruti Rawat, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, primarily aggrieved by the incorrect fixation of pay and is drawing less pay with following prayers :-

- (a) *Call for the records including the orders based on which SAI 1/S/2008 was promulgated by which disparity of pay was created between Sepoys enrolled before 01.01.2006 like the Applicant and those Sepoys enrolled after 01.01.2006 in fixation of pay resulting in Applicant getting Rs. 210 less than his juniors since 01.01.2006 and not correcting such anomaly in terms of the order dated 08.06.2018 and thereafter quash the said order to the extent Respondents have confined the*

fixation of the pay @ Rs. 6460 only to the Applicant namely Hav Brijesh Singh, who filed the OA before the Regional Bench (Lucknow) of this Hon'ble Tribunal rather than granting such benefit to all affected persons like the Applicant despite instruction dated 28.09.2018 issued and adopted by the Respondents vide letter dated 04.10.2018.

- (b) Direct the Respondents to pay the minimum basic pay scale of Rs. 6,460/- to the Applicant w.e.f 01.01.2006 either by following the mandate of SAI 1/s/2008 as per the interpretation given by this Hon'ble Tribunal vide order dated 15.10.2014 in the OA 94/2013 or by granting the benefit of stepping up instead of Rs. 6,250/- as given to the Applicant with further direction for grant of arrears of difference of pay and allowances including increment/DA etc. earned from 01.01.2006 till date to the Applicant on that basis alongwith penal interest @ 12% from the date when such payment was due till its realization*
- (c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."*

Submission on behalf of the applicant

2. It is submitted by the Ld. Counsel for the applicant that the pay of the applicant was wrongly fixed in 6th CPC w.e.f. 01.01.2006 and due to such wrong fixation, the applicant is drawing less pay with respect to other direct entry batch mates of same rank and has been financially deprived of his

legitimate entitlement of pay and allowances due to wrong fixation of pay.

3. Ld. Counsel further submits that as per the recommendations of the 6th CPC w.e.f 01.01.2006, the minimum pay for direct entry ranks from Sepoy onwards was fixed and were given minimum pay @ Rs 6460 in PB-1; however, the pay of the applicant was fixed @6250,

4. Ld Counsel also submitted that the applicant was promoted to the rank of Naik on 26.05.2010 and Havildar on 09.02.2012 but with respect to the initial difference of pay, he was drawing Rs. 210 and Rs. 50 respectively less than his juniors.

5. Learned counsel for the applicant further submitted that the applicant's case is covered by the decision of **Brijesh Singh vs. Union of India & Ors, O.A. No. 28 of 2015** decided on 21.10.2016 by AFT (RB) Lucknow and directed the respondents to revise the pay scale of the Applicant w.e.f 01.01.2006. His other submission is that the respondents have implemented the order passed by the

Regional Bench (Lucknow) and the pay of Havildar Brijesh Singh was revised. Since Brijesh Singh was junior to the applicant and as per comparative statement the applicant's pay was fixed at Rs 33,900 and his Junior's was fixed at Rs 34,900.

6. Ld. Counsel further submits that the respondents have created a difference in the pay of Sepoy enrolled prior to 01.01.2006 as compared to those enrolled after 01.01.2006 in terms of SAI 1/S/2008 resulting in the junior getting more pay than the senior and not stepping up the pay of the senior thereby resulting in financial loss to the applicant to the tune of Rs. 210 w.e.f 01.01.2006 in the rank of Sepoy which is continuing.

Submission on behalf of the Respondents

7. Per Contra, Ld. Counsel for the Respondents submits that the applicant was enrolled into the Army on 23.09.2005 and was promoted to the substantive Naik w.e.f 26.05.2010 with ante-date seniority w.e.f 01.04.2010 and Hav w.e.f 09.02.2012 with ante-date seniority w.e.f 01.01.2012. The

respondents submit that the pay of the applicant has been correctly fixed as Basic Pay of Rs 3250 as per 5th CPC. It is further submitted by the respondents that the basic pay of the applicant has been fixed @ Rs 6250 as per provision of 6th CPC and by virtue of switching over from 5th CPC to 6th CPC.

8. Ld Counsel for the Respondents further submits that as per provision of 6th CPC, persons enrolled on or before 01.01.2006 are entitled for Direct Entry Pay @ Rs 6460, whereas the applicant was enrolled into service as a Sepoy on 23.09.2005 and initially pay was fixed in 5th CPC @ Rs 3250. The pay of the applicant was fixed @Rs 6250 as per the provision of 1/S/2008 on implementation of 6th CPC w.e.f 01.01.2006. The stepping up of pay with respect to junior joining after 01.01.2006 is not applicable to the applicant hence the adjustment of fixation of pay has been made correctly.

9. Ld Counsel for the Respondents also argues that the difference in basic pay at the time of 6th CPC has continued

even after he was promoted to Naik and Havildar scale in accordance with Ministry of Finance, department of Expenditure U.O dated 28.03.2016 and CGDA clarification letter No AT/1/3510/VICPC/Vol VIII dated 07.08.2014.

ANALYSIS

10. As per Para 9 (a) (i) of SAI 1/S/2008, pay of PBORs was to be determined by multiplying their existing basic pay as on 01.01.2006 by the factor of 1.86. Para 13 of SAI 1/S/2008 lays down the minimum entry level pay of various pay bands/ranks/grades of PBORs w.e.f. 01.01.2006 as under:-

Pay Band	Grade Pay	Basic Pay (In Rs.)	Corresponding Rank
PB-1	Rs. 2000/-	6460/-	Sepoy
PB-1	Rs. 2400/-	7510/-	Naik
PB-1	Rs. 2800/-	8560/-	Havildar
PB-2	Rs. 4200/-	9300/-	Naib Subedar
PB-2	Rs. 4600/-	12540/-	Subedar
PB-2	Rs. 4800/-	13350/-	Subedar Major

11. We find that the issue under consideration in this case has been dealt with by a Coordinate bench of this Tribunal in the case of **Brijesh Singh vs. Union of India & others (O.A.No. 28 of 2015 - AFT RB Lucknow) [Date of Decision: 21.10.2016]**, wherein the Tribunal vide Para 7 and 8 observed as reproduced hereinbelow:

"7. It may be noted here that in response to the averments made in the counter affidavits, the Applicant has invited our attention to different Government orders pertaining to fixation of pay scales etc as would be evident from paras 4,5,6,7,8,9 and 10 of the rejoinder affidavit and particularly para 8 wherein he has invited our attention to the Government of India Ministry of Defence letter dated 28.03.2011 which provides for payment of equal pay scales to all persons working the same cadre. For ready reference, para 8 of the rejoinder affidavit being relevant is reproduced below.

"8. That the contents of Para 7 of Counter affidavit as stated are not admitted and are denied. In this connection it is submitted that the (C.D.A.) PAO (Ors), E.M.E. Secunderabad committed a blunder and misrepresented the recommendations of 6th Central Pay Commission. The deponent gave detailed reply in the preceding paragraphs of this rejoinder affidavit, hence no need to repeat here again. Government of India Ministry of Finance Department of Expenditure (E.III A Branch) clarified in their letter dated 28.03.2011 as under :-

Para 2.

This proposal has been examined in this department of Expenditure is of the view that there is no need to issue a corrigendum as proposed and that the pay of all such

seniors who are drawing less pay than a directly recruited juniors who is appointed on or after 01.01.2006 may be stepped up at par with the pay of directly recruited juniors appointed on or after 01.01.2006 subject to fulfilment of the following conditions:-

(1) Stepping up the basic pay of seniors can be claimed in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of directly recruited junior, provided the senior and junior belong to the same seniority list for all purposes."

In this connection it is submitted that the CDA and erroneously the basic pay of the dependent is fixed less than minimum basic pay 8 recommended by the 6th Central Pay Commission.

8. In view of the above, there appears to be no room for doubt that denial of salary to the Applicant in terms of the recommendations made by 6th C.P.C with effect from 01.01.2006 shall be an instance of non application of mind by the authority concerned. It is highly arbitrary particularly when attention was drawn by the Applicant to different orders, circulars and report of 6th C.P.C. and the higher salary paid to the juniors. In this view of the matter, without sticking to the misconceived defence as set up by the respondents, it was incumbent on the respondents to have fairly conceded the error committed by them with follow up action of rectification and re-fixation of salary. Such action on the part of the members of the Armed Forces seems to be not justified on any ground whatsoever."

12. With the aforesaid observations of the Tribunal settling the issue in hand, we find that the same observations have been reiterated by this Tribunal relying upon **Brijesh Singh**

(Supra) in **Hav Clk (SD) Lakshaydeep Singh Yadav v. UoI & Ors.** [O.A. 578/2017 AFT RB Lucknow- Date of Decision: 07.02.2019] and **Hav/PA Vishal Bakshi v. UoI & Ors.** [O.A. 143/2021 AFT RB Lucknow- Date of Decision: 01.11.2022].

13. Before parting, it is pertinent to note that it is a cardinal principle of law, as held by the Hon'ble Supreme Court in a number of cases, that equal pay has to be granted for equal work as laid down in **Randhir Singh v. UoI [(1982)1SCC 618]**, **DS Nakara v. UoI [(1983)1SCC 304]**, **Federation of All India Customs and Central Excise Stenographers (Recognized) v. UoI [(1988) 3 SCC 91]**, **State of U.P v. J.P Chaurasia [(1989) 1 SCC 121]**, **Mewa Ram Kanojia v. AIIMS [(1989) 2 SCC 235]**, **UoI v. Pradip Kumar Dey [(2000) 8 SCC 580]** and **SAIL v. Dibyendu Bhattacharya [(2011) 11 SCC 122]** and therefore, no junior in the same post/rank can be granted more salary than his seniors, whose pay scale is

higher due to the longer period of service laid down in the concerned office/authority.

14. At this point, it is relevant to refer to the decision dated 25th October, 2010 rendered in ***W.P.(C) No. 2884/2010 titled as UOI and Anr. v. Chandra Veer Jeriya***, wherein the High Court of Delhi while dealing with the same issue has observed in para 8 as follows :

"8. We agree with the findings arrived at by the Tribunal in view of the law laid down by the Supreme Court in the decision reported as UOI and Ors vs. P. Jagdish and Ors [1997 (3) SCC 176]. It may be highlighted that the respondents did not claim any pay parity with officers junior to them but in the combatized cadre till as long the officers remained in their respective streams. They claimed parity when the two streams merged in the same reservoir i.e. when they reached the post of Administrative Officer/Section Officer and that too from the date persons junior to them, but from the combatized cadre, became Administrative Officer/Section Officer. The anomaly which then arose was that persons junior in the combined seniority list of Administrative Officer/Section Officer started receiving a higher wage. With reference to FR-22, in P. Jagdish's case (supra) the Supreme Court held that Article 39(d) of the Constitution was the guiding factor in interpreting FR-22, The principle of stepping up contained in the fundamental rules comes into play when a junior person in the same posts starts receiving salary more than his senior on the same post....."

15. In ***UoI & Ors. Vs. P. Jagdish & Ors. (1997 (3) SCC 176)***, Hon'ble Apex Court has observed that the principle of Stepping up prevents violation of the principle of ***"equal pay for equal work"***. Applying the same principle

of law here, a service personnel in the same rank cannot be allowed to draw a salary lower than his batchmate because that would be against the ethos of Article 39 (d) of the Constitution which envisages the principle of "equal pay for equal work". Hence granting of stepping up is the only way out to remove the said anomaly, which results in service personnel drawing a higher salary in the same rank than their batchmate. The only way to remove this anomaly is the stepping up of the salary of aggrieved personnel at par with other service personnels in the same rank. The rules and provisions which allow the said anomaly to exist and prohibit the stepping up are violative of the principles of natural justice and equity; are contrary to Article 39(d) of the Constitution which envisages "equal pay for equal work" and contrary to the principles of law laid down by the Apex court in its pronouncements.

16. In ***Er. Gurcharan Singh Grewal and Anr. V. Punjab State Electricity Board and Ors. 2009 (2) SLJ 271 (SC)***, The Apex court in para 13 has observed:-


"13 Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No. 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No. 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No. 1 was also stepped to that of Shri Shori, as appears to have been done in the case of the appellant No. 2."

17. In view of the above analysis, we are of the considered view that the aforesaid fixation of pay violates the basic principle of equal pay for equal work, enshrined under Article 39(d) of the Constitution of India, and at any point of time, there cannot be pay disparity between two people serving in the same rank, and therefore, with the aforesaid observations, this Original Application is allowed. The respondents are directed to re-fix basic pay of the applicant w.e.f. 01.01.2006, and thereafter, re-fix his basic pay on all subsequent increments so that applicant's pay is fixed not less than his junior, and pay the arrears accordingly. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy

of this order. Default will result into interest @ 8% per annum
being payable till actual payment

18. No order as to costs.

Pronounced in the open Court on 15th the day of April, 2024.


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


(JUSTICE ANU MALHOTRA)
MEMBER (J)

Akc/