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

OA 1054/2019 with MA 3468/2023

Order reserved on 28.04.2025
Order pronounced on 8th.05.2025

Sub Maj (AIG) D. Narasimman ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

In way of the present Original Application, the applicant seeks the following reliefs:-

> *"(a) Call for the records based on which the Respondents No. 1 has taken a decision not to issue amendment in the policy dated 11.12.2013 in the light of judgment of this Hon'ble Tribunal dated 10.12.2014 in OA 113 of 2014 and judgment dated 05.10.2017 in OA 1092 of 2017 by extending the benefit of pay fixation from the date of promotion instead of 01.01.2006 by applying Para 14 of 1/S/2008 thereby denying the Applicant his rightful claim of equal pay for equal work for want of exercise of option by the Applicant and thereafter quash the same.*
>
> *(b) Direct the Respondents to step up the pay of the Applicant as mandated in Para 14 of the SAI in the Rank of Hav and subsequent ranks till Sub by applying the more beneficial clause by following the ratio of order dated 05.10.2017 in OA 1092 of 2017 with further direction to grant the Applicant arrears of such pay fixation along with the interest @ 12 percent from the date same was due till its actual realization.*

(c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case. a direction to the respondents to step up his pay from the date of his promotion as Naib Subedar, irrespective of the fact that he had not submitted the option for switching over to the 6th Central Pay Commission within the stipulated time."

2. The brief facts of the case are that the applicant was enrolled into the Indian Army on 28.12.1991 as Naik. It is the case of the applicant that while the 6th Pay Commission's recommendations were yet to be implemented, the applicant was promoted to the rank of Havildar in Group 'Y' on 03.12.2006 and later he got re-mustered as Regimental Havildar Major(RHM) Group 'X' on 01.10.2008. Thereafter, consequent upon the recommendations of the 6th Pay Commission, Special Army Instruction was issued on 11.10.2008 w.e.f. 01.01.2006. The said SAI had a provision which clearly states that in case of re-mustering of a Personnel Below Officer Rank (PBOR)from Group 'Y' to Group 'X', his basic pay will be fixed in the existing pay band and the Grade Pay of the Rank to which he is re-mustered. It is stated that the SAI had a provision for fixation of pay from the date of promotion to all those persons who were granted promotion after 01.01.2006 based on the option to continue in the pre-revised scale till the date of next promotion and get the pay fixed from the date of promotion instead of from

01.01.2006. It is contended by the applicant that the same was never notified to the individuals personally nor they were advised what would be more beneficial to them. The applicant stated that being unaware of exercising any such option, his basic pay was fixed wrongly in the rank of Havldar @ Rs.7630/- which is much lower than his juniors/batchmates who are drawing Rs.8560/- in the rank of Havildar, having either exercised their option or were holding the rank of Havildar as on 01.01.2006.

3. It is the case of the applicant that had the respondents adopted the more beneficial clause, the applicant would have got the same benefit. Thereafter, the applicant was promoted as Subedar on 01.09.2011 and again as Subedar Major on 12.01.2018. However, due to wrong fixation of pay, his pay was fixed much lower than his juniors even in the ranks of Subedar and Subedar Major.

Submissions by the parties

4. In view of the aforesaid facts, learned counsel for the applicant seeks a directions to the respondents to step up his pay from the date of his promotion as mandated in para 14 of SAI 1/S/2008 in the rank of Havildar and subsequent ranks till Subedar by applying the more beneficial clause in terms of the ratio of the order dated 11.12.2013 of this Tribunal in OA No.113/2014 (*Sub*

Chittar Singh v. Union of India and Others) and order dated 05.10.2017 in OA No.1092/2017 *(Sub. (TIFC) Dhyan Singh v. UOI and Ors.)* by extending the benefit of pay fixation from the date of promotion instead of 01.01.2006.

5. The learned counsel for the respondents on the other hand, submitted that since the applicant had not exercised the option prior to the stipulated time, he is not entitled to claim the aforesaid benefit.

Analysis

6. It is not in dispute that the last date for exercising option for getting the pay fixed as per the recommendation of the Sixth CPC was fixed as 30.06.2011. The claim of the applicant, however, has been rejected by the respondents on the ground that he had not exercised the option at all. The relevant Army Instruction stated that if no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the PBOR. Therefore, we do not find any force in the contention of the respondents that the applicant is not eligible for fixation of his pay from the date of his promotion as the option for switching over to 6th CPC was not exercised by him. The import and implications of Para 14 of SAI 1/S/2008 have also been dealt

with by this Tribunal in OA No.113/2014 in the case of ***Chittar Singh*** (supra) vide its Order dated 11.12.2013. The relevant para of the said Order reads as under:-

> *"4. We have also noticed para 21 of 1/SA/2008 itself that the power has been given to the competent authority for relaxing the rule in case of undue hardship. According to the learned counsel for the petitioner, the facts clearly demonstrate that it was admittedly a case of extreme hardship to the petitioners if they are given less salary due to a technical default, when compared with the persons in the same rank, discharging the same duties, holding the same post being paid more. Para 21 of the same SAI clearly says that the Govt. shall have power to do justice in an equitable manner. It is also submitted that stand of the Govt. of giving less salary to the petitioners due to their alleged default is not justified but is against the spirit of a model employer who by this action wants to create serious disparity and anomalous service conditions for the service personnel in one rank itself."*

CONCLUSION

7. On scrutiny of the pleadings, it is evident that the case of the applicant is fully covered by the aforesaid orders dated 11.12.2013 passed by this Tribunal in OA No.113/2014 and order dated 05.10.2017 passed in OA No.1092/2017. Therefore, the O.A is allowed and the respondents are directed to:

(i) fix the pay of the applicant in the 6th CPC from the date of his promotion as Havildar and after due verification re-fix his pay in a manner that is most beneficial to him.

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

(iii) The entire arrears will be paid to the applicant within four months from the date of receipt of this order; in default, the respondents shall pay interest @ 6% p.a., on all the arrears till fully paid.

8. There shall be no order as to costs. Pending MA(s) if any, also stand disposed of.

9. Pronounced in open Court on this 8th day of May, 2025.

(Rear Admiral Dhiren Vig)
Member(A)

(Justice Anu Malhotra)
Member (J)

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