

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

QA 276/2020

Ex Hav (PA) Pratham Singh Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. D.K. Sabat, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

QA 276/2020

Aggrieved by the impugned orders LG/133/Obser dated 28th January, 2011 and LG/133/24RR/Obser dated 12th October, 2010, the applicant has filed this OA and the reliefs claimed in para 8 thereof read as under:-

- (a) *Quash the Impugned letter No.LG/133/Obser dated 28.01.2011 and Impugned Order LG/133/24RR dated 12.10.2020.*
- (b) *Direct the respondents to Re-fix his basic pay at Rs.8560/- w.e.f 8.10.2009 in accordance with Para 13 of SAI 1/S/2008.*
- (c) *Direct the respondents to pay the due arrears of salary and other emoluments and allowances with interest @ 12% p.a. w.e.f. 01.01.2006 till his retirement i.e.31.01.2019.*
- (d) *Direct the respondents to re-fix the pension of the applicant as per revised basic pay and pay the due arrears with interest @ 12% from the date of retirement with all the consequential benefits.*

(e) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."*

2. Before we proceed further, it would be apposite to have a glimpse of the facts on record.

3. The applicant was recruited in the Indian Army as a Sepoy in the year 2003. On being promoted to the rank of Havildar on 8th October, 2009, the applicant's basic pay, including an increment @3% of Basic Pay, Grade Pay and MSP was fixed at Rs.8180/-, which, as per the applicant, was not in accordance with Para 13 (a) of the SAI 1/S/2008. It is submitted that with the issue of SAI 1/S/2008, the recommendations of the 6th CPC were implemented and as per Para 9 and 13 of SAI 1/S/2008, the pay of the applicant on being promoted to the rank of Havildar should have been fixed at Rs.8560/-. The further contention of the applicant is that Appendix F of SAI 1/S/2008 read with Para 9(a)(iii) provides multiplication formula in accordance with which the minimum revised pay band/pay scale on grant of 6th CPC has to be fixed and since his basic pay has been fixed less than the minimum pay band/pay scale, as provided in the letter under reference, he is entitled to re-fixation of his basic pay. For re-fixation of his pay as per SAI 1/S/2008, the applicant represented through letter No.150/Misc/PA dated 21st September, 2010, duly recommended by his Commanding Officer. However, as contended, his representation was rejected by the office of the Joint Controller of

A l

Defence Accounts solely on the ground that the minimum basic pay of Rs.8560/- is to be fixed only in the cases of direct recruit Havlidars and not in the cases of promoted or mustered Havlidars. Another attempt to seek redressal, as contended, vide representation dated 14th December, 2010 also met the same fate. His third attempt for re-fixation of his pay in the grade of Havlidar as per the recommendations of 6th CPC vide letter dated 27th August, 2018 was not responded to by the respondents.

4. It is further contended that though there are no direct entries in the rank of Nk, Sub and Sub Maj in the Indian Army yet, para 13 of SAI 1/S/2008 lays down the revised minimum pay in respect of all ranks of the officers including Sepoys, Nk, Havlidars, Nb Sub and Sub Maj and not just in the case of direct recruits in the rank of Havlidars. To substantiate his case, the applicant has placed reliance on the decision of this Tribunal in the case of Hav (PA) Kultar Singh Chauhan Vs. Union of India and Ors. (OA 72/2015) decided on 9th December, 2015. It is further submitted that the order passed by this Tribunal in the case of Hav (PA) Kultar Singh Chauhan (Supra) has attained finality as the Civil Appeal Dy No.18183/2017 Union of India and Ors . Vs. Hav (PA) Kultar Singh Chauhan preferred by Union of India against this order has been dismissed by Hon'ble Supreme Court vide order dated 17th July, 2017. The further contention of the applicant is that based on the principle of law settled by Hon'ble

matter of fixation of pay in the case of Havidars and the same having been implemented in the cases of similarly situated employees, there is no reason as to why he should not be granted the same benefit.

5. The respondents have filed their counter affidavit. The core contention of the respondents, in addition to the ground of delay, is that Para 13 of SAI No.1/S/2009 is applicable only in the cases of those personnel who have been recruited directly as Havlidars on or after January 2006 and since the applicant is not a direct recruit Havlidar, he is not entitled to fixation of pay at Rs.8560/-.

6. We have heard learned counsel for the parties and have also perused the documents available on record.

7. A similar question, as raised in this OA, had arisen in the case of Hav (PA) Kultar Singh Chauhan (supra) relied upon by the applicant and the same is no longer *res integra* and the Coordinate Benches of this Tribunal have granted benefits to similarly placed employees in a catena of cases.


8. The law governing service jurisprudence mandates that all similarly situated persons should be granted identical benefits until and unless there are good reasons to deny the same. On account of wrong fixation of his pay/pension, the applicant is suffering recurring financial losses and we see no reason to deny him his legitimate benefits except that since the applicant delayed in approaching this

Tribunal for over 180 days, the arrears are to be restricted to three years prior to the filing of this OA.

9. In view of the facts and circumstances of this case, the respondents are directed to calculate and re-fix the pay and allowances of the applicant at Rs.8560/- retrospectively from the date of his promotion to the post of Havlidar, i.e., 8th October, 2009 at par with the directly recruited Havlidars. However, 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] the arrears shall be restricted to three years prior to the filing of this OA on 27th January, 2020. The respondents are further directed to implement this order within four months of receipt of a copy of the order.

10. The OA is accordingly allowed as directed hereinabove without any order as to costs.

Pronounced in the open Court on this 1st day of January, 2025.



[RASIKA CHAUBE]
MEMBER (A)



[JUSTICE ANU MALHOTRA]
MEMBER (J)

/vks/