

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

OA 643/2020

Nb Sub Rajesh Kumar (JC-673249M) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
Ms. Eti, Advocate  
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal. Act, 2007 by the applicant- Nb Sub Rajesh Kumar (JC-673249M), who is a serving Nb Sub/Clk (SD) and is aggrieved by incorrect fixation of his pay under the 6<sup>th</sup> CPC. By way of this OA the applicant seeks setting aside of the impugned order dated 7<sup>th</sup> February, 2019 and prays for the following reliefs:

- “(a) Set aside the impugned order dated 07.02.2019 passed by the respondents..*
- (b). Direct the respondents to grant the same benefit of fixation of basic pay of the applicant herein as granted to the applicant in OA No.72/2015 vide the aforementioned order dated 06.09.2017 and accordingly fix the applicant's basic/minimum pay Rs.7510/- instead of Rs.7270/- in the rank of Havlidar w.e.f. 01.06.2007 in accordance with SAI-I/S/2008 r/w 6<sup>th</sup> Central Pay Commission Recommendations.*

- (c) *Direct the respondents to calculate the monthly salary of the applicant, including all other emoluments and allowances, on the basis of aforesaid basic/minimum pay. And pay the arrears with effect from 01.01.2006 within a period of three months; and*
- (e) *Pay any other order(s) or direction(s) as deemed appropriate in the facts and circumstances of this case."*

2. The applicant was enrolled as a Sepoy (Clerk) in the Army Service Corps in Group Y in the year 1997 and promoted to the rank of Naik and thereafter Havlidar on 1<sup>st</sup> May, 2001 and 1<sup>st</sup> June, 2007 respectively. It is his case that at the time of implementation of the recommendations of the 5<sup>th</sup> CPC the basic/minimum pay of the Naik and Havlidar were fixed uniformly across the board irrespective of the Arm/Service and they, including the direct entry Havs., were getting the same pay and there was no discrimination on this ground. It is further the case of the applicant that with the issue of Special Army Instruction-1/S/2008 on 11<sup>th</sup> October, 2008 the recommendations of the 6<sup>th</sup> CPC prescribing a revised/enhanced pay band/pay scale for all ranks including the rank of Naik and Havlidar were implemented. It is also the applicant's case that as per Note 8 to Para 9, if a senior promoted to a higher rank before 1<sup>st</sup> January, 2006 draws less pay than his junior promoted to a higher rank on or after 1<sup>st</sup> January, 2006, the pay of the senior, which is less, is to be stepped up. It is also the case of the applicant that Para 9(a)(ii) and Appendix F of the said SAI are

required to be read in conjunction with Para 13 of the SAI which lays down the minimum entry level pay for various ranks as under:-

Grade Pay Rs.	Basic Pay Rs.	Corresponding Rank
2,000	6,460	Sep
2,400	7,510	Naik
2,800	8,560	Havlidar
4,200	9,300	Nb Sub
4,600	12,540	Sub
4,800	13,350	Sub Maj

3. The further contention of the applicant is that Appendix F of SAI 1/S/2008 read with Para 9(a)(iii) provides Fixation Table for fixing the pay in accordance with the multiplication formula laid down in Para 9(a)(i) of the SAI for each stage of the pre revised scales based on which the minimum revised pay band/pay scale, on grant of 6<sup>th</sup> CPC, has to be fixed. As contended by the applicant, the respondents have refused to extend the said benefit to the applicant based on Note-8 of Para 9(a)(iii) of the SAI by comparing with the pay of the juniors enrolled on or after 1<sup>st</sup> January, 2006, whereas the case of the applicant is that he is seeking re-fixation of his minimum pay in terms of Para 9(a)(ii) of SAI-I/S/2008 read with Para 13(a) and not stepping up of pay as provided in Note-8 of Para 9(a)(iii) of the SAI, therefore, this provision is not relevant in his case. It is further the case of the applicant that neither in the 6<sup>th</sup> CPC recommendations nor in SAI-1/S/2008, there is any specific provision with regard to fixation or

grant of pay for the direct entry Naik or Havlidars and the direct Entry Havlidars were getting the same pay as the applicant whereas now all of a sudden the direct Entry Havlidars have been placed in higher scale of pay. It is further submitted that there are no direct entries in the rank of Naik, Subedar and Maj in the Indian Army and therefore Para 13 of SAI-1/S/2008 with regard to fixation of pay as per the recommendations of the 6<sup>th</sup> CPC applies to all Army personnel below the rank of officers.

4. It is the applicant's case that he was recruited as a Sepoy on 28<sup>th</sup> June, 1997 and subsequently promoted to the rank of Naik on 1<sup>st</sup> May, 2001 and Havlidar on 1<sup>st</sup> June, 2007 and prior to implementation of the 6<sup>th</sup> CPC, the applicant's basic pay as Naik was Rs.3850/- which, on implementation of the 6<sup>th</sup> CPC recommendation, after applying the multiplication formula (Rs.3909.60 x 1.86+ Rs.7270), was fixed at Rs.7270/-/ whereas the revised minimum pay of Naik, as prescribed in Para 13 of SAI/1/S/2008, was Rs.7510/- . The applicant further submits that in place of Rs.8560/- on promotion to the rank of Havlidar on 1<sup>st</sup> June, 2007, after applying the multiplication formula (Rs.4069.89 x 1.86+ Rs.7570) the applicant's pay in the rank of Havlidar was fixed at Rs.7570/-/ in accordance with Para 9(a)(i) of SAI-1/S/2008 which is not in line with SAI-1/S/2008.

5. It is the case of the applicant that since his basic pay has been fixed less than the minimum pay band/pay scale as provided in

Para 9 (a)(ii) read with Para 13(a) of SAI-1/S/2008, he is entitled to re-fixation of his pay both in the rank of Naik at Rs.7510/- from 1<sup>st</sup> January, 2006 and Rs.8560/- from 1<sup>st</sup> June, 2007 in the rank of Havlidar.

6. The further contention of the applicant is that the principle of law in the matter of fixation of pay in the case of Havlidars having been settled by the Hon'ble Supreme Court, the issue has a universal applicability and has attained finality. The applicant submits that thus the same is required to have been applied across the board for all Army personnel which, for no valid reason has not been done in the present case and thus the applicant is also entitled to the same benefit.

5. The respondents vide their counter affidavit to refute the claim of the applicant have based their argument on the foundation that Para 13 of SAI No.1/S/2009 is applicable only in the cases of direct entry Havlidars recruited on or after January 2006 and since the applicant was recruited as a Sepoy way back in 1997 and thereafter promoted as Naik in 2005 and Havlidar in 2007, he is not entitled to fixation of pay at Rs.7510/- in the rank of Naik and Rs.8560/- in the rank of Havlidar in terms of the recommendations of the 6<sup>th</sup> CPC recommendations made applicable in the Army vide SAI-1/S/2008 issued on 11<sup>th</sup> October, 2008.

6. We have heard learned counsel for the parties and have also perused the documents available on record. The only question that needs to be answered to decide the present OA is whether the applicant

is entitled to fixation of his pay under the 6<sup>th</sup> CPC in terms of Para 13 of SAI-1/S/2008 which lays down the minimum entry level pay in various ranks/grades on or after 1<sup>st</sup> January, 2006.

7. A similar question, as raised in this OA, having arisen in the case of Hav (PA) Kultar Singh Chauhan Vs. Union of India and Ors. (OA 72/2015) decided on 9<sup>th</sup> December, 2015 on the dismissal of Civil Appeal Dy No.18183/2017 filed by Union of India on 17<sup>th</sup> July, 2017 by the Hon'ble Supreme Court has attained finality which is no longer *res integra* and this Tribunal following the same in a catena of cases has granted benefits to similarly placed employees.

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. For the wrong of the respondents in not correctly fixing the pay/pension of the applicant, the applicant cannot be denied his legitimate benefits which he is otherwise entitled to. In view thereof we see no reason to deny benefits to the applicant.

9. In the light of the above and taking into consideration the facts and circumstances of this case, the respondents are directed

- (a) to calculate and re-fix applicant's pay and allowances in the rank of Naik at Rs.7510/- with effect from 1<sup>st</sup> January, 2006;
- (b) to calculate and re-fix his pay and allowances at Rs.8560/- in the rank of Havlidar, from 1<sup>st</sup> June, 2007;

