
(2019) 12 AFT CK 0010

In the Armed Forces Tribunal

Case No : Original Application No. 2162 Of 2019

Khagesh Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Citation : (2019) 12 AFT CK 0010

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, K.K. Tyagi

Final Decision : Allowed

Judgement

1. The applicant has filed the instant O.A seeking re-fixation of his pay and other consequential benefits as per the option exercised by him post 6

Central Pay Commission.

2. The applicant was enrolled in the Army on 28.02.1991 and in due course was promoted to the rank of Subedar. While the recommendations of the

6th CPC was yet to be implemented, the applicant was promoted to the rank of Naib Subedar on 29.01.2008.

3. In accordance with the SAI, PBORs who were in service as on 01.01.2006 were to have fixation of their initial pay in the revised pay structure by

multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86. A PBOR had the option as to when he wanted to shift to the new scale and the

option was to be exercised within a specified time frame. In case no option was received within the specified time frame, a PBOR was to be deemed

to have been elected to be governed by the revised pay structure with effect from 01.01.2006. There was also provision for fixation of pay on

promotion which occurred on or after 01.01.2006, where a PBOR had an option to get his pay fixed in higher grade from the date of his promotion or

from the date of next increment. In case no option was exercised by the individual, the PAO was to regulate fixation on promotion ensuring that the

more beneficial of the two options was given to the PBOR. As a one-time measure, PBORs promoted on or after 01.01.2006 and before the

publication of the SAI were given the chance to exercise their option within three months from the date of publication of the SAI.

4. The applicant has stated that the time limit for submitting the option for migration to the revised pay scales, was extended from the period of three

months given in the SAT to 31.05.2013. He has also stated that he was not aware of the nuances of the revised pay scales and that details were not

effectively disseminated. He, therefore, exercised his option in December 2012 and December 2013, for revision of his pay from the date of promotion

to the rank of Naib Subedar.

5. The Respondents, on the other hand, submitted that the details of pay revision post 6' CPC, promulgated by the SAT and options to be exercised by

personnel, were effectively disseminated at unit level.

6. While it is not disputed that the initial time granted for exercising of option was subsequently extended by the Government, the date upto which the

extension was granted is now being questioned. The issue is no more res Integra as the matter was looked into in depth by this Tribunal in Sub Chittar

Singh v. Union of India and others (0.A.No.113 of 2014 and connected cases). Further, in Virendra Singh and others v. Union of India and others

(OA No.42 of 2010 decided on 08.02.2010), the Chandigarh Bench of this Tribunal has granted relief to the applicant therein as allowed by the

Ministry of Defence vide letter dated 12.06.2009, which attained finality with the dismissal of S.L.P (C) CC No. 18582 of 2010 on 13.12.2010 by the

Honible Supreme Court.

7. Apart from looking into the time limits for submission promulgated by various letters, this Tribunal had also looked into the provisions of Para 21 of

the SA1, which provide the power to relax any of the provisions of the rules in the SAT, to enable justice in an equitable manner. It was held that the

options exercised by the petitioners therein, could not have been rejected merely due to delay in submission date. Therefore, the petitioners therein

were held entitled to all the benefits, as though they had exercised their options in time. In our view, therefore, the applicant, who is similarly situated,

could not have been denied the benefit of his option, merely for the reason that he had not exercised it in time. At this juncture we would also like to

reiterate that in accordance with sub-para 14(b)(iv) of the SAT, even if no option is exercised by an individual, PAO(OR) will regulate fixation

ensuring that the more beneficial of the two options promulgated in the SAT would be allowed to the individual.

8. In view of the foregoing, the instant O.A is allowed directing the respondents to re-examine fixation of pay of the applicant post 6' CPC, in

accordance with the provisions of SAT No.15/2008, and subsequent amendments/modifications issued thereon as though the applicant had exercised

his option in time. The respondents are further directed that the fixation is to be done in the manner which would be more beneficial to the applicant in

accordance with the provisions of SAI. The respondents shall refund the excess amount recovered from him if any, within four months from the date

of receipt of a copy of this order.

9. There will be no order as to costs.