
(2020) 03 AFT CK 0004
In the Armed Forces Tribunal
Case No : Original Application No. 1303 Of 2019

Kiran Salathia

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0004

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Kritika Chhatwa, I.S. Singh, V.S. Tomar

Final Decision : Disposed Of

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application seeking the

following reliefs:

(a) Direct the respondents to grant the same benefit of fixation of basic pay of the applicant herein as granted to the applicant in O.A No. 72 of 2015

vide the order dated 06.09.2017 and accordingly fix the applicant's basic/minimum pay at Rs.8560/- instead of Rs.7170/- with effect from 07.02.2007

in accordance with SAI-1/S/2008 read with 6th Central Pay Commission recommendations;

(b) 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 07.02.2007 i.e. date of promotion of Havildar within a period of three months; and

(c) Direct the respondents to grant the same benefit of fixation of pay as given vide order dated 06.09.2017 to all the similarly circumstanced

personnel including those whose names have been given out in Annexure A3.

2. The applicant was recruited as a Sepoy on 31.03.2000 and re-mustered as P.A in Group 'X' on 07.02.2007. After the implementation of the

6th Central Pay Commission (6th CPC) recommendations, the pay of the applicant was fixed at Rs.7720/- with effect from 07.02.2007. According to

the applicant, the pay fixation was made as per the recommendations of the 6th CPC and in accordance with Paragraphs 13 and 14 of the Special

Army Instruction (SAI 1/5/2008) and the pay of the applicant should have been fixed at Rs.8560/-. When this benefit was not extended to the

applicant, he submitted a representation on 19.01.2019. When the same remained unanswered, this application has been filed before this Tribunal on

25.07.2019.

3. Even though the respondents have tried to justify their action, it is contended by them that the benefit claimed by the applicant can be granted only

to a directly recruited Havildar and not to a promotee Havildar like the applicant. We are of the view that this issue is no longer res Integra. On

09.12.2015, in the case of Hay (PA) Ku/tar Singh Chauhan V. Union of India and others in O.A No. 72 of 2015, a Coordinate Bench of this Tribunal

has allowed similar applications and directed the respondents to fix the pay of employees like the applicant in the minimum pay at Rs.8560/- with

effect from the date the 6th CPC recommendations were implemented i.e. 01.01.2006. Thereafter, in a catena of judgments, similar benefit has been

granted to various employees when they were denied similar benefits. However, the Government implemented the order in the case of Ku/tar Singh

Chauhan (supra) only, vide order dated 06.09.2017. Though subsequently in various cases like Hay/PA Soumen Bharat/ v. Union of India and others

in O.A No. 1084 of 2019 decided recently on 19.09.2019 and in (i) Hay (PA) Thiyaagu C v. Union of India and others (O.A No. 341 of 2015 decided on

09.12.2015); (ii) Hav (PA) Balber Singh v. Union of India and others (O.A No. 137 of 2015 decided on 09.12.2015); and (iii) Hay (PA) Daya Krishan

v. Union of India and others (O.A No. 139 of 2015 decided on 09.12.2015), benefits had been extended to various similarly placed employees, we may

take note of the fact that the Special Leave Petition (SLP) filed by the Union of India in the case of Ku/tar Singh Chauhan (supra) was dismissed by

the Hon'ble Supreme Court on 17.07.2017 vide Annexure A6 judgment.

4. The applicant submits that once a principle of law in the matter of fixation of pay has been decided by the Hon'ble Supreme Court and it has been

implemented in the case of similarly situated persons, there is no reason as to why the applicant has not been granted the same benefit. Contending

that the same benefit should be extended to the applicant also, the learned counsel placed reliance on the following decisions:

(i) State of Karnataka v. C. Lalitha (2006) 2 SCC 747; and

(ii) KT Veerappa and others v. State of Karnataka and others (2006) 9 SCC 406.

However, learned counsel for the respondents reiterated the same objections which were raised in the case of Ku/tar Singh Chauhan (supra) and

contended that a directly recruited person is only entitled to such benefits and not promotees like the applicant. He further submitted that in the case of

Ku/tar Singh Chauhan (supra), the Hon'ble Supreme Court had dismissed the SLP only on the ground of delay and not on merit, the Hon'ble Supreme

Court had not entered into the merit of the case. That apart, learned counsel argued that the decision in Ku/tar Singh Chauhan (supra) was passed on

09.12.2015. It was implemented by the respondents by passing a detailed order making it applicable only to the case of Ku/tar Singh Chauhan (supra)

on 06.09.2017. The applicant slept over the matter for more than two years and filed the complaint only on 19.01.2019 and, therefore, on account of

delay, he is not entitled to any benefit.

5. We have heard the learned counsel for the parties and perused the record.

6. There is no denial of the fact that in view of the law laid down in the case of Ku/tar Singh Chauhan (supra) and followed by the Coordinate

Benches of this Tribunal consistently till 19.09.2019 in the case of Soumen Bharati (supra), the applicant is also entitled to similar benefit and once, in

the matter of pay fixation, the issue is settled by a Court or a Tribunal, the principle of law governing service jurisprudence mandates that all similarly

situated persons should be granted identical benefits until and unless there are reasons to deny the same to them and the only grounds, on which it can

be denied are delay and laches or acquiescence. In the case of the applicant, there was neither acquiescence nor was there any inordinate delay

which can disentitle him from claiming the benefit. On account of the wrong fixation of pay, even today, the applicant suffers due to less pay/pension

being paid. At best, the delay in approaching this Tribunal can be a reason for

denying him arrears of salary retrospectively with effect from

01.01.2006 as was granted to other employees who approached the Court within a reasonable period of time. In the interest of justice, the arrears of

pay can be restricted to three years prior to the date of filing of this application, i.e, 25.07.2019, otherwise we see no reason to deny the benefit to the

applicant.

7. Accordingly, keeping in view the totality of the facts and circumstances, we direct the respondents to re-fix the pay of the applicant at Rs.8560/-

retrospectively with effect from 07.02.2007, the date of promotion to the rank of Havildar and calculate the pay and allowances accordingly.

However, the arrears of salary shall be restricted to three years preceding the date of filing of this application i.e. 25.07.2019. This order shall be

implemented within four months from the date of receipt of a copy of this order.

8. Resultantly, the application stands allowed and is disposed of, as above. No order as to costs.