(2021) 09 AFT CK 0015

In the Armed Forces Tribunal

Case No : OA 1182, 1314, 2018, 892 Of 2019

Sub Mahendra Lai Shrivastava (Retd) APPELLANT

Vs

Union of India & Ors. RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Armed Forces Tribunal Act 2007 — Section 14, 22(1)

Citation : (2021) 09 AFT CK 0015

Hon'ble Judges : Rajendra Menon, Chairperson, (J);P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Avdhesh Kumar Singh, Prabodh Kumar, K.K. Tyagi

Final Decision : Disposed Of

Judgement

1. All three applicants have filed their applications under Section 14 of Armed Forces Tribunal Act 2007 being aggrieved with the incorrect pay fixation in the implementation of the 6th CPC instructions as per Special Army Instructions 2/ S/2008dated 11.10.2008 and various connected policy letters issued by the Govt and Army HQ from time to time and judgments on the subject.

Brief Facts of the Case and Prayer - OA 1182/2018 Sub Mahendra Lai Shrivastava

2. The brief facts of the case as per the applicant are that he was enrolled on 20.01.1988 into EME. He was promoted from time to time and retired as a Subedar on 31.01.2018. The 6th CPC was implemented from 01.01.2008, for which the implementation instructions were issued vide SAI 2/S/2008 dated 11.10.2008. The applicant was promoted to the rank of Nb Sub on 27.01.2007 when the recommendations of 6th CPC were yet to be implemented.

3. Since the applicant was unaware of the actual methodology of implementation and the fact that he was not specifically intimated, he had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.20008. The Respondents, without examining which option would be more beneficial to the applicant, mechanically fixed his pay as

on 01.01.2006. As a consequential result of this, his pay in the rank of Nb Sub and subsequently in the rank of Sub was fixed lower than his juniors who had either exercised their option or were holding the rank of Nb Sub on 01.01.2006.

4. The applicant subsequently exercised his option to fix his pay from the date of promotion to Nb Sub (27.01.2007) and necessary Part II order dated 08.02.2012 was promulgated. This was accepted by the Respondents and pay accordingly re¬fixed as reflected in the salary slip of September 2012. The applicant was then promoted to the rank of Sub on 01.03.2013. However, when the applicant was about to retire, he noticed that his basic pay had been reduced from Rs 56,900 to Rs 50,000 and that an amount of Rs 3,75,606 had been recovered without any explanation. It was then that he learnt that his Part II order dated 08.02.2012 on exercising option to fix his pay under 6th CPC from the date of promotion to Nb Sub had been cancelled. As a result of this arbitrary action not only was he denied his rightful pay in the rank of Nb Sub and Sub, but it also impacted his pensionary benefits. Hence this OA.

5. The applicant has made the following prayers

(a) In view of the facts mentioned in Paras 4 and 5 above, the Applicant prays that this Honhle Tribunal may be graciously pleased to allow the present application with exemplary costs/damages by passing following orders / directions.

(b) Call for the Records based on which the Respondents have taken a decision not to issue amendment in the policy dated 11.12.2013 in the light of the judgement dated 10.12.2014 in OA 113 of 2014 and quash the same.

(c) Call for the Records including the instructions based on which the Respondents have cancelled the option of the Applicant, recovered the pay and allowances which was revised based on his option and thereafter quash the same.

(d) The Respondents be directed to restore the Part II order published after exercise of option by the Applicant in the revised pay scale based on 6th Pay Commission from the date of his promotion on 21.01.2007 and refund the amount deducted from him with further direction not only to grant him pay in the said revised scale but fix all his post-retirement benefits from the date of his retirement till date based on the said revised last pay.

(e) Direct the Respondents to pay the Applicant arrears of the difference of pay in the rank of Nb Sub and consequently in the rank of Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA etc. earned till date along with interest @ 12% from the date it was payable till the date payment is made.

(f) Pass any other order/orders as deemed appropriate by this Honhle Tribunal in the facts and circumstances of the present case.

Brief Facts of the Case & Prayer - OA 1314/2018 Sub Sattaru Lakshmana Rao

6. The brief facts of the case as per the applicant are that he was enrolled on 24.04.1995 into Corps of Signals. He was promoted from time to time and is currently serving as a Subedar. The 6th CPC was implemented from 01.01.2006, for which the implementation instructions were issued vide SAI 2/S/2008 dated 11.10.2008. The applicant was promoted to the rank of Havildar on 01.04.2007 when the recommendations of 6th CPC were yet to be implemented.

7. Since the applicant was unaware of the actual methodology of implementation and the fact that he was not specifically intimated, he had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008. The Respondents, without examining which option would be more beneficial to the applicant, mechanically fixed his pay which unfortunately is not the most beneficial option for the applicant.

8. Consequently, on being promoted as Havildar on 01.04.2007, his total pay was Rs 8,899 as reflected in the pay slip of August 2007. Subsequently on being promoted to the rank of Nb sub on 01.09.2007, his basic pay was fixed at Rs 5,770 and was in receipt of net pay of Rs 12,448 as reflected in the pay slip of November 2007. The applicant was then promoted to the rank of Subedar on 01.12.2011. However, his pay as Sub was fixed much lower than his juniors and was drawing only Rs 11,690 as seen from the pay slip of May 2012. The initial discrepancy in pay fixation on promotion to the rank of Hav and subsequent ranks resulted in gross variation of pay after implementation of the 7th CPC too, where in, as a Sub the applicant's band pay was fixed at Rs 50,500 as reflected in his pay slip of March 2018. In comparison, his junior whose date of enrollment was 17.08.1996 was in pay band Rs 55,200 (all pay slips attached as annexures). Hence this OA.

9. The applicant has therefore made the following prayers

In view of the facts mentioned in Paras 4 and 5 above, the Applicant prays that this Hon hie Tribunal may be graciously pleased to allow the present application with exemplary costs/damages by passing following orders/ directions:

(a) Call for the records based on which the Respondents No.l has taken a decision not to issue amendment to the policy dated 11.12.2013 in the light of judgment of this Honhle 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 all such orders resulting in gross disparity in pay fixation.

(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.

Brief Facts of the Case & Prayer - OA 892/2019 Sub (TIFC) Java Prakash

10. The brief facts of the case as per the applicant are that he was enrolled on 23.06.1996 into Army Air Defence (AAD). He was promoted from time to time and finally promoted as Subedar on 01.11.2011. The 6th CPC was implemented from 01.01.2008, for which the implementation instructions were issued vide SAI 2/S/2008 dated 11.10.2008. The applicant was holding the rank of Hav (HMT) as on 01.01.2006. He was then promoted to the rank of Nb Sub on 08.07.2008, with seniority as on 01.07.2008. Subsequently, the applicant was promoted to the rank of Subedar on 01.11.2011 and the Part II Order on exercising the option of pay fixation in 6th CPC was published vide Part II order No 0/0607/2013 dated 03.07.2013; to be effective from his date of promotion to Nb Sub on 01.07.2008.

11. Since the applicant was unaware of the actual methodology of implementation and the fact that he was not specifically intimated, he had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008. The Respondents, without examining which option would be more beneficial to the applicant, mechanically fixed his pay as on 01.01.2006. In spite of having exercised an option on 13.07.2013 for pay fixation with effect from 01.07.2008, this was not accepted by the Respondents on the grounds that the option had exercised beyond even the prescribed extended period. As a consequence of this, his pay in the rank of Nb Sub and subsequently in the rank of Sub was fixed lower than his juniors who had either exercised their option or were holding the rank of Nb Sub on 01.01.2006. As a result of this arbitrary action not only was he denied his rightful pay in the rank of Nb Sub and Sub, but it also impacted his pensionary benefits. Hence this OA

12. The applicant has made the following prayers

(a) In view of the facts mentioned in Para 4 and 5 above, the Applicant prays that this Honble Tribunal may be graciously pleased to allow the present application with exemplary costs/damages by passing following orders/directions:

(b) Direct the Respondents to accept the option of the applicant with further direction to fix the pay of the Applicant in the 6th CPC from the date of his promotion to the rank of Nb Sub i.e. 08.07.2008/ antedate seniority and accordingly re-fix the pay in the rank of Nb Sub and consequently in the rank of Sub as granted to all other persons whose option was accepted by following the ratio of the order of the AFT, Principal Bench, New Delhi dated 10.12.2014 passed in Sub Chittar Singh etc. etc. Vs. Union o f India & Ors. [O.A. No. 113 of 2014 and other connected matters]

(c) Direct the Respondents to pay the Applicant arrears of the difference of pay in the rank of Nb Sub and Sub after adjusting the payments already made by revising otherallowances as per the revised rate including increment/DA etc. earned till date along with interest @12% from the date it was payable till the date payment is made.

(d) Pass any other order/orders as deemed appropriate by this Honhle Tribunal in the facts and circumstances of the present case.

Arguments by the Counsel for the Applicants

13. All the three applicants are represented by the same Counsel, Shri S.S. Pandey. The Counsel initially took us through the salient details and circumstances of the three cases. The Counsel then highlighted the relevant provisions of SAI 2/S/2008 pertaining to pay fixation, and in particular, in respect of those who are promoted in the transition period between 01.01.2006, the date when 6th CPC was effective, and 11.10.2008 when the implementation instructions were issued vide SAI 2/S/2008.

14. Referring to the provisions of Paras 7 and 8 of the SAI, the counsel highlighted the fact that the personnel had two options regarding pay fixation in the new scale of 6th CPC. Personnel could elect to continue drawing pay in the existing scale until the date on which he earned his next or any subsequent increment in the existing scale, or until he vacates his post or ceases to draw pay in that scale. He further added that where an individual is placed in a higher pay scale in the transition period on account of promotion, the individual could elect to switch over to the revised scale from the date of such promotion/ upgradation.

15. All personnel were required to exercise their option in writing as per the form given at Appendix D of the SAI within three months from the date of issue of the SAI (ie) 11.10.2008. Personnel below officer's rank were to intimate the option to their respective PAO through their units. The implementation instructions also said that if the option certificate was not received within the stipulated time, it would be deemed that the person has elected to be governed by the revised pay structure from 01.01.2006. And that option once exercised would be final.

16. The Counsel then elaborated that based on the case taken up by the Service HQs on the inability of all personnel to render the option certificate within the stipulated period of three months as given in the SAI, the period for submission was periodically extended. SAI dated 11.10.2008 stipulated that the option for pay fixation be exercised within three months. The letter dated 21.12.2010 extended the time till 31.03.2011. Further, the letter dated 11.12.2013 letter stated that options submitted till 30.06.2011 would be accepted. The Counsel then drew our attention to Para 14 of the SAI which stipulates that in the absence of option being exercised, the establishment (Pay & Accounts Office in the case of personnel below officers' rank) was required to fix the pay on its own in a manner which was MOST BENEFICIAL TO THE INDIVIDUAL

17. The Counsel relied on the following orders where similarly placed personnel

have been granted relief with instructions to the Respondents to refix the pay based on the most beneficial option to the individuals even where an individual has not exercised an option or the option had been exercised after the permissible period.

(a) AFT Principal Bench Order dated 10.12.2014 in Sub Chittar Singh & Ors Vs Union of India & Ors. - OA 113/2014

(b) AFT Principal Bench Order dated 09.12.2016 in Sub Sadeesh Kumar Vs Union of India & Ors. - OA 1610/2016

(c) AFT Principal Bench Order dated 05.10.2017 in Sub (TIFC) Dhyan Singh Vs Union of India & Ors. - OA 1092/2017 - wherein relief was granted to the applicant to fix his pay from the date of promotion, irrespective of the fact that he had not submitted the option for switching over to the 6th Central Pay Commission within the stipulated time.

(d) AFT Principal Bench Order dated 09.01.2019 in Sub (JE/NE) Sheeju A Vs Union of India & Ors. - OA 2070/2017

(e) AFT Principal Bench Order dated 09.01.2019 in Sub Nagender Singh Vs Union of India & Ors.-OA 1198/2018

18. The Counsel also drew our attention to PAO(OR) AOC, Secunderbad letter No NE/Gen/CDA Compl/JC727186L dated 08.07.2016 which in a case had stated that as far as the PAO office was concerned, if an individual did not exercise his option for pay fixation within the stipulated time extended by the Govt, the pay fixation would be carried out with effect from 01.01.2006 as stipulated in Para 8(c) of the SAI. Also, that with reference to Orders passed by the AFT, it stated that those were applicable only to the individuals concerned, there by concluding that benefit of correct pay fixation can only be done with the intervention of the Tribunal/ Courts.

19. The Counsel also drew our attention to PAO (OR) EME letter No NE-1/ Court Case/ JC761059 dated 11/06/2018, who in reference to OA 1182/2018 of Sub ML Shrivastava had stated that in some cases due to technical snag in Dolphin system (Pay and Accounts Automation Software) DO Pt II Orders published after 30.06.2011 were adjusted and fixation was done from the date of promotion to the rank of Nb Sub. However, this was 'rectified' during final settlement of account and recoveries made. Also that as per the provisions of SAI l/S/2008 dated 11.10.2008, all personnel were required to exercise their option within 3 months from the date of publication of order for migration into 6th CPC. That subsequently, the period was relaxed upto 30.06.2011 and that there was no further extension of the period. They also have stated that the JCO's pay was fixed as on 01.01.2006 as per the instructions contained in the clause 8(c) of SAI l/S/2008.

20. The Counsel concluded stating that while requisite instructions had been issued, the instructions also stipulated that where no option was exercised, the

PAO(OR) was required to work out the most beneficial option for an individual and then fix his pay on transition to 6th CPC. The Counsel vehemently stated that there is nothing on record in the three cases to remotely suggest that the respective PAO(OR) had undertaken such an examination and then fixed the pay. This impersonal and mechanical way of pay fixation had resulted in less pay to the individuals at various ranks, often drawing less pay than their juniors and finally the pension and post retiral benefits being fixed for life in a manner which was disadvantageous to the individual and against his right to correct pay and pension for the services rendered.

Arguments by the Counsel for the Respondents

21. Counsel for the Respondents, Shri Avdhesh Kumar Singh, in OA 1182/2018 - The Counsel briefly took us through the service profile of the applicant, promotions earned with dates and added that the applicant was promoted to the rank of substantive Havildar on 17.10.2003 with date of seniority as 07.10.2003; as Nb Sub on 27.01.2007 with ante date seniority of 01.12.2006; and as Sub on 01.03.2013. The Counsel then stated that since the case pertained to fixation of pay, comments of PAO(OR) EME were sought who have mentioned that the applicant was drawing a basic pay of Rs 4350 when the 6th CPC was declared and accordingly his pay was fixed at Rs.8,100 with grade pay of Rs.2800. Moreover, due to certain technical snag in the Dolphin software utilised to compute the pay and allowances, part II Orders published after 30.06.2011 were initially accepted and pay fixed accordingly. And that later the anomaly was noticed and the pay recovered. They have also mentioned that the pay fixation on 01.01.2006 was not done by default but as per the instructions contained in the clause 8(c) of SAI l/S/2008 only. The Counsel concluded that since the applicant had not exercised his option within the given time period, his pay was fixed as on 01.01.2006 as stipulated in the SAI. Also, that though the applicant had subsequently exercised his option to fix his pay from the date of promotion to Nb Sub (27.01.2007) and necessary Part II order dated 08.02.2012 was promulgated and accepted, once the anomaly that the option was exercised beyond the period of 30.06.2011, was noticed during final discharge, Rs.3,75,606 was recovered as the amount of excess payment made.

22. Counsel for the Respondents, Shri Prabodh Kumar, in OA 1314/2018 - The Counsel initially stated that the case was barred by estoppel since the applicant had failed to exercise the option for pay fixation despite the extended schedule and had thus accepted his pay for a period of approximately five years and can therefore not make a claim for it now. The Counsel also stated that the case was barred by limitation under Section 22(1) of the AFT Act and that the applicant had approached the Tribunal without availing any alternate remedy as required under Sec 14 read with Sec 21 of the AFT Act. He then briefly took us through the service profile of the applicant, promotions earned with dates and added that the applicant was promoted to the rank of Havildar on 01.04.2007 with date of seniority as 02.12.2006; as Nb Sub on 01.09.2007 with date of seniority as

01.07.2007; and as Sub on 01.12.2011. The Counsel then stated that as per the SAI, the personnel were required to exercise their option for pay fixation by 31.03.2011, which was further extended to 30.6.2011 vide MoD letter dated 11.12.2013. The Counsel then sated that since the applicant had never submitted his option for pay fixation, his pay was fixed as on 01.01.2006 as stipulated by Para 8(c) of SAI.

23. Counsel for the Respondents, Shri K.K. Tyagi, in OA 892/2019 - The Counsel briefly took us through the service profile of the applicant, promotions earned with dates and added that the applicant was promoted to the rank of Havildar on 01.07.2006; as Nb sub on 08.07.2008; and as Sub on 01.11.2011. The Counsel then added that the applicant had exercised his option on 21.04.2012 and that the Part II Order was not in the prescribed format and that the date of promotion had been reflected as 01.07.2008 whereas it should have been 08.07.2008; the date of actual promotion. Hence the Part II order had been rejected. Thus, in the absence of an option, the pay of the applicant had been fixed as stipulated in the SAI.

Consideration

24. Having heard all parties at length, the main issue before us is whether the respective PAO(OR)s who are the Respondent office responsible for all matters of pay and allowances of personnel below officers' rank are justified in arbitrarily fixing the pay as on 01.01.2006, without examining the most beneficial option for each individual while fixing the pay; irrespective of whether the option was exercised or not exercised, or was exercised late.

25. We have examined all the policies issued and placed on record, pertaining to the implementation of 6th CPC from 01.01.2006. In pursuance of recommendations of 6th CPC and the Govt decisions thereon, the existing scales of pay of JCOs, including Honorary Commissioned Officers, NCOs, OR of the Army, DSC, APS and TA when embodied, was to be revised and pay fixed in the revised pay structure in accordance with the provisions of SAI No l/S/2008 dated 11.10.2008, with effect from 01.01.2006. The provisions of this SAI were to apply to all the above categories of personnel who were on the effective strength of the Army, DSC, APS and TA, if embodied, as on 01st day of January 2006 or who joined the service thereafter. The provisions of Pay and Allowances Regulations for JCOs and OR, 1979 as amended from time to time and Government orders which are not affected by the provisions of this SAI were to remain unchanged. Relevant extracts of SAI 2/S/2008 are reproduced below.

"7. Drawal of Pan in the Revised Pay Structure. Save as otherwise provided in this instruction, a PBOR shall draw pay in the revised pay structure applicable to the rank which he holding or to the post to which he is appointed, provided that:-

(a) PBOR may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

(b) In cases where a PBOR has been placed in a higher pay scale between 1st date of January 2006 and the date of notification of this instruction on account of promotion, upgradation of pay scale etc, the individual may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc.

Explanation 1 - The option to retain the existing scale under the provisions to this rule shall be admissible only in respect of one existing scale.

Explanation 2 - The aforesaid option shall not be admissible to any PBOR appointed to a post on or after the 1st day of January 2006, whether for the first time in Government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

8. Exercise of Option.

(a) The option under the provisions to para 7 above shall be exercised in writing in the form given at Appendix 'D' to this SAI, so as to reach the concerned Pay Accounts Office, within three months of the date of publication of this instruction or where an existing scale has been revised by any order made subsequent to that date within three months of the date of such order, Provided that:-

(i) In the case of a PBOR who is, on the date of such publication or as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the PAO (OR) within three months of the date of resuming his duties in India; and

(ii) Where a PBOR is under suspension on the 1st day of January, 2006, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub rule.

(b) The option shall be intimated by the PBOR to the concerned PAO, through his unit.

(c) If the intimation regarding option is not received within the time mentioned in this SAI, the PBOR shall be deemed to have elected to be governed by the revised pay structure with effect from 1st day of January 2006.

(d) The option once exercised shall be final.

Note 1 - Persons whose services were terminated on or after the 1st day of January, 2006 and who could not exercise the option within the prescribed time limit, on account of discharge on the expiry of sanction posts, resignation, dismissal or discharge from service or disciplinary grounds, are entitled to the benefits of this rule.

Note 2 - Persons who have died on or after 1st day of January, 2006 and could not exercise the option within the prescribed time limit are deemed to have opted for the revised structure on and from 01 January 2006 or such later date as is most beneficial to their dependents, if the revised pay structure is more favourable and in such cases, necessary action for payment of arrears shall be taken by concerned Pay Accounts Office/Depot Battalion/Records Office.

Note 3 - Persons who were on annual leave or any other leave on 1st day of January 2006 which entitled them to leave salary will be allowed the benefits of this rule.

14. Fixation of Pail On Promotion on or after 1st January 2006. In the case of promotion of a PBOR from one grade pay to another in the revised pay structure, the fixation of pay in the running pay band will be done as follows

(a) One increment equal to 3% of the sum of the pay in the pay band, existing grade pay and Group 'X' pay (if any) will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band, The grade pay corresponding to the promoted rank, will thereafter be granted in addition to this pay in the pay band, In cases where promotion involves change in the pay band also, the same methodology will be followed.

However, If the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will 'be stepped up to such minimum.

(b) On promotion from one rank to another /financial upgradation under ACP, PBOR has an option to get his pay fixed in the higher post either from the date of his promotion or from the date of his next increment, viz 01 Jul of the year. The pay will be fixed in the following manner in the revised pay structure

(i) In case PBOR opts to get his pay fixed from his date of next increment then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher rank will be granted. Further re-fixation will bedone on the date of his next increment i. e. 01 Jul On that day, he will be granted two increments; one annual increment and the second on account of promotion. While computing these two increments, Basic Pay prior to the date of promotion shall be taken into account. To Illustrate, if the Basic Pay prior to the date of promotion was Rs 100, first increment would be computed on Rs 100 and the second on Rs 103.

(ii) In case a PBOR opts to get his pay fixed in the higher grade from the date of his promotion he shall get his first increment in the higher grade on the next 01 Jul, if he was promoted between 02 Jul and 01 Jan. However, if he was promoted between 02 Jan and 30 Jun of a particular year, he shall get his next increment on 01 Jul of next year.

(iii) PBOR will have the option to be exercised within one month from the date of promotion to have his pay fixed from the date of such promotion or to have the pay fixed from the date of his next increment, Option once exercised shall be final. Form of option is given at Appendix 'D' to this SAI.

(iv) If no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options mentioned above is allowed to the PBOR. Pay on promotion may be fixed in the following manner if it is more beneficial

(aa) In case promoted between 02 Jan and 30 Jun, the fixation, onpromotion will be done from the date of his next increment i.e 01 Jul.

(ab) In case promoted between 02 Jul and 01 Jan, the fixation onpromotion will be done on the date of the promotion of the PBOR.

(v) As a one time measure, PBOR promoted on or after 01 Jan 2006 and before publication of this instruction, may exercise their option afresh within three months of the issue off this instruction. Form of option is given at Appendix 'D' to this SAI.

(c) In case of promotion to Hony Captain/Lieutenant rank on or after 1st January 2006, One additional increment will be given as in all other cases unless this amount is less than Rs 15600 i.e minimum of PB-3 then the pay will be stepped up to Rs 15600. In addition, Grade Pay and MSP as indicated in the table below para 13 will be admissible.

26. The Corrigendum to SAI 2/S/2008 dated 21/12/2010 which initially extended the date by which the option was to be exercised was extended to 31.03.2011 is reproduced below:-

SPECIAL QARMY INSTRUCTION NO. l/S/08 No.

1/S/2008

New Delhi, dated the 21st December, 2010

CORRIGENDUM

The following amendment is made in the Para 8(d) to SAI l/S/08 dated 11.10.2008.

Substitute Para 8(d) with the following:

(d) The Junior Commissioned Officers (including Honorary Commissioned Officers), Non-Commissioned Officers and Other Ranks can revise their option upto 31 mar 2011 if the option is more beneficial to them.

F.No. 1/30/2010/ D(Pay/ Services)

Defence Finance Dy.No. 469/AG/FA dated 16.12.2010

(P. S. Walia) Under Secretary

27. MoD letter No Air HQ/99141/04/AFPCC/1697/D(Pay/ Services) dated 11.12.2013 on 'Extension of period of exercising of option for pay fixation in the revised pay structure' by which the period to exercise option was extended to 30.06.2011 is reproduced below:-

"Subject: Extension of period of exercising of option for pay fixation in the revised pay structure

Reference is made to Corrigendum of SAFI, SAI, SNI 1/S/08 dated vide MOD ID No. 1/30/2010/D(Pay)/ Services dated 21 Dec 2010.

2. Service HQ have represented that all affected service personnel could not exercise the option regarding re-fvcation of pay in the revised pay structure in the stipulated time. i.e. 31 Mar, 2011, due to various reasons like remote locations on being leave and long courses etc.

3. As a one time measure, relaxation is here accorded in the provisions of the ibid Corrigendum to extend the time limit for submission of option by service personnel up to 30 June, 2011.

The changes in the option submitted by Service Personnel up to 30 June, 2011, which are not processed by various agencies due to late submission will now be processed buy re-fixing the pay of affected personnel as per revised option submitted by them up to 30 June, 2011.The relevant Pay & Allowances Regulations may be amended accordingly.

4. This issued with the approval of Ministry of Finance (Department of Expenditure) vide their ID No. 192847/2013/E.III(A) dated 29.11.2013 and concurrence of MoD(Finance) vide their Dy No. 546-PA dated 10.12.2013.

Yours faithfully

(P. S. Walia)

Under Secretary to the Government of India

28. The letter intimating the extension of acceptance of option upto 30.06.2011 was intimated to the environment by AG's Branch vide its letter No B/32813/Misc Sub/AG/PS-3(a) dated 12.12.2013 and is reproduced below.

"EXTENSION OF PERIOD FOR EXERCISING OF OPTION FOR PAY FIXATION IN THE REVISED PAY STRUCTURE

1. Reference GoI letter No 1/30/2010/D(pay/Services) dt 21 Dec 2010.

2. A copy of GoI MoD order No Air

HQ/99141/04/AFPCC/1697/D(Pay /Services) dated 11.12.2013 extending the acceptance of option exercised by Service Pers upto 30 Jun 2011 is forwarded herewith for info and wide circulation please.

(MS Kumar)

Dy Director, PS-3(a)

For Adjutant General"

29. We also rely on the following Orders of the Principal Bench of this Tribunal issued in similar cases :

(i) Order dated 10.12.2014 in the case of Sub Chittar Singh and Ors Vs Union of India & Ors. in OA 113/ 2014.

(ii) Order dated 05.10.2017 in the case of Sub (TIFC) Dhyan Singh Vs Union of India & Ors. in OA 1095/201 7.

(iii) Order dated 09.01.2019 in the case of Sub Nagender Singh Vs Union of India in OA 1198/2018.

30. In all the three cases, the applicants have been promoted to the next rank after 01.01.2006 and prior to the issue of SAI No l/S/2008 dated 11.10.2008. Under normal circumstances, the applicants ought to have exercised their option for pay fixation as given in Para 8 and 14 (b) of the SAI. There is no dispute that the time laid down for exercising the option was initially three months from the date of issue of the SAI and that this was further extended to 31.03.2011 vide Corrigendum to SAI dated 21/12/2010. The period was further extended to 30.06.2011 vide MoD letter dated 11.12.2013. The letter dated 11.12.2013 was disseminated to the environment vide AG's Branch Letter dated 12.12.2013.

31. It is also undisputed that if the applicants by default, are to be in the new pay scale as fixed with effect from 01.01.2006, they would be in a disadvantageous position throughout their service tenure and on retirement/ transition to 7th CPC. Moreover, it is absolutely reasonable to assume that no sane person will knowingly put himself in a disadvantageous position in service and will refuse to accept a beneficial pay scale and opt for the new pay scale that is disadvantageous.

32. Category - A : No Option has been Exercised - In OA 1314/2018, the applicant had not exercised any option for a variety of reasons. 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 individual. 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 since the option for switching over to 6th CPC was not exercised by him.

33. Category - B : Option has been Exercised After the Stipulated Period - In the other two cases i.e. OA 1182/2018 and OA 892/2019, the applicants have exercised their option, albeit later than the stipulated period of 30.06.2011, but certainly before the issue of the letter dated 11.12.2013. In one case, the option was initially accepted and subsequently rejected resulting in recovery of pay and allowances on retirement. It is clear that the respondents, through their communication dated 11.12.2013, conveyed that the date was extended up to 30.06.2011. Unfortunately, by such an order they clearly gave the benefit on one hand by extending the time for submitting the option, and took it away by the other hand; as nobody could have anticipated that in the year 2013, that the date would be extended only upto 30.06.2011 by an order passed in 2013. Moreover, since the letter dated 11.12.2013 itself was forwarded to the

environment vide the letter dated 12.12.2013, nobody before 30.06.2011, could have known that the time limit for submitting the option was extended to 30.06.2011. When the time is extended and it is not brought to the notice of the beneficiaries then extension of time by the respondents cannot give any benefit to the bona fide claimants for such benefits. Therefore, we do not find any justification to deny the benefit of submitting the option to the applicants who have not given their option before 11.12.2013.

34. A detailed reading of SAI 1/S/2008 indicates that vide Para 21 power has been given to the competent authority for relaxing the rule in case of undue hardship. There is no denying that, the facts clearly demonstrate that it was admittedly a case of extreme hardship to the applicants that they were given less salary as compared to their contemporaries or juniors in the same rank and discharging the same duties due to a technical default/ rigid mindless application of rules. Moreover, the stand of the Respondents of giving less salary to the applicants due to their perceived omission is not only, not justified, but is against the spirit of a model employer who by this action has created serious disparity and anomalous service conditions for the service personnel in one rank itself.

35. In addition to above, we are of the considered opinion that if para 8(c) is accepted as a hurdle against providing relief to the applicants, then we cannot ignore the non¬implementation of the beneficial provision given in Para 14(b)(iv), which clearly mandates that PAO (OR) will regulate fixation of pay that will be beneficial (out of the two options mentioned in the scheme) to the individual. Such exercise should have been done before placing the applicants in a particular pay scale. If the PAO (OR) had any difficulty due to the restriction imposed by Para 8(c), it was then once again the duty of the respondents to relax the rule by exercising power under Para 21.

36. As seen from the records such arbitrary fixing of pay by the PAOs has denied the applicants and many other similarly placed personnel the correct pay and allowances in various ranks and consequently, their pension and other post retiral benefits. Equally disconcerting is the fact that, those who have continued in service and have transited into the 7th CPC scale, have again transited into lower pay bands as their initial fixation of pay during transition to 6th CPC has been done in a lackadaisical manner with utter disregard to the instructions contained in the Special Army Order which stipulates that in the absence of option being exercised, the establishment (Pay & Accounts Office in the case of personnel below officers rank) was required to fix the pay on its own in a manner which was most beneficial to the individual. Moreover, we are of the considered opinion that when there is a serious penal consequence by virtue of implementation of a particular scheme, normally such scheme should be brought to the notice of each individual. In this case we have not found any record that the scheme was brought to the notice of the individuals, or the beneficial option worked out and intimated to the applicants.

37. As seen from the documents placed on record, the reason for extending the

time by which the option was to be exercised was that personnel posted to difficult areas were unaware of these instructions and could not get the knowledge of the scheme. Thus, it is the admitted position of the Respondents themselves that they extended the time for submitting the option from time to time to at least 30.06.2011. Therefore, it appears that the time limit fixed in the option was not the soul of the scheme nor was it the essence of the scheme. We find from the response submitted by certain PAO(OR) that the letter dated 30.12.2013 itself had not extended the time limit for submission of option to 30.06.2011 but this had only given direction to the establishment to process the options of the persons who may have submitted their options by 30.06.2011. We are unable to accept such a stance for the simple reason that the respondents' letter dated 11.12.2013 has unequivocally the headings "EXTENSION OF PERIOD FOR EXERCISING OF OPTION FOR PAY FIXATION IN THE REVISED PAY STRUCTURE".

38. In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out and adopted for each individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement. This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the issue for the serving soldiers, many of whom may not be knowledgeable about the intricacies of these calculations, in the full knowledge that that no one will ever knowingly opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.

39. In view of the above, all the three OAs under consideration are allowed and we direct the Respondents to:-

(a) Review the pay fixed of the applicants and after due verification refix their pay under 6th CPC in a manner that is most beneficial to the applicants.

(b) Thereafter refix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.

(c) Refix all pensionary and post retiral benefits accordingly.

(d) Issue all arrears and fresh PPO where applicable, within three months of this order and submit a compliance report.

40. In view of the fact that there are a large number of pending cases which are similarly placed and fall into Categoiy A or B, this order will be applicable in rem to all such affected personnel. Respondents are directed to take sou moto action on applications filed by similarly aggrieved personnel and instruct concerned PAO (OR) to verify records and refix their pay in 6th CPC accordingly.

41. With the aforesaid, all three OAs stand disposed of. MA, if any pending, also stands disposed of accordingly. However, there is no order as to costs.

Pronounced in open Court on this 3rd day of September, 2021.

