

(2021) 11 AFT CK 0011
In the Armed Forces Tribunal
Case No : OA 495 Of 2020

Sub M/Tech (OE) Pankaj Kumar

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Armed Forces Tribunal Act 2007 — Section 14

Citation : (2021) 11 AFT CK 0011

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

Bench : Division Bench

Advocate : S.S. Pandey, V.S. Tomar

Final Decision : Allowed

Judgement

1. The applicant has filed this application under Sec 14 of Armed Forces Tribunal Act 2007 being aggrieved with the incorrect pay fixation in 6th Central Pay Commission, on the grounds that he had not exercised his option for pay fixation in the stipulated time and that he has not been given the benefit of the most beneficial option. The applicant has made the following prayers:

(a) Call for the records based on which Respondent No. 1 has taken a decision not to issue amendment in the policy dated 11.12.2013 in the light of judgment of this Tribunal dated 10.12.2014 in O.A No. 113 of 2014 and judgment dated 05.10.2017 in O.A No. 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 the same;

(b) Direct the respondents to extend the benefit of fixation of pay to the applicant to ensure the more beneficial fixation of pay from the date of promotion as Nb Sub in the revised pay scale in the 6th CPC with effect from 01.03.2008 either allowing him to opt the same now as done in the case of Sub

Dhyan Singh or by applying the more beneficial clause and accordingly step up the pay of the applicant in the rank of Naib Sub and Sub with further direction to grant the applicant arrears of such pay fixation along with the interest @ 12% per the date same was due till its actual realization; and

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

2. Brief facts of the case, according to the applicant, are that he was enrolled into the services of Indian Army on 30.03.1989. On 01.03.2008, when the recommendations of 6th CPC were yet to be implemented, he was promoted to the rank of Nb Sub. The implementation instructions for 6th CPC were issued vide SAI 1/S/2008 dated 11.10.2008. Thereafter on 01.07.2012, the applicant was promoted to the rank of Sub and on 26.01.2019, he was awarded honorary rank of Lt. On 31.03.2019, he was discharged from service on completion of 30 years and 02 days of service.

3. Since the applicant was unaware of the actual methodology of implementation; the fact that he was not specifically intimated, and since he was posted in a field area, 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 within the stipulated time. The respondents, without examining which option would be more beneficial to the applicant, had mechanically fixed his pay, which unfortunately was not the most beneficial option for the applicant, as a result of which the applicant's pay has been fixed lower than his juniors in the rank of Nb Sub, Sub and Hony Lt.

4. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC merely on the grounds of option not being exercised in the stipulated time or applicants not exercising the option at all, and have issued orders that in all these cases the petitioners pay is to be re-fixed with the most beneficial option as stipulated in Para 14 of the SAI 1/S/2008 dated 11.10.2008. The matter of incorrect pay fixation has been exhaustively examined in Sub M.L Shrivastava and others v. Union of India and others (O.A No. 1182 of 2018 decided on 03.09.2021).

5. Based on the aforesaid, the Controller General Defence Accounts, vide Letter No. Army/BR/Pay/Ors/3500/Legal/E-1027 dated 08.11.2021, has advised all PCsDA/ CsDA and the CDA, IT&SDC, Secunderabad to take necessary/ timely action in the matter. IHQ of MoD (Army) has also been requested to issue necessary instructions to all concerned for submitting the cases of stepping up at par with their junior duly enclosing the requisite documents as per orders on the subject. This letter is extracted below:

No. Army/BR/Pay/Ors/3500/Legal/E-1027

Date:
08.11.2021

To

1. All PCsDA/CsDA
2. CDA IT&SDC Secunderabad

Subject:

Pay Fixation on transition to 6th CPC scales from date of promotion: AFT (PB) New Delhi orders dated 03.09.2021 in OA No.1182/2018, 1314/2018 & 892/2019.

Reference:

IHQ of MoD letter No.C/7021/Pay/SAPCS/2021 dated 17.09.2021 and 04.1.2021 (copy enclosed).

Please find enclosed AFT (PB) New Delhi order dated 03.09.2021 in OA No.1182/2018, 1314/2018 & 892/2019 regarding pay fixation on transition to 6th CPC scales from date of promotion in a manner that is most beneficial to the applicants.

2. It is advised to issue suitable directions to all concerned for taking necessary/timely action as pronounced at Para 39 & 40 of ibid AFT order.

3. Further, a monthly progress/compliance report in this regard may be furnished to this HQrs. Office.

This issues with the approval of CGDA.

Sd/- Adury Srinivas

Accounts Officer (Army)

Copy to:

IHQ of MoD (Army) ADGPS / AG's Branch SAPCS Brassey Avenue, Church Road, New Delhi 110001

For information w.r.t. your office letter cited above. It is requested that necessary instructions may be issued to all concerned for submitting the cases of stepping-up at par with their junior duly enclosing the requisite documents as per orders on the subject

Sd/- Adury Srinivas

Accounts Officer (Army)

6. It is seen from CGDA's letter dated 08.11.2021 that IHQ of MoD (Army) has been requested to issue necessary instructions to all concerned to submit cases for stepping up at par with their juniors, duly enclosing the requisite documents as per orders on the subject.

7. This Tribunal has examined the issue of fixing the pay of personnel in the most

beneficial manner applicable to the individual and has held that this is an institutional/organizational responsibility. The PAO was directed to suo motu examine the cases and provide the most beneficial option. The relevant paragraphs of the order in Sub M.L Shrivastava (supra) are reproduced below:

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, 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 re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.
- (b) Thereafter re-fix 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) Re-fix 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 Category A or B, this order will be applicable in rem to all such affected personnel. Respondents are directed to take suo motu action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.

8. With regard to the letter dated 08.11.221 issued by the CGDA, the respondents are directed to issue necessary instructions to all PCsDA/CsDA that all cases be examined by the PAO (OR) without calling for any fresh representations/additional inputs and that such cases be examined with the

available information held with respective PAO (OR), utilizing the pay and allowances management system (Dolphin).

9. In view of the foregoing, we allow this O.A and direct the respondents to:

(a) Review the pay fixed of the applicant on his promotion to Nb Sub in the 6th CPC and after due verification, re-fix his pay in a manner that is most beneficial to him, while ensuring that he does not draw less pay than his juniors;

(b) Thereafter re-fix his pay in all subsequent ranks and on transition to 7th CPC; and

(c) Issue all arrears, including the amount recovered, if any, within three months of this order.

10. Pending miscellaneous applications, if any, stand closed.