(2021) 06 AFT CK 0005

In the Armed Forces Tribunal

Case No : O.A. No. 277 Of 2015

Sub M/Tech OPTO Gurjeet Singh APPELLANT

Vs

Union of India & Ors RESPONDENT

Date of Decision : 03-06-2021

Acts Referred:
Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 06 AFT CK 0005

Hon'ble Judges : Sunita Gupta, Member (J);B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Ashok Chaitanya

Final Decision : Allowed

Judgement

1. Aggrieved by wrong fixation of basic pay, the applicant has filed the present OA under Section 14 of the Armed Forces Tribunal Act, 2007 praying

for the following reliefs:

(a) Â Direct the Respondents to fix the basic minimum pay in the rank of Nb Sub which was fixed at Rs. 9450/- wef 04.01.2007 as well as with further direction

to grant arrears of the difference of pay in the rank of Naib Subedar and Sub after adjusting the payments already made by remsing rate including

increment/DA etc. earned till date along with interest @ 12% by extending benefit of Judgment dated 10.12.2014 passed by this Honâ??ble Tribunal in OA No.

130 of 2014.

(b) Â Pass any other order/orders as deemed appropriate by this Honâ??ble Tribunal in the facts and circumstances of the present case.

2. Â The facts of the case in brief are that the applicant was enrolled in the Indian Army on 23.06.1987 as a Sepoy in Corps of EME. He was

promoted to the rank of Naik on 15.10.1998 and Havildar on 23.12.2001. Subsequently, he was promoted to the rank of Naib Subedar on 04.01.2007

in the pre-revised scale of Rs. 5770-140-8290 and his basic pay was fixed @ Rs. 9,450/-. However, after his promotion in 2007, the recommendations

of Sixth Central Pay Commission (6th CPC) were accepted in 2008 but were retrospectively implemented from 01.01.2006. Thus SAI 1/S/2008 was

issued by respondents to implement recommendations of 6th CPC. As a result of this retrospective transition to 6th CPC, the applicants pay on

promotion to Naib Subedar in 2007 and the subsequent promotion to the rank of Sub on 27.07.2009, resulted in less pay fixation than what was entitled

to him. The respondents have rejected the applicantâ??s plea for revision of pay on the grounds that he failed to exercise the option for beneficial

revision of pay within the specified time limits. Hence this OA has been filed by the applicant.

3. Â The learned counsel for the applicant submitted that the applicant has got caught in the confusion during the transition period from 5th CPC to 6th

CPC and resultantly his pay on promotion to Nb Subedar has been fixed incorrectly at Rs. 9,450/- instead of Rs. 10,740/- and this wrong fixation has

again resulted in lower pay fixation after promotion as a Subedar. He further submitted that pay matters are complex and the applicant was never

informed about exercise of option for beneficial pay fixation. He also emphasised on the provisions in SAI l/S/2008 which clearly state that in case of

failure to exercise option by an individual, the most beneficial pay is to be fixed by the respondents. He lamented that while on one hand the

respondents have failed to exercise the most beneficial option for the applicant on their own as was required by SAI l/S/2008 while on the other hand

they have rejected all the representations of the applicant on grounds of failing to exercise the option within specified time limits. He further drew the

attention of the bench to a catena of decisions by AFT granting beneficial revision of pay in similar cases. He concluded by pleading for direction to

respondents to correctly fix the pay of applicant with all consequential benefits.

4. Per contra, learned counsel for the respondents argued that Para 8 (a) of SAI l/S/2008 dated 11.10.2008 provided that option under the provisions

of Para-7 shall be exercised in writing in the form given at Appendix â??Dâ?? to the SAI so as to reach the concerned Pay Accounts Office within three months of the date of publication of the 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 with provision as mentioned in Para 8 (a) (i) and 8 (a) (ii). It was strenuously argued that Paras 8 (b)

and 8 (c) of the aforesaid SAI specifically provided that if information regarding option is not received mentioned in Special Army Instruction, the

Personnel Below Officer Rank shall be deemed to have elected to be governed by the revised pay structure with effect from 01.01.2006 and the

option once exercised shall be final. Since the applicant did not exercise his option, hence his pay has been fixed in accordance with the provisions of

Rule 8(c)(supra).

5. We have heard learned counsel for the parties and perused the records. We have noted the following important aspects of this case:

(a) Â That the applicant was enrolled as a Sepoy and was gradually promoted to the rank of a Havildar hence he is not a case of direct entry Havildar

and therefore his pay canâ??t be compared with a direct entry Havildar.

(b) Â His promotion to Naib Subedar was in 2007 and his pay on promotion was fixed as per 5th CPC. Subsequently 6th CPC was accepted in the

year 2008 but its recommendations were to be implemented retrospectively from 01.01.2006.

(c) Â In the transition of pay fixation from 5th to 6th CPC, the applicantâ??s pay has been fixed less than the entitled most beneficial pay, because

apparently he failed to submit an option certificate as stated by respondents.

(d) This incorrect pay fixation as a Naib Subedar has also adversely impacted the pay fixation subsequently as a Subedar. Additionally, this less

beneficial pay fixation is bound to have an adverse impact on pension also.

6. The essential bone of contention for incorrect fixation of pay between the applicant and the respondents is the issue of submission of option post

issuance of SAI l/S/2008 dated 11.10.2008. This issue is no more res integra, as the matter was looked into in depth, by the Principal Bench of this

Tribunal at New Delhi in Sub Chittar Singh Vs. Union of Â India & Other s[O.A. No. 113 of 2014] decided on 10.12.2014, and connected cases.

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

SAI, which provides the power to relax any of the provisions of the rules in the

SAI, to enable justice in an equitable manner. It had been held that the

options exercised by the applicants therein, could not have been rejected merely due to delay in submission of option certificate. Therefore, the

applicants were held entitled to all the benefits, though they had not preferred their options in time. We feel it appropriate to reproduce the

observations made by the Hon hie Principal Bench in the case of Sub Chittar Singh (supra), as under :

â??9. First fact, and it is most important fact, is that in case the petitioners are put in the revised pay scale, they will be getting the less pay. The respondents

have taken the plea that because of the default only of the petitioners, they are not entitled to remain in old pay scale as per the clause (c) of Para 8 of SAI No.

1/S/2008, though it may result into denial of equal pay to the petitioners, which is being paid to the persons in the same rank and who are holding the post with

same duties as are being discharged by the petitioners. 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 that scheme was

brought to the notice of the individuals. We have reason to believe so because of the reason that in the documents placed on record itself there is mention of the

fact that because of the posting of the persons at difficult places, number of persons could not get the knowledge of the scheme. The Govt, itself extended the time

for submitting the option from time to time and from 10.01.2009 to at least 31.6.2011. The fact that the time was extended, is the admitted position by the

respondents themselves. It, therefore, appears that the time limit fixed in the option was not the soul of the scheme nor was it essence of the scheme. Furthermore,

we found from the respondents own documents dated 11.12.2013 that even extension of time for submitting of option to 30.6.2011 has been conveyed by

Governmentâ??s communicated dated 11.09.2013. Learned counsel for the Union of India tried his best to submit that the communication dated 30.12.2013

itself has not extended the time limit for submission of option to 30.6.2011 but this communication has only given direction to the officers to process the options

of the persons who may have submitted their options by 30.06.2011. We are unable to accept the submissions of the learned counsel for the Union of India for

the simple reason that the respondentsâ?? letter dated 11.12.2003 has unequivocally the headings â??Extension of period for exercising of option for pay

fixation in the revised pay structureâ?. The other communication in para 2 clearly indicates that time period was extended only by the letter dated 12.12.2013 is

as under:

â??Para 2

A copy of GoI, MoD Order No//air HQ/99141/04/AFPCC/I 697/D (Pay/ Services) dated 11 Dec 2013 extending the acceptance of option exercised by Service

Pers upto 30 Jun 2013 is forwarded herewith for info and wide circulation please. â??

No document has been placed on record saying that by another order the time limit to submit option was extended to 30.06.2011

apart from the one letter dated 11.12.2013. Since the letter dated 11.12.2013 itself was forwarded to various HQrs, with forwarding letter dated 11.12.2013,

nobody before 30.0- 6.2011, could have known that the time limit for submitting the option was extended to 30.06.2011. Therefore, we do not find any

justification to deny the benefit of submitting the option to the petitioners who could not give their option before 11.12.2013. If they would know prior to 30.0-

6.2011 that they can give their option by or before 30.06.2011 the others may also have submitted the option for old pay scale. 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 claimant for the benefit. This

may be a fortuous circumstance for some persons, who incidentally, have knowledge of the extended date to 30.06.2011, and may have submitted their option

before 30.06.2011 and they were given benefit of their submission of option by the letter dated 11.12.2013. Therefore, also in the matter of financial penal

consequences, such a conundrum cannot be the criteria for giving benefit and denying the benefit. In view of the above reason that extension of date for

submission of option was ordered to be circulated iride communication dated 12.12.2013 then the persons who had submitted their options prior to 12.12.2013

cannot be denied the benefit of exercising their options.

10. In addition to above, we are of the considered opinion that if para 8(c) is accepted as a hurdle against the relief to the petitioners, then we cannot ignore

the

beneficial provision given in para 14(b)(iv), which clearlu mandates that PAO (OR) will regulate fixation of pay that will be beneficial (out of the two options

mentioned in the scheme) be allowed to the person. Such exercise should have been done before putting the petitioners in a particular pay scale. If the PAO

(OAR) had any difficulty due to the restriction imposed by para 8(c) then also it was the duty of the respondents to relax the rule by exercising power under para

21 for relaxing the last date of submission o f the option subsequent to their last extension of time to do the justice in an equitable manner. At this juncture, we

mag recapitulate that the petitioners are put in disadvantageous pay scale because of the reason that allegedly they have not exercised their option in time and

admittedly because of the default they are said to be placed in lower pay scale than the pay scale given to their own colleagues, in the same rank, serving with

them, and in spite of the fact that the petitioners9 case administratively has been recommended strongly, with reasons by the service authority who is supposed to

look after the interests of its own subordinate personnel, and we have not found a single reason on the basis of which it can be justified that in the same rank , in

the same cadre and discharging the same duties, there can be and there should be two pail scales without therE being any reasonable classification. The only

ground for denial of the pay scale to the petitioners is due to late submission of the option. In such situation the respondents themselves should have taken steps

to remove this anomaly, when they came to know that no one will opt for such an option, and the omission is by a large number of persons, who may have a

number of years to serve in the service.

[Emphasis supplied]

7. In our view, therefore, the applicant whose case is similarly situated, could not have been denied the benefit of beneficial pay fixation, merely for

the reason that he had not submitted his option within specified time limits. In this case, the applicant has been put in disadvantageous pay scale i.e.

placed in lower pay scale than the pay scale that has been given to similarly placed persons in the same rank and seniority. At this juncture, we would

also like to reiterate that in accordance with sub-para 14 (b)(iv) of the SAI, 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 SAI would be allowed to the individual.

8. In view of the foregoing, the Original Application is disposed of directing the respondents to re-examine fixation of pay of the applicant in the light

of the order dated 10.12.2014 passed in the case of Sub Chittar Singh (supra) and in accordance with the provisions of SAI No.l/S/2008 dated

11.10.2008 and subsequent amendments/ modifications issued thereon even though the applicant had not exercised the option. 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 the

aforesaid SAI and in accordance with the rule of equity in the pay scale of the person in the same ranks. The respondents shall complete the whole

exercise within four months from the date of receipt of a certified copy of this order. If the needful is not done within the stipulated time, the arrears

accruing to the applicant by virtue of this order shall carry interest @ 6 % per annum from the due date till date of actual payment. No order as to

costs.

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

