

RESERVED
COURT NO 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No 244 of 2015

Tuesday, this the 09th day of April, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Subedar (Nur Tech) Narendra Singh (JC-695522W) of Command Hospital (Northern Command), PIN 901131, C/o 56 APO, Son of Late Gopal Singh, Resident of House No.592-D/385, Rajeev Nagar Ghosiyana, P.O. – Kharika, Telegraph Office – Dilkusha, Pincode – 226029.

...Applicant

Counsel for the applicant: **Sri K.K.S. Bisht, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), South Block, New Delhi 110011.
3. Additional Directorate General, Personnel Services, Adjutant General’s Branch, Integrated Headquarter of Ministry of Defence (Army), New Delhi - 110011.
4. Officer-in-Charge, Records and Commandant, AMC Centre and College, Lucknow - 226002.
5. Principal Controller of Defence Accounts (CC), Cariappa Road, Lucknow-226002.
6. Pay Accounts Office (Ors), Army Medical Corps, Lucknow Cantt.-226002.

.... Respondents

Counsel for the: **Dr. Chet Narayan Singh,**
Respondents Addl. Central Government Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. Aggrieved by wrong fixation of basic pay, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the PAO (Ors) AMC, respondent No. 6 DO No. L-III/JC695522W/AH(R&R) dated 08-08-2014 {Annexure No. A-1 (ii)} by which the DO letter No.1940/C2 dated 09-07-2014 of the applicant has been rejected in the most arbitrary, capricious and illegal manner.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the PAO (Ors) AMC, respondent No. 6 letter dated 27-03-2015 {Annexure No.A-1(iii)} by which the letter No.Ors Cell/1401/MISC/AMC dated 24-02-2015 of the applicant has been rejected in the most arbitrary, capricious and illegal manner.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the PCDA (CC), Lucknow, respondent No. 5 letter No. Ors Cell/1401/MISC/AMC dated 08-04-2015 {Annexure No. A-1 (iv)} by which the letter dated 27-03-2015 of respondent No. 6 has been communicated to the applicant.*
- (d) *Issue/pass an order or direction of appropriate nature to the respondents to fix the basic pay of the applicant with effect from the date of promotion i.e. 23-02-2006 as provided vide letter No. A/27153/VI-CPC/3/AG/PS-3(a) dated 15-10-2008 {Annexure No. A-1(i)} issued by the respondent No. 3 to all headquarters and accordingly he deserves the revised fixation of his basic pay of his present rank i.e. Subedar with effect from 01-12-2010 and all subsequent monetary benefits.*
- (e) *Issue/pass an order or direction of appropriate nature to the respondents to pay arrears to the applicant after fixing his basic pay with effect from the date of promotion i.e. 23-02-2006.*

(f) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(g) *Allow this application with exemplary costs.*

2. Shorn of unnecessary details, the facts necessary for adjudication of the controversy involved in the present case are that the applicant was enrolled in the Indian Army in Army Medical Corps (AMC) on 18.04.1995. The applicant successfully completed the Diploma in General Nursing and was mustered in the trade of Nursing Technician and subsequently promoted to the rank of Naib Subedar on 23-02-2006.

3. In pursuance to recommendations of Sixth Central Pay Commission for Army, the Additional Directorate General, Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), respondent no. 3 to the O.A. issued letter dated 15.10.2008 forwarding Special Army Instructions (SAI) Nos. 1/S/2008 and 2/S/2008 to all the Headquarters. SAI 1/S/2008 provided with regard to revision of pay structure of Junior Commissioned Officers (including Honorary Commissioned Officers), Non-Commissioned Officers and Other Ranks and fixation of pay in running band with effect from 0.01.2006 consequent upon the

implementation of decision of the Government with respect to the recommendation of the Sixth Central Pay Commission for Army. Under the authority of Para 14(b) (i) of SAI No. 1/S/2008, an option was given to the JCOs/ORs to give option either from 01.01.2006 or from the date of promotion, whichever was beneficial to them. Para 14 (b) (iv) of said SAI further provided 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 PBOR. Vide MoD Corrigendum ID No. 1/30/2010/D (Pay and Services) dated 21.12.2010, provision was made that the Junior Commissioned Officers (including Honorary Commissioned Officers), Non Commissioned Officers and other ranks can revise their option up to 31.03.2011 if the option is more beneficial to them which date was further extended up to 31.07.2013 vide Ministry of Defence letter dated 12.06.2013. The grouse of the applicant is that in spite of the fact that he exercised his right of option as per Appendix 'D' to SAI 1/S/2008 on 10.08.2013, the matter of fixation of basic pay of the applicant has been rejected by the respondents, hence, this Original Application.

4. At this stage, we feel it appropriate to mention that the application for condonation of delay in preferring the

Original Application was allowed vide order dated 17.09.2015 passed by this Tribunal.

5. Learned counsel for the applicant argued that as per SAI 1/S/2008, the pay of the applicant was to be fixed in a manner which was more beneficial to him irrespective of giving an option or not. The learned counsel further submitted that even if the applicant was late in submission of his option for shifting to new pay scale, it was incumbent on the respondents to fix it in the manner beneficial to him as per the SAI. The learned counsel, therefore, prayed that the respondents be directed to correctly fix the applicant's pay in accordance with the option exercised by him with all consequential benefits.

6. Per contra, learned counsel for the respondents argued that Para 8 (a) of SAI No. 1/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 'D' 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 within the time 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 within the stipulated time, hence his pay has been fixed in accordance with the provisions of Rule 8(c) (supra).

7. We have heard both the parties and perused the record. The only question which needs to be answered by us is as to whether the applicant is entitled to beneficial fixation of Pay after VI CPC, or the same can be denied to him on the ground of late submission of option?

8. The essential bone of contention for incorrect fixation of pay between the applicant and the respondents is the issue of timely submission of option by applicant as per SAI 1/S/2008 dated 11.10.2008. It is interesting to see the line of arguments of applicant and the respondents on this matter. The salient aspects of this arguments are as follows :-

- (a) The applicant has claimed that the time limit for exercising option was revised by the Ministry of

Defence initially upto 31.03.2011 and thereafter upto 31.07.2013 and he has exercised the option on 31.03.2013.

- (b) The respondents in their Counter Affidavit have initially accepted the cut off date of option as 31.03.2011, however, after the applicant has challenged the same in Rejoinder Affidavit they have filed a Supplementary Counter Affidavit where they have conceded the last date of option to be 31.07.2013.

Thus we are of the opinion that prima facie the applicant has a very sound case because he appears to have submitted his option within the extended time limit.

9. In any case this issue is no more RES INTEGRA as similar matter was looked into, in detail by the Principal Bench of this Tribunal at New Delhi in O.A.No.113 of 2014, ***Sub Chittar Singh & ors vs. Union of India & Others***, and connected cases. Apart from looking into the time limits for submission promulgated by various letters, the Hon'ble Principal Bench 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. The Judgment has dealt with the issue of extension of dates for exercising option. It had been held that the options exercised by the petitioners therein, could not have been rejected merely due to delay, if any, in submission of option certificate. We feel it appropriate to reproduce the observations made by the Hon'ble Principal Bench in the case of **Sub Chittar Singh** (supra), as under :

" 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 atleast 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 Government'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 respondents' letter dated 11.12.2003 has unequivocally the headings "Extension of period for exercising of option for pay fixation in the revised pay structure". The other communication in para 2 clearly indicates that time period was extended only by the letter dated 12.12.2013 is as under:

Para 2 " A copy of GoI, MoD Order No//air HQ/99141/04/AFPC/1697/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."

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 30.06.2011, 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 known prior to 30.06.2011 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 vide 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 clearly mandates that PAO (OR) will regulation 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 of the option subsequent to their last extension of time to do the justice in an equitable manner. At this juncture, we may 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 petitioners' 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 pay scales without their 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."

10. The Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir in O.A. No. 575 of 2016 **Sharad Vashisth & ors vs. Union of India & ors** decided on 18.04.2018, in similar case, has excerpted in detail the observations of Hon'ble Principal Bench in **Sub Chittar Singh** (supra) and has directed the respondents to fix pay of the applicants in the light of observations made by Hon'ble the Principal Bench.

11. In our view, therefore, the applicant whose case is similarly situated, could not have been denied the benefit of his option, merely for the reason that he had not submitted his option certificate in time. 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.

12. In view of the foregoing, the **Original Application No.244 of 2015** 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.1/S/2008 dated 11.10.2008 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 the aforesaid SAI. The respondents shall complete the whole exercise as expeditiously as possible, say, within four months from the date of presentation 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 @ 9 % per annum from the due date till date of actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : April 2019

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