

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 297 of 2011

Thursday, this, the 09th day of August, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Ex No. JC 834550-W Sub (Retd) Kedar Prasad Mishra, son of late Shri Durga Prasad Mishra, Resident of Mani Nath Kripa, Near Vidya Mandir, Deoria Khas, district Deoria-274001 (UP)

...Applicant

Counsel for the applicant: **Shri Rakesh Johri & Shri Bhanu Pratap Singh Chauhan**, Advocates

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of Army Staff (Through Adjutant General), Army HQs, DHQ, PO New Delhi-110011.
3. Additional Director General of Army Postal Service, Integrated HQs of Ministry of Defence, West Block III, R.K. Puram, New Delhi-110066.
4. Director of Accounts (Postal), (Pension-III) Maharashtra Circle, Nagpur-440001.
5. Officer-in-Charge, Army Postal Service Records, Kamptee, PIN 900746, Nagpur, Maharashtra.

.... Respondents

Counsel for the Respondents : **Shri A. N. Tripathi**,
Addl. Central Government Counsel

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

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *“Issue/pass an order to set aside/cancel Army HQs Additional Directorate General APS Letter No. 90106/1/APS-D (Pt) dated 14.06.2011 (Anneuxre A-1).*
- (b) *Issue/pass an order to set aside/cancel Army HQs Additional Directorate General APS Letter No. 90106/1/APS-D(Pt) dated 12.08.2011 (Anneuxre A-2).*
- (c) *Issue/pass orders to Respondents to pay Military Service Pay to the applicant for the period he was in service with 18% interest.*
- (d) *Issue/pass orders to Respondents to revise the pension of the Applicant and amend the Pension Payment Order of the applicant by including Military Service Pay and pay the arrears with 18% interest on the same.*
- (e) *Issue/pass orders for Contempt in accordance with Rule 25 of the Armed Forces Tribunal (Procedure) Rules 2008 for wilful non-compliance of this Hon’ble Armed Forces Tribunal Order dated 12.11.2010 (Annexure A-13)*
- (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 cost.”*

2. Briefly stated, the facts of the case are that the applicant was appointed as Warrant Officer (WO) in the Army Postal Service (APS) on 01.07.1972. Pursuant to his appointment, the applicant underwent basic military training at APS Training Centre, Kamptee, Maharashtra and thereafter served in various Units of the Indian Army. On 28.05.2005 the applicant was promoted to the rank of Naib Subedar (JCO). Upon attaining the age of superannuation after rendering 37 years and 6 months service in the Army, the applicant retired on 31.12.2009 in the rank of Subedar.

3. The 6th Central Pay Commission recommended Military Service Pay (MSP) to all ranks of Defence Services on the principle that rigours associated with military life should be compensated. The Commission, in para 1.2.21 of the Report mentioned, to quote:-

“...The specific problems faced by defence forces personnel (viz. Army Navy and Air force) on account of rigours of military life are, however, proposed to be compensated by an additional element of pay termed Military Service Pay (MSP).”

4. While recommending MSP to personnel of Army, Navy and Air Force, the Commission had made no discrimination between the Officers and Personnel Below Officer Rank (PBOR) of the Army Postal Service as reflected in Special Army Instruction (SAI) No. 1/S/2008 dated 11.10.2008. Relevant portion of the SAI aforesaid is reproduced as under:-

“1/S/2008. 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 HEREIN WITH EFFECT FROM 01ST JANUARY 2006 CONSEQUENT UPON THE IMPLEMENTATION OF THE DECISION OF THE GOVERNMENT WITH RESPECT TO THE RECOMMENDATION OF THE SIXTH CENTRAL PAY COMMISSION FOR THE ARMY

SECTION 1 : GENERAL

In pursuance of recommendation of Sixth Central Pay Commission and the Government decisions thereon, the existing scales of pay of Junior Commissioned Officers (JCSs), including Honorary Commissioned Officers, Non-Commissioned Officers (NCOs), Other Ranks (OR) of the Army, Defence Security Corps (DSC), Army Postal Service (APS) and Territorial Army (TA) when embodied, will be revised and pay fixed in the revised pay structure in accordance with the provisions of this instruction with effect from 01 January 2006.

The provisions of this Special Army Instructions (SAI) will apply to all the above categories of personnel who were on the effective strength of the Army, DSC, APS and TA embodied as on 1st day of January 2006 or who join 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 remain unchanged.”

5. It appears that the Adjutant General vide policy letter dated 05.05.2009 imposed restriction on grant of MSP to non-regular personnel in the Army Postal Service. Relevant portion of letter dated 05.05.2009 is reproduced as under:

“1.The grant of MSP to personnel on Deputation from Deptt of Posts holding Army rank during their service in APS was examined. Since MSP is applicable to regular Armed Forces personnel to compensate for their hardships endured by them over the entire period of service, deputationists from Deptt of Posts to APS are not entitled for MSP

In view of the above, you are requested to take necessary action to implement the instructions at the earliest.”

6. On the basis of said policy letter dated 05.05.2009, the applicant was denied benefit of MSP. Feeling aggrieved, the applicant represented his case before the Chief of the Army Staff on 15.10.2010. It appears that said representations of the applicant remained undisposed of, as such, the applicant preferred O.A. No. 40 of 2010 which was disposed of by this Tribunal vide order dated 12.11.2010, relevant portion of which is reproduced as under:-

“The petition is directed against the order dated 16th May 2008 by which grant of military service pay has been denied to the petitioner. Shri R. Chandra has placed before us letter dated 15.09.2010 by which the earlier letter i.e. letter dated 05.05.2009 has been withdrawn. The said fact is not disputed by the Ld. Central Government Counsel. ‘

In view of the fact that the impugned order has since been withdrawn, as such, the relief prayed for in O.A. is rendered infructuous. The petition is accordingly dismissed as having become infructuous.”

7. The applicant thereafter represented his case before the appropriate authority mentioning in his representations that officers of the Army Postal Services have been granted MSP on withdrawal of letters dated 05.05.2009 and 12.11.2010. The representations of the applicant were rejected by orders dated 14.01.2011 and 12.08.2011 on the ground that

MSP is entitled to Army PBOR as per SAI 1/8/2008. Since deputationists from Deptt of Posts holding Army rank during their service in APS are governed by civil pay scale and are granted deputation allowance while working in Army and are not governed by Military Pay, as such, the applicant is not entitled to MSP. The other ground for rejection of the representation of the applicant was that the scale of Army pay enumerated in para 3 (e) and 3 (f) of SAI 1/S/2008 does not match with any of the pay scale mentioned therein with civil scale of pay drawn by the applicant. Feeling aggrieved, the applicant has approached this Tribunal.

8. Learned counsel for the applicant submitted that the purpose of granting of MSP by the Govt was to compensate for the rigours of military life by providing additional element of pay. It was further submitted that the Special Army Instruction 1/S/2008 was issued by the Central Government whereas the policy letter dated 05.05.2009 has been issued by the Adjutant General and cannot have overriding effect over Special Army Instructions. It was also argued that during 'Op VIJAY' certain concessions were given to Officers and PBORs and no discrimination was done for personnel of Army Postal Service who had been deployed in 'Op VIJAY'. Learned counsel further argued that in letter dated 05.07.2011 of Ministry of Defence certain Field Service Concessions and allowances were extended to APS personnel and Defence Civilians in operational areas. The applicant since last 37 years and 06 months (01.07.1972 to 31.12.2009) had remained in Army Service and was posted in Field as well as peace areas. Learned counsel further informed that the option to draw Army rate of pay or civil rate was called for from the officers of the Army Postal Services who had come in the cadre of regular Army on deputation from Department of Posts and

Telegraph, but no such option was called for from the applicant who was a PBOR. The learned counsel for applicant also drew attention to the fact that one Lt Col Om Datt Sharma, who was an officer of the Army Postal Service, had approached this Tribunal by filing O.A. No. 148 of 2010 *Lt Col Om Datt Sharma vs. Union of India and Others* on the ground that while computing his pension, benefit of MSP was denied to him. A coordinate Bench of this Tribunal in said O.A. vide order dated 20.10.2010 allowed the O.A. with the following observations:-

“1. By means of the instant Original Application the applicant has assailed the order dated 29.04.2009 (Annexure No A-1) and letter dated 05.05.2009 (Annexure A-2) by which the Military Service Pay was denied while computing his pension.

2. Learned Counsel has produced before us letter dated 20.09.2010 and 15.09.2010 by which the order dated 05.05.2009 has been cancelled and the applicant as such has become entitled for Military Service pay.

3. The Learned Central Government Counsel does not dispute the fact. According to him he has also instructions that the order impugned in the petition has been cancelled.

4. In view of the aforesaid the relief claimed in the Original application has been rendered infructuous. Letter dated 20.09.2010 as also letter dated 15.09.2010 by which Army Headquarters letter dated 05.05.2010 has been cancelled shall form part of the record. In view thereof applicant is entitled for Military Service Pay.

5. Respondents are hereby directed to implement the orders regarding payment of Military Service Pay and issue revised Pension Payment Order expeditiously say within a period of three months from the date certified copy of this order is produced.

6. With the aforesaid direction the Original Application is finally disposed off.”

9. The learned counsel for the applicant concluded that since the policy letter dated 05.05.2009 curtailing the benefit of MSP granted by the 6th Pay Commission to the Army Postal Service Personnel was subsequently recalled, as conceded by the respondents and noticed by this Tribunal in O.A. No. 148 of 2010 *Lt Col Om Datt Sharma vs. Union of India and others* (supra) and O.A. No. 40 of 2010 (earlier filed by the

applicant) which was disposed of by this Tribunal vide order dated 12.11.2010, the respondents have legally erred in denying said benefit of MSP to the applicant. Learned counsel for the respondents has neither argued any ground nor cited any case law contrary to the decision of coordinate Bench of this Tribunal which has attained finality by lapse of time.

10. Per contra, learned counsel for the respondents submitted that the 6th Pay Commission recommended MSP to Army, Navy and Air Force for the rigors of service which are more relevant to the Arms such as Infantry, Artillery, Armoured etc. who are involved in combat with enemy. The applicant was discharging sedentary duties in the Army Postal Service. MSP is applicable to Regular Armed Forces personnel only and deputationists from the Army Postal Service are not entitled to MSP because they draw the civil pay scales as applicable to P&T employees. There is no Instruction/Guideline in the 6th Pay Commission to direct that the deputationists from the Army Postal Service are entitled to MSP and also there is no provision to combine civil and military pay because MSP is pay and not an allowance.

11. We have heard learned counsel for the parties at length and perused the material on record. We have considered the issue in its entirety. The undisputed facts which are absolutely clear in this entire case are as follows:-

(a) Before announcement of 6th Central Pay Commission and the existence of MSP, the PBORs of Army Postal Service were drawing civil pay scales of P&T along with the deputation

allowance because this was more beneficial to them vis-a-vis Army pay scales. Till 5th Central Pay Commission, there has been no demand from PBORs of Army Postal Service to opt for Army pay scales.

(b) After announcement of 6th Central Pay Commission and the introduction of MSP in Military pay scales, it is apparent that military pay scales along with MSP became more beneficial because the MSP, being pay, was resulting in enhanced dearness allowance during service and enhanced pension after retirement.

(c) It appears that the officer cadre of Army Postal Service was permitted to opt for MSP earlier also, hence they automatically became entitled to MSP with effect from 01.01.2006 i.e. the date of implementation of 6th Central Pay Commission.

(d) However, the PBORs of Army Postal Service were authorised to opt for Military pay with effect from 19.06.2014 vide MOD letter NO. 90004/APS-1A/82/2014-D (Mov) dated 19.06.2014.

(e) The 6th Central Pay Commission was effective with effect from 01.01.2006. However, it was announced in second half of 2008 and the option to opt for Military pay for Army Postal Service personnel was announced by MoD with effect from 19.06.2014. This situation has left a large number of Army Postal Service personnel who have retired from Army Postal Service in no man's land i.e. between 01.01.2006 and 19.06.2014 and who want the benefit of Military pay and MSP.

12. In this backdrop, the basic issues emerging out of the submission of both the parties and pleadings on record are as follows:-

(a) Can MSP be claimed simultaneously along with civil pay if one is not in receipt of military pay?

(b) Can the option of opting for military pay and by extension, MSP be denied to Army Postal Service personnel who are covered by 6th Central Pay Commission, but retired between 01.01.2006 to 19.06.2014, the period when other ranks of Army Postal Service became authorized to opt for military service pay?

(c) Can the Army Postal Service personnel who retired between 01.01.2006 and 19.06.2014 and are drawing pension based on civil pay scales transit to notional fixation of Military pay and pension with effect from 19.06.2014.

13. We have given our anxious considerations to all these three issues and are of the opinion that Army Postal Service personnel can draw certain field allowances relevant for Army along with their civil pay scales. However, they cannot claim MSP along with civil pay scales because MSP is not an allowance; rather it is a Pay. Therefore, to claim MSP, the Army Postal Service personnel will have to forego civil pay scales and deputation allowance and opt for military pay scale which includes MSP for the Army rank held.

14. Coming to the second issue, since the Government has given an option to Army Postal Service personnel to opt for military pay scales instead of civil pay scale with effect from 19.06.2014, therefore, the issue emerging for consideration is that those Army Postal Service personnel

who retired after 01.01.2006 (when MSP came into existence) and before the date with effect from 19.06.2014 when option to opt for Military pay scales was given to Army Postal Service PBOR, can they be now given notional change over to military pay scales for the purpose of pension only. In this context we are guided by the decision of Hon'ble Supreme Court in the following cases:-

1. ***Randhir Singh vs. Union of India & ors***, (1982) 1 SCC 618,
2. ***Swapan Kumar Chaudhary & ors vs. Tapas Chakravorty & ors*** (1995) 4 SCC 478) and,
3. ***Supreme Court Employees' Welfare Association vs. Union of India and anr***, AIR 1990 SC 334.

15. Their Lordships have disapproved class legislation and have held that such a classification must be founded on an intelligible differentia which distinguishes persons that are grouped together from those who are left out of the group and such a differentia must have a rational nexus to the object sought to be achieved. Concept of equality before the law contemplates minimizing inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst group of people. Learned counsel for the respondents has failed to impress upon us as to why the benefit of opting for military pay and MSP should be denied to the PBORs of Army Postal Service who are eligible for the benefits of VIth Pay Commission and have retired between 01.01.2006 and 19.06.2014. Thus, on the basis of principle of equal treatment, the PBORs who have retired between 01.01.2006 and 19.06.2014 cannot be denied the benefit of Military pay and MSP, especially so in the light of decision of this Tribunal in case of ***Lt Col Om Datt Sharma*** (supra) and the Govt decision to permit other ranks the option for military pay w.e.f. 19.06.2014.

16. Coming to the third issue of transition of PBORs who have retired from Army Postal Service between 01.01.2006 and 19.06.2014 and are drawing pension based on the civil pay scales; can they transit to Military pay scales and MSP and the associated pension of last army rank held. In this context, we have given our anxious thought to the process and complexities involved in such a transition, and we have reached a considered opinion that in the interest of substantive justice and to simplify audit related issues it has to be done in the following manner:-

(a) The transition will be notional transition to military pay including MSP for the last army rank held in the last month before retirement from Army Postal Service between 01.01.2006 and 18.06.2014.

(b) The commutation/gratuity and leave encashment amount as given through civil pay scales will be final and need not be adjusted against the notional entitlement of Military pay and MSP.

(c) The pension and associated dearness relief received till 18.06.2014 as per civil pay scales will also be final with no adjustment against notional Military pay and MSP and the pension flowing out of it.

(d) However, with effect from 19.06.2014, they will be entitled to draw the pension and dearness relief flowing out of Military pay and MSP as per the last army rank held. The difference between civil pension and Military pension thereafter, i.e. after 19.06.2014 till the date of actual payment needs to be adjusted as 'due and drawn'.

(e) PBORs who retired between 01.01.2006 and 19.06.2014 from Army Postal Service will have to give an 'Option Certificate' to opt for notional fixation of Military pay on similar lines as serving personnel of Army Postal Service to their Record Offices or offices designated by Army to opt for notional Military pay and MSP in the last month before their retirement.

17. In view of our observations made hereinbefore and especially in para 16, we are of the considered opinion that the applicant is entitled to opt for military pay scale to get Military Service Pay (MSP) only for the purpose of pension in view of the report of the 6th Pay Commission and MoD letter No 90004/APS-1A/82/2014-D (Mov) dated 19.06.2014.

18. In the result, the O.A. is **allowed**. The applicant shall notionally be given Army Pay Scale in the last month before his retirement and the pension along with dearness relief based on such notional pay scale will start from 19.06.2014 i.e. the same day as other PBORs of Army Postal Services were authorized to opt for military pay scales. The procedure for transition from civil pay scales to Military pay scales has been provided in para 16 above and the same is required to be followed. The amounts of gratuity, commutation, leave encashment etc. which are associated with the retirement benefits based on Civil Pay Scale are not recoverable or adjustable. However, the entitlement of pension along with dearness relief flowing out of military pay scales after 19.06.2014 can be adjusted as per 'due and drawn'.

19. Respondents are further directed to implement the orders regarding payment of Military Service Pay and issue revised Pension Payment Order expeditiously say within a period of five months from the date

certified copy of this order is produced, failing which the applicant shall be entitled to get interest @ 7% per annum on the amount due, till the date of actual payment.

20. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 9th August 2018

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