

Court No 3
(Ser No. 25)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 155 of 2023

Wednesday, this the 19th day of July, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 13992846P Ex ACP Nb Sub Pramod Singh Yadav, S/o Sri Nagina Singh Yadav, R/o House No. 592/3B-41, Gopal Nagar, Telibagh, PO-Dilkusha, Distt-Lucknow, PIN-226002 (UP).

.....Applicant

Ld. Counsel for the: **Shri KP Datta**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, AMC Records, Lucknow, PIN-226002 (UP).
4. O/o PAO (OR) AMC, Lucknow, PIN-226002 (UP).
5. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Mrs Kavita Mishra**, Advocate
Respondents. Central Govt Counsel

ORDER (Oral)

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

(a) *To issue/pass an order or direction to re-fix/revise the Pay Matrix to Rs 46,200/- w.e.f. due dates as per 6th & 7th CPC awards, Govt of India policy and in light of order passed in similarly placed cases by the Hon'ble AFT.*

(b) *To issue/pass an order or directions to grant him enhance service pension and other retiral dues alongwith arrears and interest @ 18% on arrears accrued after revision of Pay Matrix with due drawn audit report from the date of discharge w.e.f. 30.09.2021.*

(c) *To issue/pass an order or direction to refund Rs 1,36,654/- wrongly deducted w.e.f. 30.09.2005 in the final FSA before discharge from service alongwith interest @ 18% w.e.f. 30.09.2021.*

(d) *To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*

(e) *To allow this application with cost.*

2. Counter and rejoinder affidavits filed on behalf of the parties are taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Army on 05.09.1995. During the course of his service he was promoted to the rank of Havildar w.e.f. 01.02.2013 and thereafter, financial upgradation to the rank of ACP Naib Subedar was granted to him w.e.f. 05.09.2019. He was discharged from service w.e.f. 30.09.2021 (AN) having rendered 26 years and 26 days service. Accordingly, after discharge from service he was granted service pension @ Rs 25,050/- p.m. vide PPO No. 203202101358. It is alleged that after declaration of 5th CPC applicant did not exercise his option which resulted in less fixation of his pay matrix at the time of retirement and recovery of Rs 1,36,654/-. Applicant has filed this

O.A. for correct fixation of his pay matrix and refund of amount that was illegally recovered.

4. Learned counsel for the applicant submitted that online grievances were submitted by the applicant besides sending representations dated 22.08.2022 and 12.07.2022 to respondent No 3 but till date matter related to correct fixation pay matrix as per 6th and 7th CPC has not been resolved and amount recovered from his FSA has also not been refunded. He further submitted that his juniors are getting more pension than the applicant which is resulting in huge loss to him. However, he was informed verbally that he has not exercised the option required as per Govt of India letter dated 08.08.2017 that's why his pay was not revised as per recommendations of 7th Pay Commission with the result he drew less pension than his batch mates. The learned counsel further submitted that JCOs/OR who were in service on or after 31.12.2015 and before 03.05.2017 or on any other date, if any extension is given by the Govt and have been granted any promotion/increment/MACP during the periods, were required to submit form of option (option certificate) in writing regarding fixation of their revised pay as per 7th CPC in terms of policy letter dated 08.08.2017, but the applicant did not exercise this option due to unawareness which resulted in incorrect fixation of his band pay and thereafter, pension. Learned counsel for the applicant has quoted that No 13993232Y Ex Hav (ACP Nb Sub) Kumud Kumar Mishra who was enrolled in the Army on 01.11.1995 and discharged on 31.10.2021 and No 13992542X Ex Hav (ACP Nb Sub) Ashok Kumar who was enrolled on 28.08.1995

and discharged on 31.08.2021 having rendered more than 26 years service are getting more band pay of Rs 46,200/- p.m. and revised pensionary benefits under 7th CPC @ Rs 25,700/- p.m., however the applicant's basic pay has been fixed @ Rs 25,050/- p.m. unjustly and arbitrarily. In support of his contention learned counsel for the applicant has relied upon order dated 04.01.2018 passed in O.A. No. 156 of 2016, **Hav Jog Dhyan Sharma vs UOI & Ors**, order dated 19.02.2021 passed in O.A. No. 194 of 2018, **Anil Kumar Singh vs UOI & Ors**, order dated 23.02.2021 passed in O.A. No. 368 of 2019, **Ex Hav Ajeet Kumar vs UOI & Ors** and order dated 23.02.2021 passed in O.A. No. 37 of 2020, **Hav (AA) Shiv Saran vs UOI & Ors**. He pleaded for grant of pension in the revised pay matrix.

5. On the other hand Learned Counsel for the respondents submitted that applicant was enrolled in Army Medical Corps on 05.09.1995 and was discharged from service on 30.09.2021 (AN) on completion of extended service limit under Rule 13 (3) III (i) of Army Rules, 1954 after having rendered 26 years and 26 days service. After discharge from service he was granted service pension @ Rs 25,050/- p.m. vide PPO No 203202101358.

6. Learned counsel for the respondents further submitted that applicant was getting more basic pay w.e.f. 30.09.2005 and his pay has been corrected as per record mentioned in sheet roll. It was further submitted that No 13992542X Ex Hav (ACP Nb Sub) Ashok Kumar was granted 1st MACP on 01.01.2006 with the benefit of fixation of pay after 6th CPC, which is more beneficial as compared to those who were granted ACP before 6th CPC. The applicant had not

exercised option for fixation of pay on next increment i.e. on 01.10.2005 hence he lost one increment on 01.10.2005 and his basic pay was fixed on 06.09.2005 instead of 01.10.2005. Due to this applicant's pay on July, 2016 was Rs 7560/- and basic pay in respect of his counterpart was Rs 7850/-. He submitted that this affected the result of last basic pay of applicant i.e. 44,900/- while his counterpart's basic pay was fixed to Rs 46,200/-.

7. Learned counsel for the respondents further submitted that the applicant was not required to exercise the option for fixation of pay in accordance to Govt of India, MoD letter dated 08.08.2017 as the MACP/promotion was not granted to the individual between 01.01.2016 to 30.05.2017 and applicant being granted MACP-III of Nb Sub grade w.e.f. 05.09.2019, pay and allowances has already been adjusted. It was submitted that the fixation was done as per the provision of Para 9 (E) of SRO dated 03.05.2017. He submitted that pay of the applicant has been fixed correctly as per the existing rule. He further submitted that Original Application being devoid of merit and lacking substance is recommended to be dismissed in the interest of justice.

8. Heard Shri KP Datta, learned counsel for the applicant and Mrs Kavita Mishra, learned counsel for the respondents and perused the record.

9. Case of the applicant as spelt out in the instant O.A. is that his pay was required to be fixed in the manner which was more beneficial to him irrespective of giving of option or otherwise as per ACP Scheme and recommendations of 5th CPC which was revised with

three financial upgradations i.e. after 8 years, 16 years and 24 years of service and Modified Assured Career Progression (MACP) Scheme which took place w.e.f. 01.09.2008. The benefits of this scheme despite having completed 26 years of service were not extended to the applicant because of non exercising of option in time as per Govt of India, Ministry of Defence Office Memorandum No. 1(20)/2017/D (Pay/Services) dated 26.02.2019 which is reproduced below :-

“Clarification on availability of Option for fixation of pay on promotion from the date of next increment (DNI) in the lower post and method of fixation of pay from DNI, if opted for, in respect of Army Pay Rules 2017, Air Force Pay Rules 2017 and Navy Pay Regulations 2017 in respect officers and JCOs/OR equivalent.

1. Reference is invited to Ministry of Defence O.M. of even No dated 22.03.2018. In this connection, it is stated that the Option is to be exercised within three months from the date of promotion, to have pay fixed under these provisions from the date of such promotion, to have pay fixed under these provisions from the date of such promotion or to have the pay fixed from the date of actual of next increment in the scale of the pay in lower grade.

2. For all personnel who have been promoted in the interim period (from 01 January 2016 until the issuance of this O.M), the Option is to be exercised within six months of issuance of this O.M. Further, Option for pay fixation on promotion, once exercised is final.

3. This issues with the concurrence of Defence (Finance) vide their I.D. No. 1(8)/2017-AG/PA-35 dated 05.02.2019.”

10. In view of the submissions made by the learned counsel for the parties and above policy letter, it is clear that fact is not in dispute. The only dispute is with regard to the effect of non submission of option for fixation of pay within the period stipulated in the instructions i.e. from 01.01.2016 and before 03.05.2017. In fact the issue has already been settled by the Principal Bench, AFT, New Delhi

vide order dated 10.12.2014 passed in a bunch of cases with O.A. 113 of 2014, **Sub Chittar Singh and Ors vs. UOI and Ors**, wherein benefit has been granted to the applicants who were denied correct fixation of pay due to not exercising the option on time.

11. In addition to above, we are of the considered opinion that PAO (OR) should have regulated the fixation of pay that would be beneficial (out of the two options mentioned in the scheme) to the applicant but they did not do so. Such exercise should have been done before putting the applicant in a particular pay scale. At this juncture, we may recapitulate that the applicant is put in disadvantageous pay scale because of the reason that allegedly he has not exercised the option in time and admittedly because of the default he is said to be placed in lower pay scale than the pay scale given to his own colleagues, in the same rank and same service. We have not found a single reason on the basis of which it can be justified that in the same rank and in the same cadre, there can be and there should be two pay scales without there being any reasonable classification. The only ground for denial of the revised pay scale of the applicant is due to non/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 the applicant has not submitted his option due to unawareness of the policy in time and the applicant is going to get less pay/pension than his colleagues in the same rank and same service, due to which they will suffer heavy loss.

12. The applicant in Para 1 of O.A. submitted that consequent to less fixation of pay and allowances there was a recovery of Rs 1,36,654/- from his final settlement of account (FSA). We find that the recovery seems to have been done mainly because of wrong fixation of applicant's basic pay. In other words this recovery ought not to be done. Therefore, in view of the Hon'ble Supreme Court judgment in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer)**, Civil Appeal No 11527 of 2014 (arising out of SLP (c) No 11684/2012) decided on 18.12.2014 and **Daniel Thomas vs State of Kerala & Ors**, Civil Appeal No 7115 of 2010 decided on 02.05.2022 recovery made through FSA needs to be refunded to the applicant.

13. Govt of India, Min of Personnel and Public Grievance and pensions, Department of Personnel & Training has issued guidelines in this regard and as per Para 2 (b) of the aforesaid guidelines it is abundantly clear that after grant of MACP if increment is due, an individual shall be granted two increments (one accrued on account of annual increment and the second accrued on account of promotion). For convenience sake, Para 2 (b) of guidelines is reproduced as under:-

"(b) Subsequently, on DNI in the level of the post to which Government servant is promoted, his/her pay will be re-fixed and two increments (one accrued on account of annual increment and the second accrued on account of promotion) may be granted in the level from which the Government servant is promoted and he/she shall be placed, at a Cell equal to the figure so arrived, in the level of the post to which he/she is promoted, and if no such Cell is available in the level to which he/she is promoted, he/she shall be placed at the next higher Cell in that level."

14. Thus, in view of the above and on perusal of Pay Slip for the month of August, 2021 it reveals that prior to retirement from service PPO was issued showing his pay matrix as Rs 46,200/- but as per discharge book and FSA his pay matrix has been shown as Rs 44,900/- resulting in recovery of Rs 1,36,654/- which was illegally deducted from FSA. It is made clear that applicant shall be granted all retiral dues after taking into account his basic pay @ Rs 46,200/-.

15. In the result, the O.A. succeeds and is **allowed** directing the respondents to refund Rs 1,36,654/- to the applicant which was deducted on the basis of wrong fixation of his basic pay. The respondents are further directed to revise Pay of the applicant @ Rs 46,200/- per month by granting upgradation as per ACP/MACP Schemes. We also direct the respondents to pay the arrears accrued after fixation of pay to Rs 46,200/- per month within a period of three months from the date of receipt of a certified copy of this order failing which it shall carry interest @ 8% per annum from the due date till date of actual payment.

16. No order as to costs.

17. Miscellaneous application(s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated :19.07.2023

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