

RESERVED
Court No 1

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

ORIGINAL APPLICATION No. 642 of 2017

Thursday, this the 28th day of February, 2019

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

No 1490312Y Ex-Havildar/Clerk GD Onkar Nath Yadava,
S/O Shri Ram Deo Yadava, presently R/O House No
419/2, Sector-6C, Vrindavan Yojna-1, Raibareilly Road,
PO: Vrindavan Colony, District-Lucknow (UP), PIN-
226029.

.....Applicant

Ld. Counsel for: **Shri Ghanshyam Verma**, Advocate.
the Applicant

Versus

1. Union of India through the Secretary, Ministry of
Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters,
Ministry of Defence, South Block, New Delhi-110010.
3. OIC Records, AOC Records, Trimulgherry Post,
Secunderabad (Telangana)-500015.
4. PAO (OR), AOC, Secunderabad (Telangana)-500015.
5. PCDA (Pension), Draupadi Ghat, New Cantt,
Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Miss Appoli Srivastava**,
Respondents. Central Govt Counsel.

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

- (a) *To issue/pass an order or direction of an appropriate nature to the respondents to implement the 6th Central Pay Commission (6th CPC) in the matter of the applicant with effect from 01.01.2006.*
- (b) *To issue/pass an order or direction of an appropriate nature to the respondents to make the payment of arrears with effect from 01.01.2006 to 31.08.2009 in serving period and 01.09.2009 to 30.06.2014 (after retirement period) with the suitable interest.*
- (c) *To issue/pass an order or direction of an appropriate nature to the respondents to decide the representation made by the applicant.*
- (d) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 25.04.1994 in Bengal Engineers Group (BEG), Roorkee as a Sepoy/clerk. After due training he was posted to 237 Engineer Regiment. The applicant was permanently transferred to Army Ordnance Corps (AOC) w.e.f. 09.03.1997 after rendering approx three years service in BEG, where he was promoted to the rank of Naik and thereafter Havildar w.e.f. 31.08.2009. He took volunteer retirement on 31.08.2009 and accordingly granted pension commensurate to his rank vide PPO dated 05.11.2009. The applicant has filed this application on the basis of

para 13 (a) of 6th Pay Commission and para 14 of SAI 1/S/2008 for fixation of his pension to Rs 8,560.00 instead of Rs 7,630.00 which he is in receipt of, but has represented his cause to the respondents vide letters dated 18.10.2016 and 20.10.2016. Since no reply has been received by the applicant, hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was promoted to the rank of Havildar on 01.12.2002 and his basic pay as per 6th CPC was fixed at Rs 7,630.00 p.m. w.e.f. 01.01.2006 whereas basic pay of direct entry Havildars was fixed at Rs 8,560.00 per month in terms of Para 13 of SAI 1/S/2008 and para 14 of 6th CPC report. He further contended that on submission of representation the same has been wrongly denied by the respondents. Ld. Counsel for the applicant further pleaded that other similar Havildars are being granted basic pay of Rs 8,560.00 per month whereas the applicant is getting Rs 7,630.00 per month only. Relying upon O.A. No 94 of 2013 in the case of **Hav/SAC Manoj Kumar vs UOI & Ors** and O.A. No. 72 of 2015 in the case of **Hav/PA Kultar Singh Chauhan vs UOI & Ors**, the Ld. Counsel submitted that the applicant is also entitled to basic pay of Rs 8,560.00 per month.

4. On the other hand, Ld. Counsel for the respondents submitted that consequent upon implementation of 6th CPC, the applicant's basic pay was fixed @ Rs 7,630.00 as per para 9 of SAI 1/S/2008 w.e.f. 01.01.2006 after multiplying 1.86 to basic pay. He submitted that the applicant, a 'Y' Group Havildar as on 01.01.2006, was drawing basic pay of Rs 4,100.00 hence his basic pay was fixed at Rs 7,630.00 in accordance with rules. The Ld. Counsel further submitted that the applicant is claiming basic pay equal to group X Havildars which is not applicable to him. Hence he is not entitled to basic pay of Rs 8,560.00 in terms of para 13 and 14 of SAI 1/S/2008. He pleaded the O.A. to be dismissed.

5. Heard Ld. Counsel for the parties and perused the records.

6. In the instant case there is no dispute that the applicant was promoted to the rank of Havildar/Clerk Group 'Y' on 01.12.2002 and he took premature discharge w.e.f. 31.08.2009 after rendering 15 years, 04 months and 06 days service. After promulgation of 6th CPC applicant's basic pay was accurately stepped up to Rs 7,650.00 by multiplying 1.86 as multiplication factor as on 01.01.2006. The applicant is claiming pay in terms of para 13 and 14 of SAI 1/S/2008 which is entirely

applicable to Group 'X' direct entry soldiers/Havildars. Since the applicant is not a direct entry Havildar i.e. a promotee Havildar of Group 'Y', he cannot claim parity with that of a Direct entry Havildar of Group 'X'.

6. It is also pertinent to mention that the case laws relied upon by the applicant are totally different as in those cases the petitioners belonged to Group 'X'. The case has been made on the wrong presumptions and is totally devoid of merit. The applicant has failed to make out a case in his favour.

10. Accordingly, we decline to interfere in the matter. The Original Application is devoid of merit and is hereby **dismissed.**

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: Feb 2019
gsr