

RESERVED
Court No.1

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

ORIGINAL APPLICATION NO. 578 OF 2017

Thursday, this the 07th day of February, 2019

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

No. 14682991W Hav Clk (SD) Lakshaydeep Singh Yadav
Post at 180 Armd Bde,
C/o 56 A.P.O. Bikaner Cantt
Son of Shri Jai Chand Singh Yadav
R/o Village – Surkhuru, Post – Chandok
Distt – Bulandshahar, U.P.

..... Applicant

Ld. Counsel for the Applicant : **Shri Krishna Lal,**
Advocate

Versus

1. Union of India,
Through Directorate General of EME (EME Pers),
M.G.O. Branch, Integrated HQ of Ministry of Defence (Army), DHQ
Post Office, New Delhi – 110105.
2. HQ Sqn 180 Armd Bde PIN 908108, C/o 56 APO.
3. EME (Records) C/o 56 APO, Secunderabad.
4. The Controller of Defence Accounts
Office of Controller of Defence Accounts,
No. 1 Staff Road, Secunderabad 5000001.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt Counsel.

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- “1. To issue writ order or directions to the respondents into the matter to fix the minimum basic of clerk as recommended by 6th Central Pay Commission at par of his junior in the same cadre of the applicant as on 01-01-2006.
2. To issue writ order or directions to the respondents into the matter to grant the annual increment after completion of one year of service as per Rules.
3. To issue writ order to quash the order No. IG.32/CDA Comp/JC 769338H dated 21-04-2015 and No. G-Tech/Step up/14682991W dated 06.06.2017 of PAO (Ors) EME Secunderabad and CDA Secunderabad Sl. No. 2 of order No. ORS/AT/6716/CGDA/Comp dated 21-06-2017 passed by the respondents and direction be issued to refund of Rs. 1,74,412/- illegally deducted from the pay of applicant and Army order No. 32/80 be quashed.
4. To issue any other suitable order or directions into the facts and circumstances of the case which this Hon’ble Court may deem fit and proper on the facts and circumstances of the case.”

2. In brief the facts of the case are that the applicant was appointed/enrolled in EME Corps on the post of Sepoy Clerk under the provisions of appointments of Clerk under Union of India on 25th December 2005, the minimum qualification for appointment of clerk under the provisions of Recruitment Rules of Union of India is Intermediate examination passed with 30 words speed in English typewriting. The applicant appeared in requisite trade test of clerk and passed the same and

appointed as Sepoy Clerk on 25th December 2005. The recommendations of 6th Central Pay Commission were implemented w.e.f. 01.01.2006.

3. The grievance of the applicant is that the pay of the applicant was erroneously fixed at Rs.,6250/- instead of Rs.6460/- after implementation of recommendations of 6th Central Pay Commission, while the minimum pay as recommended by the 6th Central Pay Commission is Rs.2000/- 6460 Total Rs.8460/-. The applicant represented for fixation of minimum pay of cadre of clerk sepoy as recommended by the 6th Central Pay Commission.

4. It has been submitted by the learned counsel for the applicant that the salary of the applicant has been fixed in pursuance of the policy letter and at present junior person, who were appointed in the same cadre after 01.01.2006 are getting higher salary as their salary was fixed in view of the aforementioned policy letter.

5. In support of his submission, learned counsel for the applicant has placed reliance on the pronouncement of Co-ordinate Bench of this Tribunal in the case of **Brijesh Singh vs. Union of India & others** (O.A.No. 28 of 2015) decided on 21.10.2016, copy of which has also been annexed with the rejoinder affidavit.

6. On behalf of the respondents, it is pleaded that the applicant was an appointee of pre 2006, therefore, his pay has not been fixed in accordance of the 6th Central Pay Commission. The basic pay was to be fixed for the appointee, who were appointed on or after 01.01.2006. However, learned counsel for the respondents could not reply as to how the applicant is not entitled to the benefit of the case law relied upon by him, which has attained finality by lapse of time. The controversy, which is involved in this case, was raised in the case of **Brijesh Singh** (supra) and in Paras 6, 7 and 8, the Tribunal decided as under:

“6. A combined and plain reading of the aforesaid averments placed on record in the counter affidavit in the face of the record indicates that

though the Applicant is entitled for stepping up of pay scale in the light of the Government order dated 28th March 2011, but the same has been denied only because the Applicant was appointed prior to 01.01.2006. In our considered view, it would amount to gross travesty of justice if the persons junior to the Applicant are allowed to draw higher pay than the Applicant merely because of the fact that the Applicant was appointed prior to 01.01.2006. At the very face of it, the action of the respondents in denying the pay at par with his juniors appear to be highly unjustified, arbitrary and hit by Article 14 of the Constitution of India. The position in law is well settled that equals cannot be treated unequally. A person working in the same cadre shall be entitled to the same pay scale which is being paid to all the persons junior to him working in the same cadre subject to increment, dearness allowance etc which increases with the passage of time.

7. It may be noted here that in response to the averments made in the counter affidavits, the Applicant has invited our attention to different Government orders pertaining to fixation of pay scales etc as would be evident from paras 4,5,6,7,8,9 and 10 of the rejoinder affidavit and particularly para 8 wherein he has invited our attention to the Government of India Ministry of Defence letter dated 28.03.2011 which provides for payment of equal pay scales to all persons working the same cadre. For ready reference, para 8 of the rejoinder affidavit being relevant is reproduced below.

“ 8. That the contents of Para 7 of Counter affidavit as stated are not admitted and are denied. In this connection it is submitted that the (C.D.A.) PAO (Ors), E.M.E. Secunderabad committed a blunder and misrepresented the recommendations of 6th Central Pay Commission. The deponent given detailed reply in the proceeding paragraphs of this rejoinder affidavit, hence no need to repeat here again. Government of India Ministry of Finance Department of Expenditure (E.III A Branch) clarified in their letter dated 28.03.2011 as under :-

Para 2.

This proposal has been examined in this department of Expenditure is of the view that there is no need to issue a corrigendum as proposed and that the pay of all such seniors who are drawing less pay than a directly recruited juniors who is appointed on or after 01.01.2006 may be stepped up at par with the pay of directly recruited juniors appointed on or after 01.01.2006 subject to fulfilment of the following conditions:-

(1) Stepping up the basic pay of seniors can be claimed in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of directly recruited junior, provided the senior and junior belong to the same seniority list for all purposes.”

In this connection it is submitted that the CDA and erroneously the basic pay of the dependent fixed less than minimum basic pay 8 recommended by the 6th Central Pay Commission.”

8. In view of the above, there appears to be no room for doubt that denial of salary to the Applicant in terms of the recommendations made by 6th C.P.C with effect from 01.01.2006 shall be an instance of nonapplication of mind by the authority concerned. It is highly arbitrary particularly when attention was drawn by the Applicant to different orders, circulars and report of 6th C.P.C. and the higher salary paid to the juniors. In this view of the matter, without sticking to the misconceived defence as set up by the respondents, it was incumbent on the respondents to have fairly conceded the error committed by them with follow up action of rectification and re-fixation of salary. Such action on the part of the members of the Armed Forces seems to be not justified on any ground whatsoever.”

7. On behalf of the respondents, no case law or policy could be brought to our notice during the course of hearing in support of their submission that the applicant is not entitled to the benefit of aforementioned case law. Therefore, this O.A. deserves to be allowed in the same terms, in which the case of Brijesh Singh (supra) was disposed of.

8. According, this O.A. is **allowed**. The respondents are directed to revise the pay scale of the applicant, including all increments, in the light of the recommendations of the 6th Central Pay Commission w.e.f. 01.01.2006, in accordance with law, which must not be lowered to the persons, who are juniors to the applicant working in the same cadre.

The order shall be executed within four months from the date of receipt of a copy of this order.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : February , 2019.
PKG