

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 357 of 2019**

Friday, this the 19th day of Feb, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Suresh Kumar (No. 13985745Y Ex Hav/AA) aged about 46 years, son of Jagedo Singh, resident of Village : Jagatkhera, Post Office and Tehsil : Mohanlaganj, Lucknow-226 301.

Ld. Counsel for the Applicant : **Shri Yashpal Singh, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi-110011
2. Officer –in-Charge, Army Medical Corps Records, Lucknow Cantt (UP) -226002
3. Office of PCDA (Pension), Draupadighat, Allahabad (UP) -211014
4. Officer-in-Charge, Pay and Accounts Office (Other Ranks), Army Medical Corps, Lucknow
5. Commandant, Base Hospital, Lucknow

..... **Respondents**

Ld. Counsel for the Respondents: **Shri Arun Kumar Sahu, Central Government Counsel**

ORDER

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

“(a) issuing/passing of an order directing the respondents to consider and re-fix salary of the applicant in the Band Pay of Rs 46,200 and pay arrears of difference in salary from due date and within a stipulated time.

(b). issuing/passing of an order directing the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary in the Band Pay of Rs 46,200 and pay arrears of difference in pension from 01.03.2019 and other retiral dues alongwith interest and within a stipulated time.

(c) issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d). Allowing this application with cost.

2. In brief, the fact of the case is that the applicant was enrolled in the Army on 19.02.1993 and discharged from service on 28.02.2019 (A/N) on completion of his terms of engagement under Army Rule 13(3) III (i) of Army Act 1950. As per records maintained by Army Medical Corps Records, the applicant was promoted to the rank of Hav on 01.03.2014 and was granted MACP III (Nb Sub Grade) with effect from 19.02.2017. As per IHQ of MoD (Army)/AG/MP-8 (I of R) letter No A/20038/Appx ‘J’/MP-8 (I of R) (ADP) (i) dt 08.08.2017, all JCOs/OR who were in service on or after 31.12.15 and before 03.05.2017 or 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 Option in writing regarding fixation of their revised pay as per 7th Pay Commission. The Option Certificate for revision of Basic pay was required to be submitted to Record Office with effect from 01.01.2016 and before 03.05.2017. The applicant was required to exercise the option certificate for fixation of his Pay as per time frame provided but he did not exercise the option in time; hence his pay fixation was done as per the provision of para 6 (3) of SRO which stipulates that *“If the intimation regarding option is not received by the Pay Accounts Office within one*

hundred and eighty days of the date of notification of these rules, the JCOs/OR shall be deemed to have elected to govern by the revised pay structure with effect from 1st day of January, 2016.” Aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that before discharge from service the applicant came to know that his batch mates and juniors are getting salary in the Band Pay of Rs 46,200/- whereas, he is getting salary in the Band Pay of Rs 42,200. Feeling aggrieved, the applicant submitted a complaint through proper channel on prescribed format to Record Office, AMC Centre, Lucknow for redressal of his grievance but no action has been taken by the competent authority. 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 and he is getting less pay than his batchmates. Immediately the applicant exercised the option and requested the competent authority to revise his pay as per recommendations of 7th Pay Commission but respondents denied processing the same being time barred. Due to this, the applicant suffered a loss in basic pay of Rs 3900/- per month and accordingly other retiral benefits were also affected. Learned Counsel for the applicant further submitted that three similarly placed service personnel, No 13985811W Hav R S Ram, No 13985822H Hav Rajendra Singh and No 13985815M Hav Jitendra Singh who are his batch mates and enrolled on 27.02.1993 are drawing pay in the Band Pay of Rs 46,200/- whereas he is drawing pay in the Band Pay of Rs 42,200/-.

4. Learned Counsel for the applicant submitted that the similar controversy has been decided by Armed Forces Tribunal, Regional Bench, Lucknow in OA 156 of 2016 (Hav Jog Dhyan Sharma vs UOI & Ors decided on 04.01.2018).

5. On the other hand Learned Counsel for the respondents submitted that as per IHQ of MoD (Army)/AG/MP-8 (I of R) letter No A/20038/Appx 'J'/MP-8 (I of R) (ADP) (i) dt 08.08.2017, all JCOs/OR who were in service on or after 31.12.15 and before 03.05.2017 or 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

Option in writing regarding fixation of their revised pay as per 7th Pay Commission. The Option Certificate for revision of Basic pay was required to be submitted to Record Office with effect from 01.01.2016 and before 03.05.2017. The applicant was required to exercise the option certificate for fixation of his Basic Pay as per time frame provided but he did not exercise the option in time; hence his pay fixation was done as per the provision of para 6 (3) of SRO. 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.

6. We have heard the learned counsel for the parties and perused the records.

7. Case of the applicant as spelt out in the instant OA 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 Central Pay Commission 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 with effect from 01.09.2008. The benefits of this Scheme despite having completed 26 years of service was not extended to the applicant because of non exercising of option on time as per Government of India, Ministry of Defence Office Memorandum No 1(20)/2017/D (Pay/Services) dated 26.02.2019 which is reproduced below :-

No.1(2)/2017/D/Pay/Services
Ministry of Defence
D(Pay/Services)

Sena Bhawan, New Delhi
Dated 26th February, 2019

OFFICE MEMORANDUM

Subject : 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.

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.

Yours faithfully,

Sd/- xxxxxxxx
(Arun Kumar)

Under Secretary to the Govt. of India

8. 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. Infact the issue has already been settled by the Principal Bench, AFT, New Delhi vide order dt 10.12.2014 passed in a bunch of cases with OA 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 of the option on time.

9. In addition to above, we are of the considered opinion that PAO (OR) should have regulated the fixation of pay that will 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 their being any reasonable classification. The only ground for denial of the 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 than his colleagues in the same rank and service, due to which they will suffer heavy loss.

10. Thus in the result, the O.A. succeeds and is allowed. The respondents are directed to revise the Pay of the applicant @ Rs 46,200/- per month by granting upgradations as per ACP/MACP Schemes with all retiral benefits from the due date. We direct the respondents to pay the arrears accrued after fixation of pay to Rs 46,200/- per month with interest @ 8% per annum. The respondents are further directed to implement the order within a period of three months from the date of receipt of certified copy of this order failing which it shall carry interest @ 8% per annum from the due date till date of actual payment.

11. There shall be no order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: Feb, 2021

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