

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 751 of 2020

Sub Abdhesh Kumar Giri

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>19.02.2021</u></p> <p><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri KK Singh Bisht, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents.</p> <p>Learned counsel for the applicant submitted that applicant was enrolled in the Army as Sepoy in Nursing Assistant trade on 05.01.1991. He qualified the entrance examination for three years Diploma in General Nursing and successfully completed it. Thereafter on 03.03.2006 he was promoted to the rank of Naib Subedar and converted into the trade of Nursing Technician. As per recommendations of 6th Central Pay Commission circulated under the authority of Para 14(b) (i) of SAI 1/S/2008, an option was required to be given by all JCOs/OR within one month from the date of promotion through which they could choose for fixation of pay and allowances either from 01.01.2006 or from the date of promotion, whichever was beneficial to them. The validity of exercising the option by JCO/OR was extended from time to time and upto 31.03.2011. Due to ignorance of this policy, the applicant could not exercise the option by due date. Due to this, juniors to the applicant who had already exercised this option started getting more pay than the applicant.</p> <p>Aggrieved, the applicant represented to the authorities concerned for re-fixation of his pay and allowances, but no action was taken by them. The applicant has retired from service on 31.01.2020 (afternoon) and struck off strength from Army Service with effect from 01.02.2021.</p> <p>Learned counsel for respondents submitted that the applicant did not exercise option on promotion to the rank of Naib Subedar with effect from 03.03.2006 within the time frame i.e. 31.03.2011, consequently the PAO (OR), AMC, Lucknow has regulated the fixation of pay on promotion which was more beneficial of the two options as per the terms enumerated in para 7 and 8 in place of para 14 of SAI 1/S/2008), New Delhi dated 11.10.2008 while entering in 6th CPC.</p> <p>Learned counsel for the applicant placed reliance on Armed Forces Tribunal, Principal Bench, New Delhi order dated 10.12.2014 passed in a bunch of cases with O.A. No. 113 of 2014 (Sub Chittar Singh and others vs. UOI and others) and Armed Forces Tribunal, Regional Bench, Chandimandir passed in O.A. 575 of 2016 in Sharad Vashisth and others vs. UOI delivered on 18.04.2018 and prayed for similar benefits be granted to the applicant.</p>

We have heard the learned counsel for the parties, perused the records, SAI 1/S/2008 and the judgements on similar issues.

Facts are 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, as extended by the respondents from time to time. Infact the issue has already been settled by the Principal Bench of this Tribunal on 10.12.2014.

At this juncture, we may recapitulate that the applicant has been put in disadvantageous pay scale because of the reason that he has not exercised the option in time and admittedly because of the default, he said to have been placed in lower pay scale than the pay scale given to his own colleagues, in the same rank and junior to him. We have not found a single reason on the basis of which it can be justified that in the same rank, in the same cadre and discharging the same duties and juniors to the applicant are getting more pay than the applicant.

Thus, in light of the aforesaid judgments, we dispose of this O.A. with a direction to the respondents to fix pay of the applicant in the light of the order dated 10.12.2014 passed in Sub Chittar Singh's case (supra) and release the same together with arrears as expeditiously as possible but not later than three months from the date of receipt of certified copy of this order by learned government counsel/representative. If the needful is not done within the stipulated period, the arrears accruing to the applicant by virtue of this order shall carry interest @ 8% p.a. from the date these fell due till date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

dds/-