

**Court No. 2**  
(Ser No 8)

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

**ORIGINAL APPLICATION No. 170 of 2022**

Tuesday, this the 21<sup>st</sup> day of February, 2023

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

No. JC-694252A Ex Sub Major (Hony Capt) Karamvir, S/o Shrihand, R/o: SDM Colony, Nearby Devi Mandir Sikandrabad, Dist-Bulandshahar, Pin-203205 (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 the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, AMC Records, Lucknow-226002 (UP).
4. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Shri GS Sikarwar**, Advocate  
Respondents. Central Govt. Counsel

## **ORDER (Oral)**

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:-

*(i) To issue/pass an order or directions to the Respondents to Refix/Revise his Band Pay and Pay Matrix as per 5<sup>th</sup> CPC, 6<sup>th</sup> CPC and 7<sup>th</sup> CPC wef 01.01.2016 as per Notification issued by Govt of India time to time and direction issued on 26.02.2019, and in light of Hon'ble Apex Court Judgment and Hon'ble Aft Order passed in similar cases.*

*(ii) To issue/pass an order or directions to the Respondents to grant him enhance rate of revised service pension and other benefits dues wef 01.02.2020 based on correct fixation of Band Pay (Pay Level-10) applicable alongwith arrears on Pay & Allowances and interest @18% on arrears accrued to the applicant due to revision of his Band Pay and Pay Matrix.*

*(iii) To issue/pass an order or directions to the Respondents to grant him benefits of financial upgradation MACP to the rank of Sub Major wef 01.10.2015 alongwith arrears as per the Govt of India revised Policy of MACP Scheme passed.*

*(iv) To issue/pass an order or directions to the Respondents to adjust and credit the dues amount for 300 days leave encashment as per the last Pay Drawn by the applicant to the rank of Hony Lt (Pay Level-10) based on correct fixation of Bank Pay before discharge from service as per Policy in vogue.*

*(v) To issue/pass an order or directions to the respondents to place the applicant in 'X' Group Pay for a sum of R.6200/- p.m. from the date of his remustering to the trade of Nursing Technician alongwith arrears and interest @ 18% p.a. on arrears.*

*(vi) To issue/pass an order or directions to the Respondents to reduce the periods for restoration of commuted value of pension to 10 years instead of 15 years as per the present scenario.*

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

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

3. Brief facts of the case are that the applicant was enrolled in the Army on 25.08.1986 and retired from service on 31.01.2020 after rendering 33 years, 05 months and 07 days service. Prior to discharge from service he was awarded coveted rank of Hony Lt on the occasion of Republic Day 2020 i.e. on 26.01.2020 and Hony Capt after discharge from service. Applicant successfully

completed 03 years diploma course in Nursing Technician from Military Hospital, Secunderabad which as per applicant is approved by AICTE/UGC/Indian Nursing Council/equivalent to AICTE. Therefore, applicant approached AMC Records for publication of Part II Order for remustering into 'X' Group trade (X Group pay @ Rs. 6200/- per month) which was denied by AMC Records. The applicant has fulfilled all the conditions as provided in para 24 of ROI 15/2005 for remustering into 'X' Group, however, he is still not being placed in 'X' Group pay by the respondents. Being aggrieved, the applicant preferred representation dated 06.08.2021 which was replied by the respondents clarifying why Rs 6,200/- are not applicable to him, hence this O.A.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 25.08.1986. The applicant underwent prescribed course of 03 years Diploma in Nursing Technician for the period from July, 1999 to June, 2002 from Military Hospital, Secunderabad (AP) which is approved by the AICTE, therefore, a case was taken up to AMC Records by his unit to remuster applicant in 'X' Group having completed three years diploma course which was not conceded by the AMC Records stating that applicant will be remustered as Nursing Technician Group 'Y', which the applicant feels is against the principles of natural justice and against Article 14 of the Constitution of India. The applicant was remustered as Nursing Technician JCO on 27.02.2003 while posted with 155 Base Hospital.

5. Learned counsel for the applicant further submitted that as per 7<sup>th</sup> CPC letter dated 29.11.2016, it was mentioned that higher diplomas approved by AICTE/UGC/Indian Nursing Council/ equivalent to AICTE will be placed in 'X' Group (Rs. 6200/- p.m.), however, the applicant despite having the said diploma is still not kept in 'X' Group. The applicant submitted representation dated 06.08.2021 but it was turned down vide letters dated 25.04.2022 and 04.02.2022 by AMC Records and IHQ of MoD (Army) respectively mentioning therein as to why Nursing Technician are not placed in higher 'X' Group.

6. Learned counsel for the applicant further submitted that applicant has fulfilled all the conditions as provided in para 24 of ROI 15/2005 for remustering into 'X' Group. The applicant even after fulfilling the essential conditions as required by the respondents is not being placed in 'X' Group (X Group pay @ Rs. 6200/- per month) while Radiographers and Lab Technicians trades in AMC whose training is not approved by AICTE and other diploma holders of one year/two years in Army are still placed in 'X' Group Pay. Thus, the action of the respondents ignoring the demand of the applicant of placing him in 'X' Group Pay having completed 3 years Diploma course is biased, unfair and prejudicial. He pleaded that applicant is eligible to be remustered in 'X' Group Pay and accordingly, he should be paid higher rate of 'X' Group Pay. In support of his contention reliance has been made on order dated 06.01.2022 passed by this Tribunal in O.A.

No. 379 of 2019, **Nb Sub Kailash Chandra Bhatt vs UOI & Ors**, order dated 10.12.2014 passed by AFT, PB, New Delhi in O.A. No. 113 of 2014, **Sub Chittar Singh vs UOI & Ors**, the Hon'ble Apex Court judgment rendered in **UOI & Ors vs P Jagdish & Ors**, 1997 (3) SCC 176.

7. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army (Army Medical Corps) on 25.08.1986. He has undergone Diploma Nursing Technician course and on completion of the said course he was remustered to Nursing Technician and was subsequently promoted to the rank of Naib Subedar w.e.f. 27.02.2003. The applicant submitted his Diploma issued by Military Hospital, Secunderabad to AMC Records for publication of Part II Order for fixation of higher rate of 'X' Group pay, however, the ibid documents were not taken into consideration stating that there is no provision for grant of higher rate of 'X' Group pay for Nursing Technician JCOs in terms of IHQ of MoD (Army) letters dated 22.10.2018 and 18.07.2018 which stipulates that "the revised policy for 'X' group is applicable only for Radiographer and Lab Technician (JCOs only) trades in Army Medical Corps and Dental Hygienist trade in Army Dental Corps".

8. Learned counsel for the respondents further submitted that a proposal has been sought by the office of DGAFMS/Pay Cell for inclusion of 13 trades of 'Y' groups into 'X' groups based on Diploma which is recognized by AICTE/equivalent statutory body

of Medical/Dental/Nursing/Paramedical received through IHQ of MoD (Army) vide their letter dated 02.07.2018. In accordance with IHQ of MoD (Army), financial liabilities were calculated by AMC Records and submitted to IHQ of MoD (Army) vide AMC Records letter dated 20.07.2019. Subsequently, financial liabilities of Nursing Technician (JCO) were also calculated and duly vetted by Pay Account Office were submitted to IHQ of MoD (Army) vide AMC Records letter dated 07.08.2019 which is still under consideration at the appropriate level. Now, the applicant has filed the present Original Application to place him in 'X' Group pay (Rs. 6200/- pm) before receiving any decision from the competent authority. He pleaded for dismissal of O.A.

9. Heard Shri KP Datta, learned counsel for the applicant and Shri GS Sikarwar, learned counsel for the respondents and perused the record.

10. On perusal of records we find that applicant has done 03 years Diploma in Nursing Technician for the period July, 1999 to June, 2002 from Military Hospital, Secunderabad and on completion of diploma course he was promoted to the rank of Nb Sub w.e.f. 27.02.2003. We have also observed that few other trades in AMC who are having a diploma of 1 year/2 years duration are kept in 'X' Group whereas the applicant who has done the Diploma for a duration of 03 years has been denied inclusion of his name in 'X' Group trade having monetary benefit of Rs. 6,200/- per month.

11. In representation dated 06.08.2021 applicant raised certain allegations with regard to non grant of some allowances which was replied vide letter dated 25.04.2022 explaining him all details with regard to applicability of his dues. For convenience sake extract of aforesaid letter is reproduced as under:-

"4.7 इस कार्यालय में उपलब्ध दस्तावेजों के अनुसार Sub Maj (Hony Lt) जी. एस. रावत का अंतिम मूल वेतन 67000/- है जो कि इनसे वरिष्ठ Sub Maj (Hony Lt) कर्मवीर के अंतिम मूल वेतन रु 68000/- से कम है। अतः Sub Maj (Hony Lt) जी. एस. रावत के वेतन से अपने वेतन की तुलना तर्कसंगत नहीं है।

4.12 01.01.2016 से 7वे वेतन आयोग के अनुसार Hony Lt का न्यूनतम वेतन रु 56100/- व MS Pay 15500/- तथा Hony Capt का न्यूनतम मूल वेतन रु 61300/- व MS Pay 15500/- है।

उक्त सैन्यकर्मियों की Hony Lt की प्रोन्नति का DO-II FSA होने के उपरांत इस कार्यालय को प्राप्त है जिसके कारण 300 दिन के ENCFIN के बकाए की राशि माह 11/2021 में उक्त सैन्यकर्मियों के FSA में क्रेडिट हुआ था। जिसका भुगतान नियमानुसार उक्त सैन्यकर्मियों के बैंक खाते में कर दिया जाएगा।"

12. Applicant has heavily relied upon order dated 06.01.2022 passed by this Tribunal in O.A. No. 379 of 2019, **Nb Sub Kailash Chandra Bhatt vs UOI & Ors.** We have gone through the aforesaid order and connected case file and we find that IHQ of MoD (Army) vide letter dated 04.03.2022 rejected the issue for grant of 'X' Group pay. For convenience sake extract of aforesaid letter is reproduced as under:-

"1. x x x x

2. Classification of pers in Gp 'X' (with higher rate of Rs 6,200 and lower rate of Rs 3,600) and Gp 'Y' is clearly spelt out in Para 3, Rule 5 of Army pay rules-2017.

3. It is again stated that trades having qualification equivalent to a diploma recognized by AICTE are entitled to Rs 6,200 p.m. as Gp 'X' Pay at higher rate while those not having a qualification recognized by AICTE are entitled to Rs 3,600 p.m. as Gp 'X' Pay at lower rate. All other trades not covered by the above are in Gp 'Y' and not eligible for Gp 'X' Pay."

13. During the course of hearing we were informed that consequent to disposal of O.A. No. 379 of 2019, speaking order was passed by the respondents and his case for grant of 'X' Gp pay was rejected.

14. Applicant's other limb of argument as contended in Para 4.11 of the O.A. is that due to non submission of option certificate in time his band pay has not been correctly fixed which resulted in grant of less pay/pension as compared to his juniors and batchmates. We find that in regard to non submission of option certificate the Hon'ble Principal Bench, AFT, New Delhi passed order dated 10.12.2014 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.

15. 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 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 same service, due to which they will suffer heavy loss.

16. In view of aforesaid discussion, Original Application is **partly allowed** directing the respondents to adjust his pay/pension in view of **Sub Chittar Singh** (supra) with further directions to consider case of the applicant who is having Diploma in Nursing Technician of 3 years duration for inclusion of his name in the trades of 'X' Group as per rules within a period of two months from today.

17. No order as to costs.

18. Pending Misc. Application(s), if any, stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated :21.02.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**