

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 405 of 2021**

Friday, this the 21st day of January, 2022

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

No. 14806319N Ex Hav (Hony Nb Sub) Radhey Krishna, S/o Late Beni Madhav, R/o Pure Chandi (Jagatpur Baradara), Post Office-Darigapur, District-Rai Bareilly, Pin-229125 (UP).

..... Applicant

Learned counsel : **Shri KP Datta**, Advocate
for the Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer in Charge, ASC Records (South), Bangalore-560007.
4. OIC, PAO (OR) ASC (South), Bangalore-560007.
5. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Learned counsel for the Respondents : **Shri GS Sikarwar**, Advocate
Central Govt Counsel

ORDER (Oral)

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

- (a) *To issue/pass an order or direction to the respondents to refix/revise the band pay matrix from Rs 42,300/- to Rs 46,200/- as per directions issued by Govt of India on 26.02.2019 and relevant order passed in similar type cases by the Hon'ble AFT.*
- (b) *To issue/pass an order or direction to the respondents to grant him enhance rate of service pension and other retiral dues wef 01.05.2016 based on correct fixation of band pay for Rs 46,200/- p.m. w.e.f. 01.01.2016 alongwith arrears and interest @ 18% on arrears accrued to the applicant due to revision of his band pay and pay matrix.*
- (c) *To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*
- (d) *To allow this application with cost.*

2. Brief facts giving rise to this application are that the applicant was enrolled in the Indian Army on 26.04.1990. He was promoted to the rank of Havildar w.e.f. 01.04.2008 and was granted financial upgradation of MACP Nb Sub w.e.f. 26.04.2016. On completion of 26 years of service he was discharged from service w.e.f. 30.04.2016. The grievance of the applicant is that after implementation of 7th CPC his junior was granted band pay @ 46,200/- whereas the applicant was granted pay band @ 42,300/-, thus there being a difference of Rs 3,900/- in pay band he is getting less pension to his junior Ex Hav Ram Swarup who was enrolled on 09.04.1993 and discharged from service w.e.f. 30.04.2019 and Ex Hav Rakesh

Kumar who was enrolled on 31.12.1989 and discharged from service on 31.12.2015.

3. 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) dated 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 CPC. 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. Applicant did not exercise his option due to unawareness of the policy; hence his Pay was not revised and he retired on 30.04.2016 with pay band @ Rs. 42,300/- causing heavy financial loss to him.

4. Learned counsel for the applicant submitted that Government had introduced Assured Career Progression (ACP) Scheme on recommendation of 5th CPC. The said Scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. The Govt again introduced Modified Assured Career Progression (MACP) Scheme for Personnel Below Officer Rank (PBOR) superseding the previous ACP Scheme. The scheme was made to take effect from 01.09.2008. The Government of India, Ministry of Defence (Department of Pay Services) vide their letter No.

1(20)/2017/D (Pay/Services) dated 26.02.2019 issued guidelines to all affected service personnel to give option for fixation of their pay as per 7th CPC. Learned Counsel for the applicant further submitted that those who exercised the option at the time of discharge drill were granted the revised MACP but due to ignorance since the applicant could not exercise the option he was not granted revised MACP prior to his discharge on 30.04.2016. He further submitted that applicant's grievance has been turned down by the respondents vide letter dated 09.04.2019.

5. Learned Counsel for the applicant further submitted that two similarly placed service personnel No. 14806136X Ex Hav (MT) Rakesh Kumar and No. 14807297M Ex Hav (MT) Ram Swarup were enrolled on 31.12.1989 and 09.04.1993 and were discharged from service w.e.f. 31.12.2015 and 30.04.2019 respectively and their basic pay were fixed @ Rs. 46,200/- but the applicant was discharged on 30.04.2016 and his basic pay was fixed @ Rs 42,300/- which is apparently unjust and improper. He submitted that basic pay of the applicant be fixed @ Rs. 46,200/- instead of Rs. 42,300/- according to MACP Scheme for fixation of pay. Thus, he submitted that since the similar controversy has already been decided by Armed Forces Tribunal, Regional Bench, Lucknow in various judgments, applicant is also entitled for revision of his pension in terms of said Govt policy letter.

6. On the other hand, the contentions advanced by learned counsel for the respondents is that No. 14806136X Ex Hav Rakesh Kumar, even though junior to the applicant got his MACP Nb Sub w.e.f. 31.12.2013 i.e. before the applicant due to which his pay fixed on date of MACP Nb Sub i.e. by one increment of 3% on old basic pay + grade pay (Basic Pay-10600+grade pay-2800) \times 3%=402 rounded off to 410 and his basic pay fixed at (11010+4800) \times 3%=474 rounded off to next 10 rupees is 480 and basic pay after increment of the junior is fixed at Rs 11940/-, whereas the applicant got his MACP Nb Sub w.e.f. 26.04.2014 and his pay has been fixed on 01.07.2014 by giving two increments @ 3% in the old basic pay (basic pay-10600+grade pay-2800) and basic pay fixed as Rs 11900/- on 01.07.2014, hence difference of pay is correct as per Rule 14 (iv) (aa) and (ab) of Special Army Instructions 1/S/2008 dated 11.10.2008. He further submitted that No 14807297M Ex Hav Ram Swarup got his MACP Nb Sub w.e.f. 09.04.2017 and he opted pay fixation under 7th CPC w.e.f. the date of MACP i.e. 09.04.2017 under Rule 5 (1) of Army Pay Rules, 2017 and his basic pay fixed on 09.04.2017 at Rs 43600/- and due to retirement on 30.04.2019 the junior got 2 more subsequent increments on 01.01.2018 at Rs 44900/- and another increment on 01.01.2019 at Rs 46200/- hence there is difference in the fixation of basic pay of the applicant who retired on 30.04.2016.

7. Learned counsel for the respondents further submitted that the pay of the applicant has been fixed correctly as per the existing rules as clarified by PAO (OR) ASC, (South) Bangalore vide their letter dated 09.04.2019. He submitted that Original Application being bereft of merit and lacking substance is recommended to be dismissed in the interest of justice.

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

9. Case of the applicant as spelt out in the instant O.A. 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 were 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 26 February, 2019*

OFFICE MEMORANDUM

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.

1. 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."

10. In view of the submissions made by the learned counsel for the parties and above policy letter, it is clear that 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 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 dated 10.12.2014 passed in a bunch of cases in O.A. No 113 of 2014 (Sub Chittar Singh v. UOI) wherein benefit has been granted to the applicants who were denied correct fixation of pay due to not exercising of the option on time.

11. Additionally, 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 has been put in disadvantageous pay scale because of the reason that allegedly he has not exercised his 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 there 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 several persons have not submitted their options due to unawareness of the policy in time and they are going to get less pay than their colleagues in the same rank and service, due to which they will suffer heavy loss. Record Office, ASC (South), Bangalore is directed to complete the formalities required for the correct fixation of pay at their own as the applicant has already been retired from service w.e.f. 30.04.2016.

12. 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. 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.

13. There shall be no order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 21st January, 2022
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