

Court No. 3
(Ser No 3)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 809 of 2022

Tuesday, this the 31st day of January, 2023

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

1. V-00594A Lt Col Winson Daniel Abraham, (CDA A/C No. 06/037/204735L), S/o Shri Chelliah, presently posted at No. 20 Army Dog Unit, PIN: 902820, C/o 56 APO.

.....Applicant No. 1

2. V-00598W Lt Col Sanjeeth BS, (CDA A/C No. 06/039/204743K), S/o Shri B Siddegowda presently posted at DGRVS [AAG RVS (Legal)], IHQ of MoD, West Block-3, RK Puram, New Delhi – 110066.

.....Applicant No. 2

3. V-00600H Lt Col Mukesh Kumar Parti, (CDA A/C No. 06/039/204748K), S/o Shri Raj Kumar Parti presently posted at RVC Centre & College, PIN: 900468, C/o 56 APO.

.....Applicant No. 3

4. V-00621Y Lt Col Fernandes Richmark Igni, (CDA A/C No. 06/037/204739F), S/o Shri RMS Fernandes, presently posted at 26 Mobile Field Vet Hospital, PIN : 902726, C/o 56 APO.

.....Applicant No. 4

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

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), Post –DHQ, New Delhi - 110011.
3. ADG PS, Standing Army Pay Commission Section, AG's Branch, 5th Floor, Defence Office Complex, KG Marg, New Delhi-110066.
4. Director General Remount Veterinary Services, QMG's Branch, Integrated Headquarters of MoD (Army) West Block 3, Ground Floor, Wing No. 4, RK Puram, New Delhi - 110066.
5. Office of PCDA (O) Golibar Maidan, Pune (Maharashtra)- 411001.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. 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 quash/set aside the Respondent No. 5 communication dated 23 Aug 2022, 16 Sep 2022, 30 Aug 2021 & 03 Aug 2022 & 21 Sep 2022 (Annexure No. A-1 to A-5 respectively) wherein applicants have been denied for re-fixation of their basic pay in terms of 7th CPC in true spirit wef 20 Dec 2016 (date of promotion) and allowing them to suffer financial loss of Rs 18,000/- in their basic pay on monthly basis since then.*
- (b) *to direct the respondents to correctly fix the basic pay of the applicants w.e.f. 20 Feb 2016 (Date of promotion to the rank of Lt Col) in terms of 7th CPC.*
- (c) *to direct the respondents to pay the arrear of salary alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*
- (d) *to impose exemplary costs on respondent No. 5 for not taking appropriate steps in resorting the anomaly well knowing that the applicant is suffering a financial loss of approximately Rs 18,000/- per month and thus forced to approach this Hon'ble Tribunal for ibid litigation.*
- (e) *any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.*

2. Counter affidavit filed on behalf of the respondents is taken on record.

3. Brief facts of the case are that applicant No 1 to 4 were commissioned in the Indian Army [Remount and Veterinary Corps (RVC)] as Lieutenant (Lt) on 20.06.2005 and were promoted to the rank of Lt Col on 20.12.2016. The Govt of India, MoD issued letter dated 06.08.2019 regarding timeline for exercising of option for pay fixation in 7th CPC. In Para 5 of Army Officers Pay

Rules, 2017 notified on 03.05.2017 it is mentioned that in case an officer has been placed in a higher grade pay or scale between the first day of January, 2016 and the date of notification of these rules on account of promotion or upgradations the officer may elect to switch over the revised pay structure from the date of such promotion or upgradation, as the case may be'. In Para 6 of Army Officers Pay Rules it is mentioned that 'the option under the provisions to Rule 5 shall be exercised in writing in the form appended to these rules so as to reach the PCDA (O) within one hundred and eighty days of the date of notification of these rules. This time limit was further extended upto 01.02.2020 vide MoD letter dated 06.08.2019. Applicants No 1 to 3 had exercised their option (at the time of promotion to the rank of Lt Col) at belated stage and applicant No 4 could not exercise his option as he was on deputation to Sudan. Therefore, their pay were revised in the 7th CPC w.e.f. 01.01.2016 and on promotion to the rank of Lt Col, their pay was fixed giving the benefit of one increment in accordance with Para 12 of Army Officers Pay Rules, 2017. However, pay of some of their coursemates who opted for 7th CPC pay revision from the date of promotion, their pay was revised from their date of promotion at higher rate as per the pay matrix of Lt Cols. These coursemates foregone their revised increased pay from 01.01.2016 to the date of their promotion to the rank of Lt Col i.e. 22.12.2016 and as a result their pay was fixed at higher rate giving the benefit of fitment table of the rank of Lt

Col. Whereas those officers who exercised option at belated stage or did not exercised option their pay was revised w.e.f. 01.01.2016 as per the pay matrix of Maj and at the time of promotion to Lt Col, they were given the benefit of one increment in accordance with Para 12 of Army Officers Pay Rules, 2017. All the applicants exercised their option belatedly, therefore their basic pay was not fixed correctly. Redressal of grievance (ROG) were submitted but reply was received stating that 'at this belated stage this office is unable to take action for those officers whose option for switch over pay fixation from date of promotion not received within stipulated time', hence this O.A.

4. Learned counsel for the applicants submitted that applicant No 1 to 4 were commissioned in the Indian Army [Remount and Veterinary Corps (RVC)] as Lieutenant (Lt) on 20.06.2005 and were promoted to the rank of Lt Col on 20.12.2016. The applicants came to know that there was difference in basic pay due to incorrect fixation of pay. Accordingly, belated Option was exercised and when it was turned down, ROGs were preferred which were also rejected stating that 'at this belated stage this office is unable to take action for those officers whose option for switch over pay fixation from date of promotion not received within stipulated time'.

5. Learned counsel for the applicant further submitted that respondents have ignored the settled law as held by AFT (PB), New Delhi in O.A. No. 113 of 2014, **Sub Chittar Singh v. Union**

of India & Ors, decided on 10.12.2014 wherein Para 3 states that in the scheme itself, it has been provided that it will be the duty of the PAO (OR) to ensure that out of the two options the more beneficial option be given and, therefore, even if one has not submitted the option, even then it was the duty of the PAO (OR) to at least offer the beneficial provision's Option and that fixing of the time limit itself cannot deny the beneficial provision benefit to the petitioners. Hence, there cannot be two pay scales for the individuals working in the same rank, same cadre and discharging same duties. The Court also held that if no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the applicants.

6. On the other hand, learned counsel for the respondents submitted that applicants were commissioned in the Indian Army on 20.06.2005. After implementation of 7th CPC, the applicants were promoted to the rank of Lt Col w.e.f. 20.12.2016. Implementation of Govt. orders for officers who were on effective strength of Army as on 01.01.2016 were notified vide SRO No. 12 (e) dated 03.05.2017 and SRO No. 17 (e) dated 08.07.2017. Rule 5 of SRO No. 12 (e) dated 03.05.2017 provides reads as under :-

"Rule 5 – Drawal of Pay – (1) (i) Save as otherwise provided in these rules, an Officer shall draw pay in the level in the revised pay structure applicable to the rank to which he is appointed in substantive capacity. Provided that an officer may elect to continue to draw pay in the existing pay structure, until the date on which he earns his next or any subsequent increment in the existing pay structure or until he ceases to hold his rank or cease to draw pay in the existing pay structure. Provided further that in case an officer has been placed in a higher grade pay or scale between the 1 day of

January 2016 and the date of notification of these rules on account of promotion or upgradation, the officer may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be.

In light of the aforesaid provisions, the applicants had an option to elect to switch over from 6th CPC to 7th CPC pay structure from the date of their promotion to the rank of Lt Col w.e.f. 20.12.2016. For this purpose, they were supposed to exercise and submit option under Rule 6 (1) of the SRO 12 (e) dated 03.05.2017 which reads as under :-

"Rule 6. Exercise of option (1). The option under the provisions to Rule 5 shall be exercised in writing in the form appended to these rules so as to reach the PCDA (O) Pune within one hundred and eighty days of the date of notification of these rules, or where revision in the existing pay structure is made by any order subsequent to the date of notification of these rules, within one hundred and eighty days of the date of such order."

In light of these provisions, the applicants were supposed to submit their option for switching over from 6th CPC to 7th CPC which they submitted belatedly.

7. Learned counsel for the respondents further submitted that Rule 6 (3) of SRO 12 (e) further provides that "if the intimation regarding option is not received by the PCDA (O) Pune within 180 days of the date of notification of these rules, the officer shall be deemed to have elected to be governed by the revised pay structure w.e.f. 1st day of January 2016". The Ministry of Defence letter dated 06.08.2019 provided another opportunity to the officers to revise their initial option in terms of Rules 5 and 6 of SRO 12 (e), within a period of 180 days from the date of issue of the order dated 06.08.2019, i.e. in the light of these extended provisions the applicants were supposed to submit their option for switching over to the 7th CPC pay structure by 03.09.2021.

8. Learned counsel for the respondents also submitted that as per records available with the respondents office, the applicants failed to exercise and submit any such option in time for switching over from 6th CPC to 7th CPC pay structure w.e.f. the date of their promotion to the rank of Lt Col even within the extended time frame, i.e. 03.09.2021 as provided under MOD letter dated 06.08.2019, accordingly, their pay was fixed in the 7th CPC pay structure w.e.f 01.01.2016 as provided under Rule 6 (3) of SRO 12 (e) dated 03.05.2017 correctly. Hence, relief sought by the applicants is contrary to the rules and policy on the subject and the applicants are not eligible for any relief at this stage and pleaded for dismissal of O.A.

9. Heard learned counsel for the parties and perused the relevant documents available on record.

10. The issue is no more RES INTEGRA as the matter was looked into in depth by the Principal Bench of this Tribunal at New Delhi in O.A.No.113 of 2014, **Sub Chittar Singh & Ors vs. Union of India & Others**, and connected cases. Apart from looking into the time limits for submission promulgated by various letters, the Hon'ble AFT, Principal Bench had also looked into the provisions of Para 21 of the SAI, which provides the power to relax any of the provisions of the rules in the SAI, to impart justice in an equitable manner. It had been held that the options exercised by the petitioners therein, could not have been rejected merely due to delay in submission of option certificate. Therefore, the

applicants were held entitled to all the benefits, though they had not preferred their options in time. We feel it appropriate to reproduce the observations made by the Hon'ble AFT, Principal Bench, New Delhi in the case of **Sub Chittar Singh** (supra), as under :

"9. First fact, and it is most important fact, is that in case the petitioners are put in the revised pay scale, they will be getting the less pay. The respondents have taken the plea that because of the default only of the petitioners, they are not entitled to remain in old pay scale as per the clause (c) of Para 8 of SAI No. 1/S/2008, though it may result into denial of equal pay to the petitioners, which is being paid to the persons in the same rank and who are holding the post with same duties as are being discharged by the petitioners. We are of the considered opinion that when there is a serious penal consequence by virtue of implementation of a particular scheme, normally such scheme should be brought to the notice of each individual. In this case we have not found that scheme was brought to the notice of the individuals. We have reason to believe so because of the reason that in the documents placed on record itself there is mention of the fact that because of the posting of the persons at difficult places, number of persons could not get the knowledge of the scheme. The Govt. itself extended the time for submitting the option from time to time and from 10.01.2009 to at least 31.6.2011. The fact that the time was extended, is the admitted position by the respondents themselves. It, therefore, appears that the time limit fixed in the option was not the soul of the scheme nor was it essence of the scheme. Furthermore, we found from the respondents own documents dated 11.12.2013 that even extension of time for submitting of option to 30.6.2011 has been conveyed by Government's communication dated 11.09.2013. Learned counsel for the Union of India tried his best to submit that the communication dated 30.12.2013 itself has not extended the time limit for submission of option to 30.6.2011 but this communication has only given direction to the officers to process the options of the persons who may have submitted their options by 30.06.2011. We are unable to accept the submissions of the learned counsel for the Union of India for the simple reason that the respondents' letter dated 11.12.2003 has unequivocally the headings "Extension of period for exercising of option for pay fixation in the revised pay structure". The other communication in para 2 clearly indicates that time period was extended only by the letter dated 12.12.2013 is as under:

Para 2 "A copy of GoI, MoD Order No//Air HQ/99141/04/AFPC/1697/D (Pay/ Services) dated 11 Dec 2013 extending the acceptance of option exercised by Service Pers upto 30 Jun 2013 is forwarded herewith for info and wide circulation please."

No document has been placed on record saying that by another order the time limit to submit option was extended to 30.06.2011 apart from the one letter dated 11.12.2013. Since the letter dated 11.12.2013 itself was forwarded to various HQrs, with forwarding letter dated 11.12.2013, nobody before 30.0-6.2011, could have known that the time limit for submitting the option was extended to 30,06.2011,. Therefore, we do not find any justification to deny the benefit of submitting the option to the petitioners who could not give their option before 11.12.2013. If they would known prior to 30.0-6.2011 that they can give their option by or before 30.06,.2011 the others may also have submitted the option for old pay scale. When the time is extended and it is not brought to the notice of the beneficiaries then extension of time by the respondents cannot give any benefit to the bona fide claimant for the benefit. This may be a fortuous circumstance for some persons, who incidentally, have knowledge of the extended date to 30.06.2011, and may have submitted their option before 30.06,.2011 and they were given

benefit of their submission of option by the letter dated 11.12.2013. Therefore, also in the matter of financial penal consequences, such a conundrum cannot be the criteria for giving benefit and denying the benefit. In view of the above reason that extension of date for submission of option was ordered to be circulated vide communication dated 12.12.2013 then the persons who had submitted their options prior to 12.12.2013 cannot be denied the benefit of exercising their options.

10. In addition to above, we are of the considered opinion that if para 8(c) is accepted as a hurdle against the relief to the petitioners, then we cannot ignore the beneficial provision given in para 14(b)(iv), which clearly mandates that PAO (OR) will regulate fixation of pay that will be beneficial (out of the two options mentioned in the scheme) be allowed to the person. Such exercise should have been done before putting the petitioners in a particular pay scale. If the PAO (OAR) had any difficulty due to the restriction imposed by para 8(c) then also it was the duty of the respondents to relax the rule by exercising power under para 21 for relaxing the last date of submission of the option subsequent to their last extension of time to do the justice in an equitable manner. At this juncture, we may recapitulate that the petitioners are put in disadvantageous pay scale because of the reason that allegedly they have not exercised their option in time and admittedly because of the default they are said to be placed in lower pay scale than the pay scale given to their own colleagues, in the same rank, serving with them, and in spite of the fact that the petitioners' case administratively has been recommended strongly, with reasons by the service authority who is supposed to look after the interests of its own subordinate personnel, and 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, 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 to the petitioners is due to 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 no one will opt for such an option, and the omission is by a large number of persons, who may have a number of years to serve in the service."

11. The Hon'ble AFT (PB), New Delhi in **Sub Dhyan Singh's** case has also held that if no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the PBOR.

12. We observe that applicants have been put in disadvantageous pay scale because of the reason that they have not exercised the option to elect to switch over from 6th CPC to 7th CPC pay structure from the date of their promotion to the rank of Lt Col, i.e. 20.12.2016 in time and admittedly because of the default, they have been placed in lower pay scale compared to the pay scale given to their colleagues in the same rank and with

same length of service. Hence, there appears an anomaly in fixation of basic pay of the applicants which needs correction.

13. In view of above, Original Application is **allowed**. The respondents are directed to re-fix pay of applicant No 1 to 4 from 6th CPC to 7th CPC pay structure from the date of their promotion to the rank of Lt Col, i.e. w.e.f. 20.12.2016 in the light of the order dated 10.12.2014 passed in the case of **Sub Chittar Singh** (supra) and pay them arrears accordingly. The impugned orders passed by the respondents are set aside. The Respondents are directed to comply with the order within a period of four months from the date of receipt of a certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, are disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 31.01.2023

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(Justice Anil Kumar)
Member (J)