

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 557 of 2017**

Tuesday, this the 22<sup>nd</sup> day of May, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

**Col Aurobindo Kumar Pandey (IC 45928W) son of Babu Ram Pandey, attached with Station HQ Lucknow \* 8 Kumaon Bn) residing at H-118, South City, Raebareilly Road, Lucknow. .... Applicant**

Ld. Counsel for the Applicant : Shri Gynendra Kumar Pandey  
Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO New Delhi – 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army) DHQ PO New Delhi - 110011.
3. Military Secretary MS Branch, IHQ of MoD (Army) DHQ PO New Delhi -11.
4. Adjutant General through ADG, Personnel Services AG Branch IHQ of MoD (Army) DHQ PO New Delhi-11.
5. PCDA (O) Golibar Maidan Pune.

**.....Respondents**

Ld. Counsel for the Respondents. :Dr. Chet Narayan Singh,  
Advocate, Central Govt. Standing  
Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

*“(i) To direct the respondents to rectify the error in fixation of the basic pay of the petitioner in correct manner vis a vis his batch mate of the same category as well as his junior referred in Annexure No A-3 & A-4 to the OA and pay the rectified dues i.e. 27 Aug 2004 with compound interest from the date of its dues till the date of payment and further continuance of it as per his rank and stature.*

*“(ii) To grant any other relief in favour of the petitioner as deemed just and expedient in the light of facts and circumstances of the instant case.*

*“(iii) To award the cost in favour of the petitioner.”*

2. The facts in nutshell are that the Applicant was commissioned in the Indian Army on 04.09.1987. After elapse of five years, he was granted permanent commission re-fixing the date of seniority with effect from 22.04.1988. After serving the Army for 17 years (16 years of service on substantive seniority), the applicant was promoted to the rank of Lt Colonel Selection Grade. In December 2004, AV Commission was constituted and on the basis of recommendations of the said commission, all officers of 13 years of service irrespective of merit were given time scale of

Lt Col and granted pay and allowances of Lt Colonel. However, on account of incorrect fixation, it was noticed by the applicant that he was getting less pay than his juniors since 2004-05 and immediately, he represented the matter to the CDA (O) Pune to rectify the error in his pay fixation. When the representation did not elicit any response from CDA (O) Pune, the applicant approached the Military Secretary, MS Branch, IHQ of MoD (Army) DHQ PO New Delhi -11 and also the PCDA (O) on 18.04.2013 and 02.05.2013 respectively. Again a communication was made to the PCDA (O) on 14.05.2013 giving all service details about himself as also about his juniors by way of illustration with the request to remove the pay anomaly. This communication too did not yield any response. Again the Applicant represented the matter to the PCDA (O) Pune and in response to this representation, the PCDA (O) came out with a lame excuse that it was due to non exercise of option on promotion prior to 01.01.2006 and it was barred by provisions of SAI 2/S/2008 and declined to process the matter in this regard to the SAI. Subsequently, there were exchanges of communication between the Applicant and the competent authorities but grievance of the Applicant remained unaddressed. Being aggrieved, the Applicant has invoked the jurisdiction of this Tribunal for the reliefs aforesaid.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. Learned counsel for the applicant submits that in order to exercise option knowledge of it was necessary. At the time when the circular was issued the applicant was serving as Staff Officer & DS (Co-Ord) of SATA Wing School of Artillery Deolali. The circular with accompanying option form was neither communicated to the applicant nor was sent to his parent department with the purpose of its intimation to the applicant and, therefore, neither the applicant could exercise his option nor could the department send Part II order in this regard. When he came to know about the more salary being paid to his immediate junior in the year 2013, he immediately asked for the same.

5. On the other hand, supporting the order, the learned counsel for the respondents contends that the applicant was advised vide letter No LW/06/101/170929Y dated 07.10.2013, 05.10.2013 and 05.04.2017 to forward copy of option exercised if any, to the Government of India, Ministry of defence New Delhi but no such intimation or option has been received from the end of the Applicant.

6. The only question for consideration is whether the circular in question was circulated to the Applicant and

whether the applicant had failed to exercise the option despite being in receipt of circular. The circular letter No 33/02003 dated 22.07.2003 being relevant is quoted below.

*"I am directed to refer to the note below Para 12 (a) of SNI: 2/S/98, SAI:2/S/98 and SAFI 2/S/98 inserted vide Corrigendum No 2, No 3 and No 4 of 2003 respectively and to state that competent authority has decided that as a special relaxation, Armed Forces Officers (Serving/Retired) who were promoted on or after 1<sup>st</sup> January, 1996 shall have the option, to be exercised within one month from the date of issue of these orders, to get their pay fixed in the higher rank from the next date of increment in the lower rank. Where it is not possible to communicate and get the" consent of officers concerned within the prescribed period of one month on account of the said officer being absent on leave/temporary duty, retirement etc, a further period of one month shall be allowed."*

7. According to the aforesaid instruction, the applicant was required to exercise his option within three months of the date of publication of this instruction. It was also provided that where it is not possible to communicate and get the consent of officers concerned within the prescribed period of one month a further period of one month shall be allowed. From the above it is clear that the intention behind the

instruction was to give better option regarding pay fixation of the employee and was not to harm him in any way.

8. Based on the material on record and the pleadings during hearing it is clear that this is a case where an option was required to be exercised by the applicant in the year 2004 on his promotion to the rank of Lt Col. In case the officer had exercised the option of "fixation of pay on promotion from the date of his increment in lower rank" then he would have been more benefitted financially. As per respondents since he did not exercise this beneficial option his fixation of pay on promotion was done immediately after his promotion, thus resulting in his junior getting higher pay because the junior had exercised this beneficial option. We also find that PCDA (O) has been mechanically replying the officer stating that "*Approach the Govt for regularisation with the option form you had filled earlier.*" This kind of reply in our opinion is neither a meaningful reply nor a solution because since the officer had not ab-initio filled the beneficial option form hence such correspondence amounted to pushing him into a dead end.

9. We have given our anxious consideration to the issues involved in this O.A. and we have formed following questions which need to be answered:-

*(a) Has the information regarding exercise of beneficial option been communicated to the applicant and was he aware about it?*

*(b) If the applicant has not opted for this beneficial option, then is it prudent for a rational Govt organization to automatically implement an option which is less beneficial for applicant.*

10. Coming to the first question as to whether the information regarding exercise of beneficial option has been communicated to the applicant, we find that the respondents have miserably failed to prove the same. The letters they have quoted in their counter and during hearing are policy letters from Govt to COAS/Army HQ on the matter. We believe that no rational Govt employee will do self harm on pay matters provided he is communicated properly. Here we give benefit of doubt to the applicant and reach a conclusion that he was never informed about the exercise of beneficial option on promotion. Coming to the second issue as to what shall a rational and prudent govt organisation do if an employee fails to exercise a beneficial pay related option on promotion. In this situation we are of the considered opinion that firstly no conclusion can be drawn that the employee has failed to exercise this important beneficial option merely on general communication addressed to formations. For

concluding that employee has failed to exercise this beneficial option there has to be direct communication with him. Secondly, even if lack of response on a general communication to Formation is construed as failure by individual to exercise the beneficial option, even then a Govt Organisation in such a case is bound to opt for the most beneficial option for the employee.

11. Thus it is as clear as crystal that the applicant was not duly conveyed to exercise any option so he was not aware about the instructions regarding filling up of beneficial option form as the same was neither intimated nor was circulated to the department where he was serving at the relevant time. The respondents have utterly failed to prima facie show that the applicant was asked to exercise such an option. Therefore, it cannot be said that the applicant has failed to exercise the beneficial option in terms of the circular aforesaid. It appears that by adopting a too technical approach the applicant's claim for revised pay in accordance with his option has been turned down without going into the entire facts and circumstances of the case. Therefore, on the face the rejection of applicant's claim is not sustainable in law and on facts.

12. For the reasons mentioned above, the application deserves to be and is hereby allowed. The respondents are



directed to re-fix the pay and allowances treating the applicant to have exercised the option as required in terms of the circular dated 22.07.2003 within a period of four months from the date of receipt of a copy of this order. The respondents are further directed to calculate all the arrears with effect from the due date. Default if any will invite interest at the rate of 9% per annum till actual date of payment.

13. There shall be no order as to costs.

**(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)**  
**Member (A) Member (J)**

Dated: May, ,2018  
MH/-