

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

COURT NO. 2

**O.A. No. 28 of 2015**

**Friday, this the 21<sup>st</sup> day of October, 2016**

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative  
Member”**

No. 14682816F Hav/Clk (SD) Brijesh Singh son of Shri Vishnupal Singh, Posted at 614 E.M.E. Bn. Secunderabad, R/O Village Chirley, Post Sadh, District Kanpur Nagar,..... **Applicant**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army) South Block, New Delhi. 110001.
2. The Adjutant General, HQ of Ministry of Defence (Army) DHQ Post Office, New Delhi. 110011.
3. E.M.E. (Records) C/O 56 APO, Secunderabad 500021.
4. The Controllar of Defence Accounts, Office of Controllar of Defence Accounts, No. 1, Staff Road, Secunderabad. 500001.

**...Respondents**

**Ld. Counsel appeared for the Applicant**

**- Shri Krishna Lal  
Advocate**

**Ld. Counsel appeared for the Respondents  
Assisted by OIC Legal Cell**

**- Shri Amit Sharma  
Addl C.G.C  
Col Kamal Singh**

**Order**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act seeking relief of mandamus to fix minimum basic pay on the pay scale of clerk as recommended by 6<sup>th</sup> Central Pay Commission at par with his junior in the same cadre as on 01.01.2006 attended with the further relief of direction to the respondents to grant the annual increment after completion of one year service as per Rules.

2. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also been taken through the materials on record.

3. The facts of the case as are necessary for adjudication of the present case are that the Applicant was enrolled in the Indian Army as Sepoy/clerk on 2<sup>nd</sup> Dec 2005. The recommendations of 6<sup>th</sup> Central Pay Commission (In short the C.P.C) were implemented with effect from 01.01.2006 but the benefits accruing from the C.P.C were not extended to him inasmuch as his salary was fixed at Rs 6250/- while the salaries of those junior to him were fixed at higher rate than the Applicant. Aggrieved by it, the Applicant represented the matter vide his representation dated 21.09.2013 a copy of which is annexed as Annexure 3 to the O.A. Pursuant to his representation aforesaid, EME Records

forwarded his representation with appropriate recommendations but the reply to it received at the end of the Applicant was ambiguous inasmuch as the Ministry of Finance, Department of Expenditure conveyed that the proposal was examined and the Department was of the view that there was no need to issue a corrigendum as proposed and that the pay of all such seniors who are drawing less pay than a directly recruited junior who is appointed on or before 01.01.2006 may be stepped up at par with the pay of the directly recruited junior appointed on or after 01.01.2006. The Applicant again represented the matter vide representation dated 25.07.2013 but no orders appears to have been passed as he has not received any communication till filing of the O.A. It is in the above backdrop that the Applicant has filed the present O.A.

4. Learned counsel for the Applicant submits that the salary of the Applicant was erroneously fixed at Rs 6250/- while in terms of the recommendations of the 6<sup>th</sup> C.P.C it ought to have been fixed at Rs 6460 plus Grade pay of Rs 2000/-= total Rs 8460/-. It is further submitted that in the counter affidavit, the claim of the Applicant to the above extent has not been disputed. However, a misconceived defence has been set up by

the respondents that only those persons who were appointed after 01.01.2006 were entitled for the benefits for fixation of salary in terms of the recommendations made by the 6<sup>th</sup> C.P.C and not those who were appointed prior to 01.01.2006. The claim of the Applicant was also denied on this misconceived plea submitting that the Applicant having been appointed on 2<sup>nd</sup> Dec 2005 was not entitled to salary at par with those who were appointed on or after 01.01.2006.

5. The stand of the respondents as contained in paras 4, 5, 6, 7, 8 and 9 of the counter affidavit is reproduced below.

*"4. That the PBOR Army No. 14682816F Hav Brijesh Singh was enrolled on 02.12.2005 and his pay was fixed @ Rs 6250/- in Group Y in the revised pay structure w.e.f 01.01.2006 as per the provisions contained in Para 9 to SAI 1/S/2008 dated 11.10.2008.*

*5. That the individual is contesting that his pay should be fixed at Rs 6460/- with effect from 01.01.2006 only if enrolled on or after 01.01.2006 as per provisions contained in Para 13(a) of 1/S/2008.*

*6. That further regarding this matter, CDA Secunderabad letter No. AND ORS/AT/605/PAO's views dated 25/06/2012 has clarified that the pay of a senior sepoy recruited prior to 1.1.2006 cannot be stepped up with a junior recruited on or after 1.1.2006 though he was drawing lesser pay under the provisions of Government of India*

*Ministry of Defence letter No 804499/C/R&I/2010 dated 28.03.2011.*

*7. That further clarification issued by CDA No ORS/AT/6716/CGDA/COMP dated 23/4/2013 for the ibid Government letter inter alia also the notings of the AG'S Branch letter No. PC to MF No B/37913/AG/PS-3 (B) dated 7/9/2012. Noting of the AG's Branch letter No PC to Sepoys cannot be treated as direct recruitment.*

*8. That stepping up of pay of seniors at par with juniors is to be regulated as per instructions issued vide CGDA letter No AT/I/3510/VI CPC/Vol-III dated 7/8/2014 provided the BPOR fulfills all the conditions of ibid Government letter dated 28.3.2011.*

*9. That in the light of the instructions contained therein, stepping up of pay of senior is not admissible at par with direct recruits appointed on or after 1.1.2006."*

6. A combined and plain reading of the aforesaid averments placed on record in the counter affidavit in the face of the record indicates that though the Applicant is entitled for stepping up of pay scale in the light of the Government order dated 28<sup>th</sup> March 2011, but the same has been denied only because the Applicant was appointed prior to 01.01.2006. In our considered view, it would amount to gross travesty of justice if the persons junior to the Applicant are allowed to draw higher pay than the Applicant merely because

of the fact that the Applicant was appointed prior to 01.01.2006. At the very face of it, the action of the respondents in denying the pay at par with his juniors appear to be highly unjustified, arbitrary and hit by Article 14 of the Constitution of India. The position in law is well settled that equals cannot be treated unequally. A person working in the same cadre shall be entitled to the same pay scale which is being paid to all the persons junior to him working in the same cadre subject to increment, dearness allowance etc which increases with the passage of time.

7. It may be noted here that in response to the averments made in the counter affidavits, the Applicant has invited our attention to different Government orders pertaining to fixation of pay scales etc as would be evident from paras 4,5,6,7,8,9 and 10 of the rejoinder affidavit and particularly para 8 wherein he has invited our attention to the Government of India Ministry of Defence letter dated 28.03.2011 which provides for payment of equal pay scales to all persons working the same cadre. For ready reference, para 8 of the rejoinder affidavit being relevant is reproduced below.

*" 8. That the contents of Para 7 of Counter affidavit as stated are not admitted and are*

*denied. In this connection it is submitted that the (C.D.A.) PAO (Ors), E.M.E. Secunderabad committed a blunder and misrepresented the recommendations of 6<sup>th</sup> Central Pay Commission. The deponent given detailed reply in the proceeding paragraphs of this rejoinder affidavit, hence no need to repeat here again. Government of India Ministry of Finance Department of Expenditure (E.III A Branch) clarified in their letter dated 28.03.2011 as under :-*

*QOTE*

*Para 2.*

*This proposal has been examined in this department of Expenditure is of the view that there is no need to issue a corrigendum as proposed and that the pay of all such seniors who are drawing less pay than a directly recruited juniors who is appointed on or after 01.01.2006 may be stepped up at par with the pay of directly recruited juniors appointed on or after 01.01.2006 subject to fulfilment of the following conditions:-*

- (1) Stepping up the basic pay of seniors can be claimed in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of directly recruited junior, provided the senior and junior belong to the same seniority list for all purposes."*

*In this connection it is submitted that the CDA and erroneously the basic pay of the dependent fixed less than minimum basic pay*

recommended by the 6<sup>th</sup> Central Pay Commission.”

8. In view of the above, there appears to be no room for doubt that denial of salary to the Applicant in terms of the recommendations made by 6<sup>th</sup> C.P.C with effect from 01.01.2006 shall be an instance of non-application of mind by the authority concerned. It is highly arbitrary particularly when attention was drawn by the Applicant to different orders, circulars and report of 6<sup>th</sup> C.P.C. and the higher salary paid to the juniors. In this view of the matter, without sticking to the misconceived defence as set up by the respondents, it was incumbent on the respondents to have fairly conceded the error committed by them with follow up action of rectification and re-fixation of salary. Such action on the part of the members of the Armed Forces seems to be not justified on any ground whatsoever.

9. Having considered the matter in its entire pros and cons, we are of the view that it is a fit case in which exemplary cost should be awarded to the Applicant who was made to suffer mental pain and agony without any valid justification by denying to him what was due to him in the light of the 6<sup>th</sup> C.P.C without proper application of mind and in a very arbitrary manner.



10. Their Lordships of the Apex Court in a catena of decisions have in clearer terms observed that the litigants should be awarded costs who have suffered mental pain and agony and financial loss on account of omission and commission of the State Authorities that be. The provisions of section 18 of the Armed Forces Tribunal also empowers the Tribunal to make such order as to costs as it may deem just and proper while disposing of the Application under section 14 or in case of appeal under section 15 of the Act.

11. In the above conspectus, we feel that the ends of justice would be best served if exemplary cost which we quantify at Rs 1 lakh is awarded to the Applicant keeping in view the mental pain and agony and financial loss suffered by the Applicant for no fault of him.

### **ORDER**

12. In the result, the O.A is allowed with all consequential benefits and it is directed that the respondents shall revise the pay scale of the Applicant in the light of 6<sup>th</sup> C.P.C from 01.01.2006 together with all increments from that date and dearness allowance as may be admissible as may be found admissible in accordance with law which must not be lower than the salaries being paid to those persons who are junior to

the Applicant working in the same cadre. The arrears of difference of pay scale shall be paid to the Applicant within four months from the date of presentation of a certified copy of this order.

The cost which we have quantified at Rs 1 lakh shall be deposited with the Registry of this Tribunal within four months. The Applicant shall be entitled to withdraw the said amount through cheque to be issued in the name of the Applicant by the Registry of the Tribunal immediately thereafter.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**Dt. Oct 2016.**

**MH/-**