

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 26 of 2022****Tuesday, this the 1<sup>st</sup> day of April, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**MR-09617X Major Anchita Srivastava  
D/o Shri Anil Kumar Srivastava,  
Posted to HQ Central Command (Dept of ENT),  
Lucknow (UP)

..... Applicant

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

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), Post-DHQ, New Delhi-110011.
3. Additional Directorate General Personnel Services (Standing Army Pay Commission Section), Integrated Headquarter of Ministry of Defence, Sector 9A, Room No. 10, Plot 108 (West), Brassey Avenue, Church Road, New Delhi – 110001.
4. Comdt. Comd Hosp, Central Command, Lucknow (UP) – 226001.
5. Office of PCDA (O), Golibar Maidan, Pune (Maharashtra) – 411001.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,  
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 for the following reliefs:-

- “A. To quash the Respondent No. 5 letter dated 23 Sep 2020 (Annexure A-1 & Impugned Order) wherein applicant’s correct pay fixation has not been accepted.
- B. To direct the respondents to correctly fix the basic pay of the applicant at par with her course mate wef 17 Feb 2016.
- C. To direct the respondents to pay the arrear of salary due to her wef 17 Feb 2016 alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.
- D. To impose a 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. 20,000/- per month for last 5 years 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. The brief facts of the case are that applicant was commissioned in the Indian Army on 18.05.2015 as Lieutenant. The applicant had undergone internship course from 22.03.2015 to 16.02.2016 and was promoted to the rank of Captain w.e.f. 17.02.2016. On 08.06.2020, applicant was posted to Command Hospital, Lucknow. The applicant came to know from the monthly salary of June 2020 of her course mates that there is a difference of approximately Rs. 11000/- in her basic pay due to incorrect fixation of pay. Accordingly, the matter was taken up with PCDA (O), Pune vide letter dated 04.07.2020 to adjust the Basic Pay of the applicant at par with other officers with same seniority. PCDA (O) Pune, vide letter dated 23.09.2020 communicated that no switch over pay option was received from the applicant by their office within the stipulated period i.e. upto

01.02.2020, therefore, request of the applicant for re-fixation of her pay cannot be considered at this belated stage. The applicant raised her grievance on 17.01.2021 and 25.06.2021 to PCDA (O) Pune for fixation of her pay w.e.f. 17.02.2016 which was denied by PCDA (O) Pune vide their letter dated 23.09.2020 and 30.03.2021 respectively. Being aggrieved, the applicant has filed present Original Application.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army (Army Medical Corps) on 18.05.2015 as Lieutenant. The applicant had undergone internship course from 22.03.2015 to 16.02.2016 and on successful completion of the same, she was promoted to the rank of Captain w.e.f. 17.02.2016. On 22.04.2016, applicant was posted to MH, Tenga (Arunachal Pradesh) in a remote area having huge network crises. On 20.02.2019, applicant was posted at Kanpur and on 08.06.2020, applicant was posted to Command Hospital, Lucknow (ENT Department). The applicant came to know from the monthly salary of June 2020 of her course mates that there is a difference of approximately Rs. 11000/- in her basic pay due to incorrect fixation of pay. Accordingly, the matter was taken up with PCDA (O), Pune vide letter dated 04.07.2020 to adjust the pay band of the applicant at par with other officers with same seniority. PCDA (O) Pune, vide letter dated 23.09.2020 communicated that no switch over pay option was received by their office within the stipulated period i.e. upto 01.02.2020, therefore, request of the applicant for re-fixation of her pay cannot be considered at this belated stage.

4. Learned counsel for the applicant further submitted that Asst. Registrar, Command Hospital, Lucknow vide letter dated 20.11.2020 brought to the notice of PCDA (O) Pune that applicant was promoted to the rank of Captain w.e.f. 17.02.2016 and her pay was fixed by default in 7<sup>th</sup> CPC on 01.01.2016 to Rs. 57,800/- correctly as per rank of Lieutenant whereas other officers of same rank and commissioned on same date (18.03.2015) who have exercised their options for fixation of pay as per 7<sup>th</sup> CPC on promotion to the rank of Captain from the date of promotion i.e. 17.02.2016 is Rs. 71,100/-. In this connection, applicant has submitted option for pay fixation in person at O/o PCDA (O) Pune on 18.01.2020 and 13.10. 2020 in which it was requested that applicant desires to exercise option for pay fixation from the date of promotion to the rank of Captain i.e. 17.02.2016 and same be processed and manage the discrepancy in pay between the officers commissioned on same date as the applicant is facing financial crisis due to salary discrepancy for last four years. Command Hospital, Lucknow also submitted a letter enclosing monthly Pay Slips of March 2020 of the applicant and Maj Anil Kalotra stating that both were commissioned on 18.03.2015 but the applicant basic pay is fixed @ Rs. 69,000/- and Maj Anil Kalotra's basic pay is fixed to Rs. 80,000/- in the Pay Slips of March 2020, thus there is difference of Rs. 11,000/- per month.

5. Learned counsel for the applicant further submitted that applicant raised her grievance on 17.01.2021 on CP GRAM portal for fixation of her pay w.e.f. 17.02.2016 which was again denied by PCDA (O) Pune vide their letter dated 30.03.2021 on same reasons

under reference to their letter dated 23.09.2020. Applicant again raised her grievance on 25.06.2021 but PCDA (O) Pune rejected on the same reasons. The applicant also represented her case to Standing Army Pay Commission Section for one time relaxation to exercise option to switch over to pay fixation from the date of promotion, i.e. 17.02.2016 but the same has not been replied till date.

6. 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.* He placed reliance with the judgment of AFT Chandigarh in O.A. No. 575 of 2016, **Sharad Vashistha & Others vs. Union of India & Others**, decided on 08.04.2018 and submitted that similiary situated persons who approached for re-fixation of basic pay in this Original Application are getting higher pay scale/pension that applicant. Hence, there cannot be two pay scales for the individuals working in the same rank, same cadre and discharging same duties. He also submitted that AFT (PB) in O.A. No. 1092 of 2017, **Sub Dhyan Singh v. Union of India & Ors**, decided on 05.10.2017 has given relief to a similarly placed JCO by fixing his pay from the date of promotion that was a more

beneficial option for the applicant, by fixing his pay from the date of promotion to the rank of Nb Sub. The Court 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.

7. Learned counsel for the applicant also placed reliance on the judgment of this Tribunal in O.A. No. 17 of 2016, **Subedar Rajender Singh Bisht vs. Union of India and Others**, decided on 28.02.2019. He pleaded that applicant's pay be fixed correctly at par with her course mates w.e.f. 17.02.2016 alongwith arrears.

8. Learned counsel for the respondents submitted that applicant was commissioned in the Indian Army on 18.03.2015. After implementation of 7<sup>th</sup> CPC, the applicant was promoted to the rank of Captain w.e.f. 17.02.2016 and implementation of Govt. orders for officers who were on effective strength of Army as on 01.01.2016 have been 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 and 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 applicant had an option to elect to switch over from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC pay structure from the date of her promotion to the rank of Captain i.e. 17.02.2016. For the purpose, she was supposed to exercise and submit option under Rule 6(1) of the SRO 12(e) dated 03.05.2017 which provides and 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 applicant was supposed to submit her option for switching over from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC by 29.10.2017 and subsequently by 01.01.2018.

9. 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. 1<sup>st</sup> 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 applicant was supposed to submit her option for switching over to the 7<sup>th</sup> CPC pay structure by 01.02.2020.

10. Learned counsel for the respondents also submitted that as per records available with the respondents office, the applicant failed to exercise and submit any such option for switching over from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC pay structure w.e.f. the date of her promotion to the rank of Major even within the extended time frame, i.e. 01.02.2020 as provided under MOD letter dated 06.08.2019, Accordingly, her pay was fixed in the 7<sup>th</sup> 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 applicant is contrary to the rules and policy on the subject and the applicant is not eligible for any relief at this stage and pleaded for dismissal of O.A.

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

12. 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 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 enable 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 Principal Bench 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 atleast 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 communicated 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 Gol, MoD Order No//Air HQ/99141/04/AFPCC/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,.201 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 (OR) 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."

13. AFT (PB), New Delhi in ***Sub Dhyan Singh*** (*supra*) 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.

14. We observe that applicant has been put in disadvantageous pay scale because of the reason that she has not exercised the option to elect to switch over from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC pay structure from the date of her promotion to the rank of Captain, i.e. 17.02.2016 in time and admittedly because of the default, she has been placed in lower

pay scale compared to the pay scale given of her colleagues in the same rank and with same length of service. Hence, there appears an anomaly in fixation of basic pay of the applicant which needs correction.

15. In view of above, Original Application is allowed. The respondents are directed to re-fix pay of the applicant from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC pay structure from the date of her promotion to the rank of Captain, i.e. w.e.f. 17.02.2016 in the light of the order dated 10.12.2014 passed in the case of **Sub Chittar Singh** (supra) and pay the arrears accordingly. The impugned order dated 23.09.2020 passed by the respondents is set aside. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

16. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
**Member (A)** **Member (J)**  
 Dated: April, 2022  
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