

**Court No 3****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO. 22 of 2022**

Wednesday, this the 04<sup>th</sup> day of January, 2023

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. JC-673066W Sub (PA) Digar Singh Bist, S/o Late Sur Singh, presently residing at 79C, Sub Yogendra Singh Yadav Vihar, Lucknow Cantt-226002, permanent resident of 592G/27, Moharibagh, Kharika, Telibagh, Lucknow, UP-226002.

.....Applicant

Ld. Counsel for the: **Shri Manoj Kumar Awasthi**, Advocate  
Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. AG's Branch, ADG PS (PS-3), Room No 5, Plot No 108, L Block, IHQ of MoD (Army), DHQ, PO-New Delhi-110011.
3. Controller General of Defence Accounts, Ministry of Defence, Ulan Batar Road, Palam Delhi Cantt-110010.
4. Officer-in-Charge Records, ASC (South), Bangalore-560007, C/o 56 APO.
5. The PAO (ORs) ASC (South), Agram post, Bangalore-560007.
6. Commanding Officer, HQ 71 Mtn Bde, PIN-908071, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Govt Counsel

**ORDER (Oral)**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

*(a) To issue/pass an order or direction to the respondents to grant to the applicant herein the same benefit of fixation of basic pay as granted to the applicant Hav/PA Kultar Singh Chauhan in O.A. No. 72/2015 decided by AFT, Principal Bench on 09.12.2015, and which was implemented by the Government vide their order dated 06.09.2017, and accordingly fix the applicant's basic/minimum pay at Rs 8,560/- with effect from 01.01.2006 in terms of SAI 1/S/2008 r/w 6<sup>th</sup> Central Pay Commission Recommendations as elucidated before.*

*(b) To issue/pass any order or direction to the respondents to calculate the monthly salary of the applicant, including all other emoluments and allowances, on the basis of aforesaid basic/minimum pay and arrears and interest thereon with effect from 01.01.2006, within a period of three months with interests accrued thereon; and*

*(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case.*

*(d) Allow this original application with costs.*

2. The factual matrix on record is that the applicant was enrolled as Sepoy (Clerk) in Group Y in the Indian Army on 05.01.1996. He was re-mustered in Personal Assistant trade in 'X' Group and was promoted as Havildar/PA in Army Service Corps (ASC) w.e.f. 26.07.2003. On 11.10.2008, the Govt implemented

recommendations of 6<sup>th</sup> CPC by issuing Special Army Instruction 1/S/2008 whereby a revised pay band/pay scale was prescribed for all ranks including the rank of Havildar. The pay of the applicant after implementation of 6<sup>th</sup> CPC has been fixed to Rs. 7,720/- in the rank of Havildar, however revised minimum pay of Havildars as per Para 13 of SAI should have been fixed to Rs. 8,560/-. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was re-mustered as Personal Assistant trade in 'X' Group and was promoted as Havildar/PA in Army Service Corps (ASC) w.e.f. 26.07.2003. He further submitted that on 11.10.2008, Centre Government implemented recommendations of 6<sup>th</sup> CPC by issuing Special Army Instruction 1/S/2008 whereby a revised pay band/pay scale was prescribed for all ranks including the rank of Havildar. As per Para 9 (a) (i) of SAI 1/S/2008, pay of PBORs was to be determined by multiplying their existing basic pay as on 01.01.2006 by the factor of 1.86. Para 13 of SAI 1/S/2008 lays down the minimum entry level pay of various pay bands/ranks/grades of PBORs w.e.f. 01.01.2006 as under :-

S No	Pay Band	Grade Pay	Basic Pay	Corresponding rank
1.	PB-1	Rs 2,000/-	6,460/-	Sep
2.	PB-1	Rs 2,400/-	7,510/-	Naik
3.	PB-1	Rs 2,800/-	8,560/-	Havildar
4.	PB-2	Rs 4,200/-	9,300/-	Nb Sub
5.	PB-2	Rs 4,600/-	12,540/-	Sub
6.	PB-2	Rs 4,800/-	13,350/-	Sub Maj

4. Learned counsel for the applicant further submitted that pay of the applicant after implementation of 6<sup>th</sup> CPC, has been fixed to Rs 7,720/- in the rank of Havildar by applying multiplication formula (Rs. 4150 x 1.86 = 7,720/-), however revised minimum pay of Havildars under Para 13 of SAI has been fixed to Rs. 8,560/- and therefore, applicant is also entitled to the benefit of re-fixation of his minimum pay of Rs. 8,560/- in accordance with Para 9 (a) (ii) of SAI 1/S/2008 which needs to be re-fixed by the respondents.

5. In support of his claim learned counsel for the applicant has relied upon order dated 09.12.2015 passed by the Hon'ble AFT, Principal Bench, New Delhi in O.A. No. 72 of 2015 in the case of **Havildar/PA Kultar Singh Chauhan vs. Union of India & Others**, order dated 15.10.2014 passed by the Hon'ble AFT, Principal Bench, New Delhi in O.A. No. 269 of 2014 in the case of **Hav/SAC Manoj Kumar vs Union of India & Others** and order dated 19.09.2019 passed by the Hon'ble AFT, Principal Bench, New

Delhi in O.A. No. 1084 of 2019 in the case of **Hav/PA Soumen Bharati vs Union of India & Others**. He pleaded for grant of revised scale of pay to the applicant.

6. Per contra, learned counsel for the respondents submitted that applicant was enrolled in the Army as a Sepoy on 05.01.1996 and subsequently he was re-mustered to Army Service Corps (ASC) in Personal Assistant Trade. Consequent to implementation of 6<sup>th</sup> CPC, pay of the applicant was correctly fixed as on 01.01.2006 as per Rule 9 of SAI 1/S/2008. The applicant was re-mustered to Group 'X' in the rank of Havildar/PA w.e.f. 26.07.2003 and accordingly, his pay was fixed to Rs 7,720/- (band pay+2800 grade pay+1400 (X group pay) as per Rule 14 (b) of SAI 1/S/2008.

7. Learned counsel for the respondents further submitted that Para 13 of SAO 1/S/2008 is regarding entry pay for direct recruitment cases on or after 01.01.2006 and this entry pay is not applicable to the PBORs promoted on or after 01.01.2006 and their pay has to be fixed under Rule 14 of SAI 1/S/2008 only. It was further submitted that since the applicant was recruited on 05.01.1996 and promoted to the rank of Havildar w.e.f. 26.07.2003, he is not entitled for entry pay of Rs. 8,560/-. He also submitted

that benefit of judgment passed by the AFT (PB) New Delhi in ***Kultar Singh Chauhan*** (supra) case, is restricted to the particular case and Ministry of Defence vide their letter dated 06.09.2017 has clarified that approval in the case of ***Kultar Singh Chauhan*** (supra) will not be cited as a precedent in any other case, hence benefit of this judgment cannot be extended to the applicant. He pleaded for dismissal of O.A.

8. Heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents and perused the record.

9. We observe that applicant's basic pay of the applicant after remustering to Group 'X' in the rank of Havildar/PA has been fixed to Rs. 7,720/- as per Rule 14 (b) of SAI 1/S/2008. On perusal of SAI 1/S/2008, we find that revised pay scales shall be applicable to all those who are on the effective strength of the Army on or after 01.01.2006 but in Para 13, 'Entry pay in the revised pay structure for direct recruits' is given and this expression is being read as it applies to those who have joined on or after 01.01.2006. Para 13 (a) clearly states that the entry level pay of 'direct recruits' to a particular rank will be fixed on or after 01.01.2006; it connotes that

in respect of all those direct recruits to a particular rank carrying specific grade, their pay will be fixed on or after 01.01.2006. It nowhere provides that pay fixation is directly related to the date of entry in service, thus, the stand of the respondents per se is misconceived. Pay Commissions are implemented across-the-board and they are not related to date of entry into service. Therefore, the contention of the respondents, that only those Havildars who are directly appointed on or after 01.01.2006 will be entitled basic pay of Rs. 8,560/-, is misconceived.

10. In view of aforesaid, the applicant is also entitled to the Basic Pay of Rs. 8,560/- (as fixed for direct recruited Havildars as on 01.01.2006) from the date he was re-mustered as Havildar/PA, i.e. w.e.f. 26.07.2003, as per AFT (PB), New Delhi judgment in the case of **Kultar Singh Chauhan** (supra).

11. Resultantly, the Original Application is **allowed**. The respondents are directed to revise/fix basic pay of the applicant at Rs. 8,560/- w.e.f 26.07.2003 i.e. the date on which applicant was promoted to the rank of Havildar. The respondents are further directed to revise applicant's further pay by granting annual increments on his basic pay of Rs. 8,560/- w.e.f. 26.07.2003

onwards, as per rules. The Respondents are also directed to comply with the order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Miscellaneous applications, pending if any, stand disposed of.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated : 04.01.2023

rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**