

Reserved
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 729 of 2023

Tuesday, this the 17th day of December, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

No. 13992768H Ex Hav (ACP Nb Sub) Khim Singh Kaira, S/o late Kalyan Singh Kaira, R/o Village-Chandrawati Colony, Choti Mukhani, P.O.-Badi Mukhani, Distt-Nainital, Pin-263139 (UK).

..... Applicant

Ld. Counsel for the : Shri KP Datta, Advocate
Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, AMC Records, Lucknow, PIN-226002.
4. O/o PAO (OR) AMC, Lucknow, PIN-226002 (U.P.).
5. O/o PCDA (Pension), Draupadi Ghat, Allahabad-211014.

...Respondents

Ld. Counsel for the : Shri RKS Chauhan,
Respondents. Central Govt Counsel.

ORDER

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

(a) To issue/pass an order or directions to refix/revise pay matrix to Rs 46,200/- from due date with other consequential benefits as per Govt of India Policy and in light of order passed in similar cases by the Hon'ble AFT.

(b) To issue/pass an order or direction to grant enhance service pension, other retiral dues alongwith arrears and interest @ 18% on arrears accrued to the applicant after revision of pay matrix with due drawn audit report from the date of discharge w.e.f. 31.08.2021.

(c) To issue/pass an order or direction to issue corrigendum PPO duly revised pay matrix, service pension and other retiral dues.

(d) To issue/pass an order or direction to refund Rs 1,20,659/- wrongly deducted in the final FSA alongwith interest from date of discharge.

(e) To issue/pass an order or direction to adjust the entitled CEA, CILQ, SCCIA, HAUCL, TPTL and composite transfer grant as per details mentioned in above paras and credit the amount in his bank account.

(f) To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.

2. Shorn of unnecessary details, the facts necessary for adjudication of the controversy involved in the present case are that the applicant was enrolled in the Indian Army in Army Medical Corps (AMC) on 31.08.1995. During the course of his service, he was promoted to the rank of Havildar w.e.f. 18.01.2013 and granted MACP Naib Subedar w.e.f. 31.08.2019. He was discharged from service w.e.f. 31.08.2021 after putting in 26 years and 01 day service and PPO No. 203202100742 (Annexure A-2) was issued to him.

3. In pursuance to recommendations of Sixth Central Pay Commission for Army, the Additional Directorate General, Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army) issued letter dated 15.10.2008 forwarding Special Army Instructions (SAI) Nos. 1/S/2008 and 2/S/2008 to all the Headquarters. SAI 1/S/2008 provided with regard to revision of pay structure of Junior Commissioned Officers (including Honorary Commissioned Officers), Non-Commissioned Officers and Other Ranks and fixation of pay in running band with effect from 01.01.2006 consequent upon the implementation of decision of the Government with respect to the recommendation of the Sixth Central Pay Commission for Army. Under the authority of Para 14 (b) (i) of SAI No. 1/S/2008, an option was given to the JCOs/ORs to give option either from 01.01.2006 or from the date of promotion, whichever was beneficial to them. Para 14 (b) (iv) of said SAI further provided 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. Vide MoD Corrigendum ID No. 1/30/2010/D (Pay and Services) dated 21.12.2010, provision was made that the Junior Commissioned Officers (including Honorary Commissioned Officers), Non Commissioned Officers and other ranks can revise their option up to 31.03.2011 if the option is more beneficial to them which date was further extended up to 31.07.2013

vide Ministry of Defence letter dated 12.06.2013. The grievance of the applicant is that due to non exercising option as per Appendix 'D' to SAI 1/S/2008, the matter of correct fixation of basic pay of the applicant has been rejected by the respondents, hence, this Original Application.

4. Learned counsel for the applicant argued that as per SAI 1/S/2008, the pay of the applicant was to be fixed in a manner which was more beneficial to him irrespective of giving an option or not. The learned counsel further submitted that even if the applicant was late in submission of his option for shifting to new pay scale, it was incumbent on the respondents to fix it in the manner beneficial to him as per the SAI (supra). The learned counsel, therefore, prayed that the respondents be directed to correctly fix the applicant's pay so that he should not receive less pay/pension than his colleague Ex Hav (MACP Nb Sub) Ashok Kumar with all consequential benefits.

5. Further, learned counsel for the applicant submitted that due to incorrect fixation of basic pay in respect of the applicant reducing from 46,200/- to Rs 44,900/-, respondents have recovered an amount of Rs 1,20,659/- at the time of making final settlement of account which is required to be refunded. The learned counsel for the applicant has also pleaded that Children Education Allowance (CEA), CILQ and Composite Transfer Grant be adjusted and credited to his account. In support of his contention, learned counsel for the

applicant has relied upon order dated 09.05.2022 passed by this Tribunal in O.A. No. 425 of 2022, **Ex Hav (Hony Nb Sub) Bhola Shankar Sharma** and order dated 01.11.2022 passed by this Tribunal in O.A. No. 428 of 2022, **Ex Hav (ACP Nb Sub) Dharendra Singh**.

6. Per contra, learned counsel for the respondents argued that Para 8 (a) of SAI No. 1/S/2008 dated 11.10.2008 provided that option under the provisions of Para-7 shall be exercised in writing in the form given at Appendix 'D' to the SAI so as to reach the concerned Pay Accounts Office within three months of the date of publication of the instruction or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order with provision as mentioned in Para 8 (a) (i) and 8 (a) (ii). It was strenuously argued that Paras 8 (b) and 8 (c) of the aforesaid SAI specifically provided that if information regarding option is not received within the time mentioned in SAI, the Personnel Below Officer Rank shall be deemed to have elected to be governed by the revised pay structure with effect from 01.01.2006 and the option once exercised shall be final. Since the applicant did not exercise his option, hence his pay has been fixed in accordance with the provisions of Rule 8 (c) (supra).

7. Learned counsel for the respondents further submitted that the applicant while serving with 92 Base Hospital submitted willingness

certificate to accept the promotion and option certificate to grant of ACP Naik grade. It was further submitted that since the applicant voluntarily submitted willingness and option certificate for promotion/ACP, he was granted ACP Naik grade under ACP scheme w.e.f. 01.09.2005 on completion of 10 years of qualifying service and his pay was fixed in terms of Para 13 and 14 of policy letter dated 29.09.2003 which stipulates that 'on grant of ACP, pay in the higher scale will be fixed next above the pay notionally arrived at by increasing pay in the existing pay scale by one increment at the relevant stage subject to minimum of financial benefit of Rs 100/- p.m.

8. Learned counsel for the respondents further submitted that the applicant was required to exercise the option for fixation of his pay as per time frame provided. He has opted fixation of pay w.e.f. the date of grant of 1st ACP i.e. on 01.09.2005 vide certificate dated 05.01.2006 instead of date of next increment in the existing scale in accordance with Para 8 of conditions for grant of benefits under ACP scheme which was accepted and pay was fixed accordingly, whereas his junior No. 13992542X Ex Hav (ACP Nb Sub) Ashok Kumar was granted MACP-I (Naik grade) w.e.f. 01.01.2006 with the benefit of fixation of pay after 6th CPC, which is more beneficial as compared to those who were granted ACP before 6th CPC. It was further submitted that the applicant did not opt for fixation of pay from

the date of next increment in the existing scale i.e. on 01.10.2005, hence applicant lost one increment on 01.10.2005 and his pay was fixed on 01.09.2005 instead of 01.10.2005. Due to which applicant's pay on 01/2006 was Rs 7,270/- while his counterpart's pay was Rs 7,550/- and accordingly, this effected the result of last basic pay of the applicant to Rs 44,900/- while pay in respect of his counterpart was fixed to Rs 46,200/-.

9. Submitting further, learned counsel for the respondents has stated that amount of Rs 1,20,659/- was recovered related to CFAA, DA, LRA, RUMCIG & TPTL being not admissible on deputation for the period 17.01.2020 to 12.02.2021. With respect to grant of of CEA, the learned counsel for the respondents has submitted that it was rejected due to non submission of requisite documents. He pleaded for dismissal of O.A.

10. We have heard both the parties and perused the record. The only question which needs to be answered by us is as to whether the applicant is entitled to beneficial fixation of Pay after VI CPC, or the same can be denied to him on the ground of late submission of option?

11. The essential bone of contention for incorrect fixation of pay between the applicant and the respondents is the issue of non

exercising option by the applicant as per SAI 1/S/2008 dated 11.10.2008.

12. In any case this issue is no more RES INTEGRA as similar matter was looked into, in detail 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. The Judgment has dealt with the issue of extension of dates for exercising option. It had been held that the options exercised by the petitioners therein, could not have been rejected merely due to delay, if any, in submission of option certificate. 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/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 30.06.2011, 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 30.06.2011 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 regulation 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."

13. The Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir in O.A. No. 575 of 2016 **Sharad Vashisth & ors vs.**

Union of India & ors decided on 18.04.2018, in similar case, has excerpted in detail the observations of Hon'ble Principal Bench in **Sub Chittar Singh** (supra) and has directed the respondents to fix pay of the applicants in the light of observations made by Hon'ble the Principal Bench.

14. In the case in hand applicant being enrolled on 31.08.1995 and Ex Hav (MACP Nb Sub) Ashok Kumar being enrolled on 28.08.1995 and retired on same date i.e. 31.08.2021 (AN) deserve to be granted same basic pay/pension in terms of judgment pronounced in AFT in the case of **Sub Chittar Singh** (supra). As far as CEA is concerned, applicant may submit required documents to his Record Office for early settlement. With regard to CILQ and transfer grant, respondents have not denied admitting the same but contended that these will be admitted as soon as Part-II orders are received.

15. In our view, therefore, the applicant whose case is similarly situated, could not have been denied the benefit of his option, merely for the reason that he had not submitted his option certificate in time. At this juncture we would also like to reiterate that in accordance with sub-para 14 (b) (iv) of the SAI, even if no option is exercised by an individual, PAO (OR) will regulate fixation ensuring that the more beneficial of the two options promulgated in the SAI would be allowed to the individual.

16. In this case respondents' contention is that the applicant is getting less pay/pension than his colleague due to grant of ACP/MACP in that the applicant was granted ACP Nk w.e.f. 01.09.2005 and Ashok Kumar was granted MACP Nk w.e.f. 01.01.2006. Be that as it may, the fact remains that the applicant and Ashok Kumar having same rank and same length of service deserve to be granted same pension, since the difference in fixation is only because of fixation as MACP Nk in 5th/6th CPC.

17. In view of the foregoing, the **Original Application No. 729 of 2023** is **disposed of** directing the respondents to re-examine fixation of pay of the applicant in the light of the order dated 10.12.2014 passed in the case of **Sub Chittar Singh** (supra) and in accordance with the provisions of SAI No.1/S/2008 dated 11.10.2008 and subsequent amendments/modifications issued thereon. The respondents are further directed to revise his pay at Rs 46,200/- p.m. as was paid in respect of his colleague **Raj Kumar** (supra) in accordance with the provisions of the aforesaid SAI and issue fresh PPO accordingly by revising pay/pension. The respondents are also directed to grant CEA, CILQ and Transfer Grant to the applicant soon after receipt of requisite documents/Part-II Orders. The respondents shall complete the whole exercise as expeditiously as possible, say, within four months from the date of presentation of a certified copy of this order. Default will invite interest @ 8% p.a.

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 17.12.2024
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RESERVED
Court No 2

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 729 of 2023

Ex Hav (ACP Nb Sub) Khim Singh Kaira
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Ors
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>17.12.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 729 of 2023 is disposed off. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A)</p> <p>(Justice Anil Kumar) Member (J)</p> <p><i>rathore</i></p>