

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 381 of 2022**

-----, this the ---- day of July, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No.14627930Y Ex ACP Nb Sub Kaushalesh Kumar Singh, S/o Sri Surya Bakash Singh, R/o: Vill- Sangipur, P.O- Tiloi, Dist- Amethi, Pin - 229309 (UP).

----- Applicant

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

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, EME Records, Secunderabad, Pin - 900453, C/o 56 APO
4. OIC, PAO (OR) EME, Secunderabad, Pin - 900453, C/o 56 APO
5. O/o PCDA (Pension), Draupadighat, Allahabad - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee,
Central Govt. Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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 issue / pass an order or directions to the Respondents to Refix / Revise the Band Pay and Pay Matrix from Rs. 42,300/- to Rs. 46,200/- p.m. as per directions issued by Govt of India on 26.02.2019 and relevant Order passed in similar cases by the Hon’ble Tribunals.*
- B. To issue / pass an order or directions to the Respondents to grant him enhance rate of service pension and other retiral dues after correct fixation of Band Pay along with arrears and interest @18% on arrears accrued to the applicant after revision of his Band Pay and Pay Matrix along with due drawn audit report wef 30.09.2019.*
- C. To issue / pass an order or directions to the respondents to refund the amount of Rs. 1,14,141/- wrongly deducted in the Final FSA before discharge from service alongwith interest @ 18% duly adjusted his increment time to time from date of discharge wef 30.09.2019.*
- D. To issue / pass any other order or directions as may deem just, fit and proper under the circumstances of the case in his favour.*
- E. To allow this application with cost.”*

2. Brief facts giving rise to this application are that the applicant was enrolled in the Indian Army on 05.09.1995. He was promoted to

the rank of Naik w.e.f. 11.12.2008 and was granted financial upgradation of ACP Hav w.e.f. 05.09.2011 and ACP Nb Sub on 05.09.2019. On completion of 24 years of service he was discharged from service w.e.f. 30.09.2019. The grievance of the applicant is that after implementation of 7th CPC his junior was granted pay band @ 46,200/- whereas the applicant was granted pay band @ 40400/- which was subsequently revised to Rs. 42,300/- , thus there is a difference of Rs 3,900/- in pay band.

3. Ld. Counsel for the applicant further submitted that a sum of Rs. 1,14,141/- was wrongly deducted in the form of increment in the Final Settlement of Accounts (FSA)- 09/2019 before discharge from service.

4. As per IHQ of MoD (Army)/AG/MP-8 (I of R) letter No A/20038/Appx 'J'/MP-8 (I of R) (ADP) (i) dated 08.08.2017, all JCOs/OR who were in service on or after 31.12.15 and before 03.05.2017 or any other date, if any extension is given by the Govt. and have been granted any promotion/increment/MACP during the periods, were required to submit option in writing regarding fixation of their revised pay as per 7th CPC. The option Certificate for revision of basic pay was required to be submitted to Record Office with effect from 01.01.2016 and before 03.05.2017. Applicant did not exercise his option due to unawareness of the policy; hence his Pay

was not revised and he retired on 30.09.2019 with pay band @ Rs. 42,300/- instead of Rs. 46200/- causing heavy financial loss to him.

5. Learned counsel for the applicant submitted that Government had introduced Assured Career Progression (ACP) Scheme on recommendation of 5th CPC. The said Scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. The Govt. again introduced Modified Assured Career Progression (MACP) Scheme for Personnel below Officer Rank (PBOR) superseding the previous ACP Scheme. The scheme was made to take effect from 01.09.2008. The Government of India, Ministry of Defence (Department of Pay Services) vide their letter No. 1(20)/2017/D (Pay/Services) dated 26.02.2019 issued guidelines to all affected service personnel to give option for fixation of their pay as per 7th CPC. Learned Counsel for the applicant further submitted that those who exercised the option at the time of discharge drill were granted the revised MACP but due to ignorance since the applicant could not exercise the option he was not granted revised MACP prior to his discharge on 30.09.2019. He further submitted that applicant preferred representation dated 30.09.2019 for correct fixation and refund of Rs. 1,14,141/- deducted from his account in the FSA but nothing has been done by the respondents in the matter till date.

6. Learned Counsel for the applicant further submitted that the applicant was discharged on 30.09.2019 and his basic pay was fixed @ Rs 42,300/- which is apparently unjust and improper. He submitted that basic pay of the applicant be fixed @ Rs. 46,200/- instead of Rs. 42,300/- according to MACP Scheme for fixation of pay. Thus, he submitted that since the similar controversy has already been decided by Armed Forces Tribunal, Regional Bench, Lucknow in various judgments, applicant is also entitled for revision of his pension in terms of said Govt policy letter.

7. On the other hand, the contentions advanced by learned counsel for the respondents is that the applicant was promoted to the rank of Naik wef 11.12.2008 with ante date seniority wef 01.11.2008. He was granted MACP II on 05.09.2011 and further MACP III wef 05.09.2019. He submitted that the applicant has drawn his last increment in July 2019 with basic pay of Rs. 40,400/- with financial upgradation on 05.09.2019, the pay of the applicant was fixed in pay level 6 with basic pay of Rs. 42,300/-, hence, pay of the applicant was correctly fixed.

8. Ld. counsel for the respondents further submitted that the applicant's pay was erroneously fixed by the dolphin system which resulted in drawing excess increment from 1999 which was worked out to be Rs. 1,14,141/- as reflected in FSA of Sep 2019, the basic

pay was incorrectly shown as Rs. 41,600/- in Jul & Aug 2019 monthly pay slip. While granting ACP wef 05.09.2005 pay was fixed at Rs. 3935/- by the system instead of Rs. 3850/- with one increment excess during FSA 09/2019, the case was reviewed and deducted the excess amount i.e. Rs. 1,14,141/- drawn earlier. The same has been rectified at the time of final settlement of account and basic pay was fixed to Rs. 40,400/- in the month of Sep 2019. The applicant was drawing pay of Rs. 40,400/- on date of MACP-III as on 05 Sep 2019 and in MACP pay fixed on 05 Sep 2019 at Rs. 42,300/- and the applicant was discharged on 30.09.2019 in pay level 6 as applicable in pay matrix. Moreover, the applicant has failed to submit the option form, accordingly, the pay was fixed as per the 7th CPC recommendations.

9. Learned counsel for the respondents further submitted that the pay of the applicant was fixed correctly as per the existing rules. He submitted that Original Application being bereft of merit and lacking substance is recommended to be dismissed in the interest of justice.

10. We have heard the learned counsel for the parties and perused the records.

11. Case of the applicant as spelt out in the instant O.A. is that his pay was required to be fixed in the manner which was more beneficial to him irrespective of giving of option or otherwise as per

ACP Scheme and recommendations of 5th Central Pay Commission which was revised with three financial upgradations i.e. after 8 years, 16 years and 24 years of service and Modified Assured Career Progression (MACP) Scheme which took place with effect from 01.09.2008. The benefits of this Scheme despite having completed 24 years of service were not extended to the applicant because of non exercising of option on time as per Government of India, Ministry of Defence Office Memorandum No 1(20)/2017/D (Pay/Services) dated 26.02.2019 which is reproduced below:—

*“No. 1(2)/2017/D/Pay/Services
Ministry of Defence
D(Pay/Services)
Sena Bhawan, New Delhi
Dated 26 February, 2019*

OFFICE MEMORANDUM

Clarification on availability of Option for fixation of pay on promotion from the date of next increment (DNI) in the lower post and method of fixation of pay from DNI, if opted for, in respect of Army Pay Rules, 2017, Air Force Pay Rules, 2017 and Navy Pay Regulations 2017 in respect officers and JCOs/OR equivalent.

Reference is invited to Ministry of Defence O.M. of even No dated 22.03.2018.

1. In this connection, it is stated that the Option is to be exercised within three months from the date of promotion, to have pay fixed under these provisions from the date of such promotion, to have pay fixed under these provisions from the date of such promotion or to have the pay fixed from the date of actual of next increment in the scale of the pay in lower grade.

2. For all personnel who have been promoted in the interim period (from 01 January 2016 until the issuance of this O.M), the Option is to be exercised within six months of issuance of this O.M. Further, Option for pay fixation on promotion, once exercised is final.

3. This issues with the concurrence of Defence (Finance) vide their I.D. No. 1(8)/2017-AG/PA-35 dated 05.02.2019.”

12. In view of the submissions made by the learned counsel for the parties and above policy letter, it is clear that facts are not in dispute. The only dispute is with regard to the effect of non submission of option for fixation of pay within the period stipulated in the instructions i.e. from 01.01.2016 and before 03.05.2017. In fact the issue has already been settled by the Principal Bench, AFT, New Delhi vide order dated 10.12.2014 passed in a bunch of cases in O.A. No 113 of 2014, **Sub Chittar Singh v. UOI**, wherein benefit has been granted to the applicants who were denied correct fixation of pay due to not exercising of the option on time.

13. Additionally, we are of the considered opinion that PAO (OR) should have regulated the fixation of pay that will be beneficial (out of the two options mentioned in the scheme) to the applicant but they did not do so. Such exercise should have been done before putting the applicant in a particular pay scale. At this juncture, we may recapitulate that the applicant has been put in disadvantageous pay scale because of the reason that allegedly he has not exercised his option in time and admittedly because of the default he is said to be placed in lower pay scale than the pay scale given to his own colleagues in the same rank and same service. The only ground for denial of the pay scale of the applicant is due to non/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 several persons have not submitted their options due to unawareness of the policy in time and they are going to get less pay than their colleagues in the same rank and service, due to which they will suffer heavy loss. Record Office, EME/ respondents/competent authority is directed to complete the formalities required for the correct fixation of pay at their own as the applicant has already been retired from service w.e.f. 30.09.2019.

14. So far as relief (c) i.e. refund of amount of Rs. 1,14,141/- is concerned, on perusal of the record it appears that while granting ACP wef 05.09.2005 pay was fixed at Rs. 3935/- by the system instead of Rs. 3850/- with one increment excess during FSA 09/2019, the case was reviewed and deducted the excess amount i.e. Rs. 1,14,141/- drawn earlier. As the amount deducted is due to final settlement and before the discharge of the applicant, no question of refund is made out.

15. Thus, in the result, the O.A. succeeds and is **partly allowed**. The respondents are directed to revise the Pay of the applicant @ Rs. 46,200/- per month by granting upgradations as per ACP/MACP Schemes with all retiral benefits. We direct the respondents to pay the arrears accrued after fixation of pay to Rs. 46,200/- per month with interest @ 8% per annum. The respondents are further directed

to implement the order within a period of four months from the date of receipt of certified copy of this order failing which it shall carry interest @ 8% per annum from the due date till date of actual payment.

16. There shall be no order as to costs.

17. Pending applications, if any, are disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: July, 2023
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