

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 37 of 2020**

Tuesday, this the 23rd day of Feb, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No 13985408K Hav (AA) Shiv Saran aged about 47 years son of Shri Raghunandan, resident of Village : Pipauri, Post – Missi and District : Fatehpur (UP)

Applicant No. 1

No 13986365M Hav (AA) Ramesh C aged about 47 years son of Shri Chinnappan, resident of Village and Post Office : Kilara Sampet, District : Vellore (TN)-632312

Applicant No. 2

No 13986368A Hav (AA) Kumar C aged about 47 years son of Shri S Chinna Kannan Resident of House No 49/04 Bajanai Kovil ST Village : Edappalavam Post Office : Vnapadi, District : Vellore (TN)-632404

Applicant No. 3

No 13986386H Hav (Dvr MT) Anand Giri aged about 47 years son of Shri Jangi Giri, resident of Village : Awarai Kala (Hathoura) , Post Office : Kirihrapur, District : Ballia (UP)-221716

Applicant No. 4

No 13986398X Hav (AA) Prit Paul aged about 47 years son of Shri Raj Kumar, resident of House No 87, Sunder Enclave Colony , Post Office : Suro, Dist : Patiala (Pb)-140401

Applicant No. 5

No 13986412Y Hav (Dvr MT) Naresh Kumar aged about 48 years son of Shri Mange Ram resident of Vill & PO : Khor, District : Gurgaon (Haryana) – 124414

Applicant No. 6

No 13986414K Hav (Dvr MT) Vinod Kumar aged about 47 years son of Shri Raghvir Singh, resident of Village and PO : Dharana, Dist : Jhajjar (Haryana)-124412

Applicant No. 7

No 13986465X Hav (AA) Raman Singh aged about 47 years son of Shri Suraj Mal, resident of Vill : Longtipura, Post Office : Bajana Klan, Dist : Karauli (Raj)-322230

Applicant No. 8

No 13986473W Hav (Dvr MT) Onkar Singh Lahkoidya, aged about 48 years, son of Shri Brij Mohan Lal, resident of Vill & PO : Dhindhora, Dist : Karauli (Raj)-322236

Applicant No. 9

No 13986517H Hav (AA) Beerendra Pratap Singh aged about 48 years son of Late Jagat Pal Singh, resident of Village : Garah Champa, PO : Bahadurganj District : Sitapur (UP)-261203

Applicant No. 10

No 13986522N Hav (AA) Nagendra Prasad Yadav, aged about 48 years, son of Shri Brij Mohan Prasad Yadav, resident of : Vill – Balua, PO : Kansdiyar, Dist : Saran (Bihar) - 841216

Applicant No. 11

No 13986530M Hav (Dvr MT) Dharamdeo Chauhan, aged about 47 years son of Shri Achchaibar Prasad, resident of Village : Manraicha, PO : Bardiha Parsuram, Dist : Deoria (UP)- 274505

Applicant No. 12

No 13986535L Hav (AA) Anil Kumar, aged about 47 years, son of Shri Banwari Lal Yadav, resident of House No : 942, World Bank Barra, Sector 1, Kanpur Nagar, Dist : Kanpur (UP)- 208027

Applicant No. 13

No 13986539F Hav (AA) Ram Surat Baitha, aged about 48 years, son of Shri Gora Baitha, resident of Village : Sisva, PO : Ukhai, Dist : Siwan (Bihar) – 841226

Applicant No. 14

No 13986584N Hav (AA) Subrat Kumar Pal, aged about 47 years, son of Shri Bethi Kanta Pal, resident of Village : Manikhamb, PO : Motiganj , Dist : Balasore (Orissa)- 756003

Applicant No. 15

No 13986626P Hav (AA) Chintamani Jaiswal aged about 48 years son of Shri Hinchh Lal Jaiswal, resident of Ward No 2, Subhash Nagar, Baniya Colony, PO : Sidhi, Dist : Sidhi (MP) – 486661

Applicant No. 16

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

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi-110011
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi-110011
3. Addl Dte Gen Pers Services (Standing Army Pay Commission Section), IHQ of MoD (Army), Room No 23, Plot No 108 (West), Brassey Avenue, Church Road, New Delhi-110001
4. OIC Records, Army Medical Corps, Lucknow Cantt (UP) -226002
5. Office of PAO (OR) AMC, Lucknow (UP) -226002
6. Office of PCDA (Pension), Draupadighat, Allahabad (UP) -211014

..... **Respondents**

Ld. Counsel for the Respondents: **Shri Amit Jaiswal, Central Government Counsel**

ORDER

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

- “A. to issue/pass an order or direction of appropriate nature to the Respondents to refix/revise the Band Pay and Pay Matrix from Rs 42,300/- to Rs 46,200/- forthwith as per the direction issued by Govt. of India, Min of Def (Department of Pay and Services) letter dated 26.02.2019 (Annexure A-1).*
- B. to issue/pass an order or direction of an appropriate nature to the respondents to make the payment of arrears alongwith suitable rate of interest, as deemed fit and proper by this Hon’ble Tribunal, accrued to the applicant due to revision of his Band Pay & Pay Matrix and continues to pay service pension and consequential benefits to the applicants in the revised rate in accordance to rules.*
- C Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicants.”*

2. In brief, the facts of the case is that the applicants were enrolled in the Army and discharged from service after completion of their terms of engagement under Rule 13(3)

III (i) of Army Rule 1954, as per details given below :-

Ser No	No, Rank and Name	Date of Enrolment	Date of promotion to the rank of Hav with seniority	Date of Discharge
(a)	13985408K Hav (AA) Shiv Saran	12.11.1992	01.12.2013/01.12.2013	30.11.2018 (A/N)
(b)	13986365M Hav (AA) Ramesh C	22.06.1993	13.11.2014/01.08.2014	30.06.2019 (A/N)
(c)	13986368A Hav (AA) Kumar C	22.06.1993	25.08.2014/01.08.2014	30.06.2019 (A/N)
(d)	13986386H Hav (AA) Anand Giri	25.06.1993	01.02.2014/01.01.2014	30.06.2019 (A/N)
(e)	13986398X Hav (AA) Prit Paul	25.06.1993	10.09.2014/01.09.2014	30.06.2019 (A/N)
(f)	13986412Y Hav (AA) Naresh Kumar	26.06.1993	20.02.2014/01.01.2014	30.06.2019 (A/N)
(g)	13986414K Hav (AA) Vinod Kumar	26.06.1993	01.02.2014/01.02.2014	30.06.2019 (A/N)
(h)	13986465X Hav (AA) Raman Kumar	28.06.1993	03.11.2014/01.11.2014	30.06.2019 (A/N)
(i)	13986473W Hav (AA) OS Lahkoidya	28.06.1993	01.03.2014/01.03.2014	30.06.2019 (A/N)
(j)	13986517H Hav (AA) Beerendra Pratap Singh	28.06.1993	01.10.2014/01.10.2014	30.06.2019 (A/N)
(k)	13986522N Hav (AA) Nagendra Prasad Yadav	28.06.1993	08.10.2014/01.10.2014	30.06.2019 (A/N)
(l)	13986530M Hav (AA) Dharmdeo Chauhan	29.06.1993	01.03.2014/01.03.2014	30.06.2019 (A/N)
(m)	13986535L Hav (AA) Anil Kumar	30.06.1993	01.12.2014/01.12.2014	30.06.2019 (A/N)
(n)	13986539F Hav (AA) Ram Surat Baitha	30.06.1993	22.12.2014/01.12.2014	30.06.2019 (A/N)
(o)	13986584N Hav (AA) Subrat Kumar Pal	28.06.1993	01.11.2014/01.11.2014	30.06.2019 (A/N)
(p)	13986626P Hav (AA) Chintamani Jaiswal	30.06.1993	01.12.2014/01.12.2014	30.06.2019 (A/N)

3. 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) dt 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 Pay Commission. 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 No. 1, i.e. No 13985408K Ex Hav Shiv Saran, who is covered under this policy, exercised Option for fixation of his pay accordingly and his pay was fixed @ Rs 46,200/-. Other applicants listed at Serial Nos. 2 to 16 did not exercise their Option due to unawareness of the policy; hence their Pay were not revised and they retired on 30.06.2019 @ Rs 42,300, causing heavy financial loss to them.

4. Learned counsel for the applicant submitted that Government had introduced Assured Career Progression (ACP) Scheme on recommendation of 5th Pay Commission. The said Scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. The Government 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 Pay Commission. Learned Counsel for the applicant submitted that all applicants exercised the Option in terms of letter dated 26.02.2019 at the time of discharge drill as they were not aware of the said policy, but Respondent No 4 denied to process the same. Thereafter, about 91 affected service personnel including the present applicants approached to Respondent No 5 for the same on 14.06.2019 for granting benefit of MACP and revise the pay from Rs 42,300 to Rs 46,200 on completion of 26 years of service but it was not considered and due to this, their Basic Pay were not revised and they retired on 30.06.2019 (AN) causing loss of Rs 3900/- per month and accordingly their other retiral benefits were also affected.

5. Learned Counsel for the applicant further submitted that two similarly placed service personnel No 1398553P Hav (AA) Shank Reppa Hariwal who was enrolled on 27.12.1992 and discharged on 31.12.2018 and No 13985782M Hav (AA) Govind Singh who was enrolled on 24.02.1993 and discharged on 28.02.2019, their basic pay were fixed @ Rs 46,200 and the present applicants discharged after them i.e on 30.06.2019 were fixed @ Rs 42,300 which is apparently unjust and improper. He submitted that basic pay of all the applicants except serial 1 be fixed @ Rs 46,200 instead of Rs 42,300 according to MACP Scheme issued by Govt of India and option exercised at the time of retirement be accepted for fixation of pay.

6. Learned Counsel for the applicant submitted that the similar controversy has been decided by Armed Forces Tribunal, Regional Bench, Lucknow in OA 156 of 2016 (Hav Jog Dhyan Sharma vs UOI & Ors decided on 04.01.2018).

7. On the other hand, the contentions advanced by learned counsel for the respondents is that Basic pay of Applicant No. 1, i.e. No 13985408K Hav Shiv Saran (Retd) was fixed at Rs 46,200 on receipt of Option Certificate as required vide Govt letter dated 26.02.2019. He also submitted that applicants listed at serial 2,4,6,7,8,9,12,13 & 14 were not entitled to upgradations as they were promoted after 03.05.2017 as per Min of Def (Deptt of Def) notification bearing SRO No 9(E) dated 03.05.2017. However, after grant of MACP, their Basic Pay could have been regulated within six months as per Govt letter dated 26.02.2019 but since they did not exercise their Options on time and now the same has become time barred, their pay could not be revised to Rs 46,200. Learned Counsel for the respondents further submitted that pay of applicants listed at serials 3,5,11,15 and 16 were fixed in the Pay Level 05 @ 37000/- wef 01.01.2016 as per para 7 of RPR 2017 and on upgradation (MACP Nb Sub) their pay were fixed in Pay Level 06 @ Rs 39,900 as per para 12 of RPR 2017. The Basic pay on granting increments on Jan 2018 and then on Jan 2019 works out to Rs 42,300 at the time of their discharge from Army Service is correct.

8. He submitted that the pay of all the applicants have been fixed correctly as per the existing rule as clarified by PAO (OR) AMC, Lucknow vide their letter dated 12 Mar 2020, 15 Apr 2020 and 19 Jun 2020. He submitted that Original Applications being bereft of merit and lacking substance is recommended to be dismissed in the interest of justice

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

10. Cases of the applicants as spelt out in the instant OA is, that their pay were required to be fixed in the manner which were more beneficial to them 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 26 years of service were not extended to the applicants except applicant listed at serial 1 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 26th February, 2019

OFFICE MEMORANDUM

Subject : 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.

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.

Yours faithfully,

Sd/- xxxxxxxx
(Arun Kumar)

Under Secretary to the Govt. of India

11. 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. Infact the issue has already been settled by the Principal Bench, AFT, New Delhi vide order dt 10.12.2014 passed in a bunch of cases with OA 113 of 2014 (Sub Chittar Singh and Ors vs. UOI and Ors) wherein benefit has been granted to the applicants who were denied correct fixation of pay due to not exercising of the option on time.

12. In addition to above, 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 applicants but they did not do so. Such exercise should have been done before putting the applicants in a particular pay scale. At this juncture, we may recapitulate that the applicants 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 and same service. We have not found a single reason on the basis of which it can be justified that in the same rank and in the same cadre, 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 of the applicants 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.

Records Office, AMC, Lucknow and PAO (OR), AMC, Lucknow are directed to complete the formalities required for the correct fixation of pay at their own as the applicants have already been retired from service.

13. Thus in the result, the O.A. succeeds and is allowed. The respondents are directed to revise the Pay of the applicants listed at Serial 2 to 16 @ 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 three 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.

14. There shall be no order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: March, 2021

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