

**Reserved**  
**Court No. 2**  
**(Ser No 11)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 861 of 2021**

Friday, this the 26<sup>th</sup> day of May, 2023

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

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

No. 2890731A, Ex Hony ACP Nb Sub (PA), Anil Kumar Dubey S/o Late Sri Ram Prasad Dubey, Resident of House No. 764, Sector-6K, Vrindavan Colony, Lucknow, U.P.-226029.

..... Applicant

Ld. Counsel for the : **Mohd Zafar Khan**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, MoD (Army), South Block, DHQ PO New Delhi-110011.
2. Chief Controller of Defence Accounts, Ministry of Defence, South Block, DHQ PO, New Delhi -110010.
3. The Officer-in-Charge, Records ASC (South), Bangalore, PIN - 560007.
4. The PAO (OR), ASC (South), Agram Post Bangalore-560007.
5. The PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Sunil Sharma**, Advocate  
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) set aside/quash Para 1 (a) and (b) the impugned order dated 06.09.2017 passed by the Respondents annexed as Annexure No. A-1 and also set aside/quash letter / order No.*

*4210/STF/L/Cell/ER/NC dated 09.03.2020 passed by the respondent No. 3 annexed as Annexure No. A-2.*

*(b) Direct the Respondents to grant the same benefit of fixation of basic pay of the applicant herein as granted to Applicant (No 3998421P) Hav PA Kultar Singh in compliance of order dated 09.12.2015 passed by Hon'ble Armed Forces Tribunal, Principal Bench New Delhi in OA No. 72/2015 vide the aforementioned order dated 06.09.2017, and accordingly fix the Applicant's basic/minimum pay at Rs 8,560/-, instead of Rs. 7910/- with effect from 01.01.2006 in accordance with SAI- 1/S/2008 r/w 6<sup>th</sup> Central Pay Commission Recommendations;*

*(c) Direct 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 pay the arrears with effect from 01.01.2006 within a period of three months; and*

*(d) Direct the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary in the Band Pay of Rs 52,000/- and pay arrears of difference in pension from 01.08.2021 and other retiral dues along with interest and within a stipulated time.*

*(e) Pass any other order(s) or direction(s) as deemed appropriate in the facts and circumstances of this case.*

2. The factual matrix on record is that the applicant was enrolled as Sepoy (Mess Waiter) in Group Z in the Indian Army (Rajputana Rifles Regiment Centre) on 04.07.1995. He was re-mustered as Clerk in 'Y' Group w.e.f. 01.10.2001 and again re-mustered as Personal Assistant trade in 'X' Group and was promoted to the rank of Havildar in Army Service Corps (ASC) w.e.f. 06.10.2004. On 11.10.2008, Government of India, Min of Def 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. 7,910/- in the rank of Havildar, however revised minimum pay of Havildars in Group 'X' as per Para 13 of SAI has been fixed to Rs. 8,560/-. Respondents have not given the benefit of re-fixation of minimum pay of Rs. 8,560/- to the applicant. Being aggrieved, letter dated 10.08.2018 was issued to ASC

Records (South) by his unit. In response to this letter, Records intimated that revision of basic pay is applicable to those whose orders were passed by the court and not all personnel. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant was re-mustered in Personal Assistant trade in 'X' Group and was promoted as Havildar/PA in Army Service Corps (ASC) w.e.f. 06.10.2004. On 11.10.2008, Central 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 :-

Ser. No.	Pay Band	Grade Pay	Basic Pay (In Rs.)	Corresponding Rank
1	PB-1	Rs. 2,000/-	Rs 6,460/-	Sepoy
2	PB-1	Rs. 2,400/-	Rs 7,510/-	Naik
3	PB-1	Rs. 2,800/-	Rs 8,560/-	Havildar
4	PB-2	Rs. 4,200/-	Rs 9,300/-	Naib Subedar
5	PB-2	Rs. 4,600/-	Rs 12,540/-	Subedar
6	PB-2	Rs. 4,800/-	Rs 13,350/-	Subedr Major

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 4,150.00x1.86=Rs 7,720.00), however revised minimum pay of Havildars

under para 13 of SAI has been fixed to Rs 8,560.00 and therefore, applicant is also entitled to the benefit of re-fixation of his minimum pay of Rs 8,560.00 in accordance with para 9 (a) (ii) of SAI 1/S/2008 which needs to be re-fixed by the respondents.

5. Relying upon order dated 09.12.2015 passed by AFT (PB), New Delhi in OA No. 72 of 2015, **Havildar/PA Kultar Singh Chauhan vs. Union of India & Others**, learned counsel for the applicant submitted that applicant's basic pay be fixed at Rs. 8,560/- w.e.f. 06.10.2004 i.e. w.e.f. the date applicant was re-mustered as Havildar/PA of in 'X' Group and assumed the rank of Havildar on 06.10.2004.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled as a Sepoy (Mess Waiter) on 04.07.1995 in Rajputana Rifle Regimental Centre and subsequently he was re-mustered on 01.10.2001 as Clerk in Group 'Y' and again re-mustered on 06.10.2004 as Personal Assistant (PA) in Group 'X' in Army Service Corps (ASC). He further submitted that consequent upon implementation of 6<sup>th</sup> CPC, pay of the applicant was fixed correctly at Rs. 7,910/- as on 01.01.2006 in the rank of Naik 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. 06.10.2004, thereafter, pay of the applicant as on 01.01.2006 before promotion to the rank of Havildar was Rs. 7,910/-. Accordingly, pay of the applicant has been correctly fixed at Rs. 7,910/- (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. Since the applicant was recruited on 04.07.1995 and promoted to the rank of Havildar w.e.f. 06.10.2004, 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 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 Mohd Zafar Khan, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents and perused the record.

9. We find that applicant's basic pay has been fixed to Rs. 7,720/- as on 01.01.2006 in the rank of Naik 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 if 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 stand of the respondents, that only those Havildars who are directly appointed on or after 01.01.2006, will be entitled basic 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), as per AFT (PB), New Delhi judgment in the case of **Kultar Singh Chauhan** (supra).

11. Resultantly, Original Application is **allowed**. The respondents are directed to revise/re-fix basic pay of the applicant at Rs. 8,560/- w.e.f 01.01.2006, in accordance with SAI 1/S/2008. The respondents are further directed to revise applicant's further pay by granting annual increments 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. till actual payment.

12. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated :26.05.2023  
rathore

**(Justice Anil Kumar)**  
**Member (J)**