

RESERVED
Court No 2
 (Ser No 7)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 425 of 2022

Tuesday, this the 09th day of May, 2022

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 13992642H Ex Hav (Hony Nb Sub) Bholu Shankar Sharma, S/o Krapa Shankar Sharma, R/o-C/o Sanjeev Kumar Pal (Retd), 35 Maheshwari Enclave (Near Sector 6C), Vrindavan, Telebagh, Distt-Lucknow, PIN-226029 (UP).

.....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 (UP).
4. O/o PAO (OR) AMC, Lucknow, PIN-226002 (UP).
5. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Mrs Deepti P Bajpai**, Advocate
 Respondents. Central Govt Counsel

ORDER

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 refix/revise the band pay and pay matrix from Rs 44,900/- to Rs 46,200/- as per directions issued by Govt of India on 26.02.2019 and in light of order passed in similar cases by the Hon'ble AFT.*

(b) *To issue/pass an order or direction to the respondents to grant him enhance rate of service pension and other retiral dues alongwith arrears and interest @ 18% on arrears accrued to the applicant after revision of his band pay and 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 the respondents to refund the amount of Rs 1,46,275/- wrongly deducted in the Final FSA before discharge from service alongwith interest @ 18% w.e.f. 31.08.2021.any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*

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

(e) *To allow this application with cost.*

2. The factual matrix on record is that the applicant was enrolled in the Army on 31.08.1995 and was discharged from service on 31.08.2021 (AN) having rendered 26 years and 02 days service after fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules 1954. After discharge from service he was granted Honorary rank of Naib Subedar w.e.f. 01.09.2021. He was granted pension in the pay matrix @ Rs 44,900/- pm instead of Rs 46,200/- pm but as per applicant his juniors are getting band pay @ Rs 46,200/- pm which is unjust and arbitrary. As per records maintained by Army Medical Corps Records, the applicant was promoted to the rank of Havildar on 28.03.2018 and was granted MACP III (Nb Sub Grade) with effect from 30.08.2019. 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/ORs who were in service on or after 31.12.2015

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. The applicant was required to exercise the option for fixation of his pay as per time frame provided but he did not exercise the option in time; hence his pay fixation was done as per the provisions of Para 6 (3) of SRO which stipulates that "If the intimation regarding option is not received by the Pay Accounts Office within one hundred and eighty days of the date of notification of these rules, the JCOs/OR shall be deemed to have elected to govern by the revised pay structure with effect from 1st day of January, 2016." In view of not exercising his option in time, his basic pay was not correctly fixed. Aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that a detailed representation dated 10.03.2022 was submitted to the respondent No. 3 for revision of his correct basic pay and thereafter, enhancement of pension, but till date no remedial measures have been taken by the respondents even after sending several reminders on this aspect. He further submitted that his juniors are getting more pension than the applicant which is resulting in huge loss to him. However, he was informed verbally that he has not exercised the option required as per Govt of India letter dated 08.08.2017 that's why his pay was not revised as per recommendations of 7th

Pay Commission and he is getting less pension than his batch mates. The learned counsel further submitted that JCOs/OR who were in service on or after 31.12.2015 and before 03.05.2017 or on 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 form of option (option certificate) in writing regarding fixation of their revised pay as per 7th CPC in terms of policy letter dated 08.08.2017, but the applicant did not exercise this option due to unawareness which resulted in incorrect fixation of his band pay and thereafter pension. Learned counsel for the applicant has quoted that No 13992542X Ex Hav (Hony Nb Sub) Ashok Kumar who was enrolled in the Army on 28.08.1995 and discharged on 31.08.1995 having 26 years and 04 days service is getting more band pay of Rs 46,200/- p.m. and revised pensionary benefits under 7th CPC @ Rs 25,700/- p.m., however the applicant's basic pay has been fixed @ Rs 25,050/- p.m. unjustly and arbitrarily. In support of his contention learned counsel for the applicant has relied upon order dated 04.01.2018 passed in O.A. No. 156 of 2016, **Hav Jog Dhyan Sharma vs UOI & Ors**, order dated 19.02.2021 passed in O.A. No. 194 of 2018, **Anil Kumar Singh vs UOI & Ors**, order dated 23.02.2021 passed in O.A. No. 368 of 2019, **Ex Hav Ajeet Kumar vs UOI & Ors** and order dated 23.02.2021 passed in O.A. No. 37 of 2020, **Hav (AA) Shiv Saran vs UOI & Ors**. He pleaded for grant of pension in the revised pay matrix.

4. On the other hand Learned Counsel for the respondents submitted that 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 31.12.2015 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 during the period 01.01.2016 to 03.05.2017. The applicant was required to exercise the option for fixation of his basic pay as per time frame provided but he did not exercise the option in time; hence his pay fixation was done as per the provision of Para 6 (3) of SRO. He submitted that pay of the applicant has been fixed correctly as per the existing rule. He further submitted that Original Application being devoid of merit and lacking substance is recommended to be dismissed in the interest of justice.

5. Heard Shri KP Datta, learned counsel for the applicant and Mrs Deepti P Bajpai, learned counsel for the respondents and perused the record.

6. 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 w.e.f. 01.09.2008. The benefits of this Scheme despite having completed 26 years of service

were not extended to the applicant because of non exercising of option in time as per Govt of India, Ministry of Defence Office Memorandum No. 1(20)/2017/D (Pay/Services) dated 26.02.2019 which is reproduced below :-

“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.

1. 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.”

7. In view of the submissions made by the learned counsel for the parties and above policy letter, it is clear that fact is 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 with O.A. 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 the option on time.

8. In addition to above, we are of the considered opinion that PAO (OR) should have regulated the fixation of pay that would 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 is put in disadvantageous pay scale because of the reason that allegedly he has not exercised the 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. 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 there being any reasonable classification. The only ground for denial of the revised 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 the applicant has not submitted his option due to unawareness of the policy in time and the applicant is going to get less pay/pension than his colleagues in the same rank and same service, due to which they will suffer heavy loss.

9. The applicant in Para 4.6 of O.A. submitted that consequent to less fixation of pay and allowances there was a recovery of Rs 1,46,275/- from his final settlement of account (FSA). We find that since the respondents have wrongly fixed his basic pay, the aforesaid recovery should not have been done. We also find that while filing

counter affidavit the respondents have not replied this part of submission made by the applicant. Therefore, in view of the Hon'ble Supreme Court judgment in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer)**, Civil Appeal No 11527 of 2014 (arising out of SLP (c) No 11684/2012) decided on 18.12.2014 and **Daniel Thomas vs State of Kerala & Ors**, Civil Appeal No 7115 of 2010 decided on 02.05.2022 recovery made through FSA needs to be refunded to the applicant.

10. Govt of India, Min of Personnel and Public Grievance and pensions, Department of Personnel & Training has issued guidelines in this regard and as per Para 2 (b) of the aforesaid guidelines it is abundantly clear that after grant of MACP if increment is due, an individual shall be granted two increments (one accrued on account of annual increment and the second accrued on account of promotion). For convenience sake, Para 2 (b) of guidelines is reproduced as under:-

"(b) Subsequently, on DNI in the level of the post to which Government servant is promoted, his/her pay will be re-fixed and two increments (one accrued on account of annual increment and the second accrued on account of promotion) may be granted in the level from which the Government servant is promoted and he/she shall be placed, at a Cell equal to the figure so arrived, in the level of the post to which he/she is promoted, and if no such Cell is available in the level to which he/she is promoted, he/she shall be placed at the next higher Cell in that level."

11. Thus, in view of the above, it is made clear that applicant shall be granted all retiral dues after taking into account his basic pay @ Rs 46,200/- and further increment due on 01.07.2021 as he was discharged from service in the month of August, 2021.

12. In the result, the O.A. succeeds and is **allowed** directing the respondents to refund Rs 1,46,275/- to the applicant which was

deducted on the basis of wrong fixation of his basic pay. The respondents are further directed to revise Pay of the applicant @ Rs 46,200/- per month by granting upgradation as per ACP/MACP Schemes alongwith one increment due on 01.07.2021 from the date of his discharge. We also direct the respondents to pay the arrears accrued after fixation of pay to Rs 46,200/- per month and next increment due on 01.07.2021 within a period of three months from the date of receipt of a certified copy of this order failing which it shall carry interest @ 8% per annum from the due date till date of actual payment.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated :09.05.2022

rathore

(Justice Anil Kumar)
Member (J)