

RESERVED
Court No 2
 (Ser No. 8)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 607 of 2022

Wednesday, this the 03rd day of May, 2022

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Ex Hony Nb Sub Anil Yadav, S/o Sri MP Yadav, R/o: 320A Hariharpur, Nilmatha, P.O.-Dilkusha, Distt-Lucknow, PIN-226002 (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, EME Records, Secunderabad, PIN-900453.
4. O/o PAO (OR) EME, Secunderabad, PIN-900453, C/o 56 APO.
5. O/o PCDA (Pension), Draupadighat, Allahabad-211014.
6. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Ld. Counsel for the :**Shri DK Pandey**, 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 refix/revise his pay in the pay matrix to Rs 46,200/- p.m. from due date as per policy issued by Govt of India and relevant order passed in similar cases by the Hon'ble Tribunals.*

(b) *To issue/pass an order or direction to grant one notional increment on 01.07.2017 for the period from 01.07.2016 to 30.06.2017 for one full year of service, for the purpose of pensionary benefits.*

(c) *To issue/pass an order or direction to grant enhance service pension and other retiral dues after correct fixation of pay matrix, and issue revised pension payment order (PPO).*

(d) *To issue/pass an order or direction to grant arrears accrued after revision of pay in pay matrix and enhanced service pension with interest @ 18% on arrears w.e.f. 30.06.2017 along with due drawn audit report.*

(e) *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. The factual matrix on record is that the applicant was enrolled in the Army on 28.06.1991 and was discharged from service on 30.06.2017 (AN) having rendered more than 26 years service after fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules 1954. During the course of his service he was granted MACP-III w.e.f. 04.10.2014. 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 EME Records, the applicant was promoted to the rank of Havildar on 04.10.2006 with ante date seniority w.e.f. 01.08.2006 and was granted MACP III (Nb Sub Grade) with effect from 04.10.2014. 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 31.12.2015 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 between the period 01.01.2016 to 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 17.01.2022 was submitted to the respondents 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 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 his colleague was enrolled in the Army along with him and was discharged on 30.06.2017 having more than 26 years service is getting more band pay of Rs 46,200/- p.m. and revised pensionary benefits under 7th CPC, however the applicant's basic pay has been fixed @ Rs 24,400/- p.m. instead of 25,700/- 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** and order dated 21.01.2022 passed in O.A. No. 405 of 2021, **Ex Hony Nb Sub**

Radhey Krishna 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 Shri DK Pandey, 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. Thus, in the result, prayer clause 'A' of the Original Application succeeds and is liable to be allowed.

10. Applicant's second part of the prayer relates to grant of one notional increment for the period 01.07.2016 to 30.06.2017 as he was discharged from service w.e.f. 01.07.2017. Learned Counsel for the applicant submitted that after the Six Central Pay Commission, the Central Government fixed 1st July/1st January, as the date of increment for all Government Employees, thereafter, the applicant being enrolled on 28.06.1991 and retired on 30.06.2017 is entitled for grant of last increment due on 01.07.2017 as per decision of the Hon'ble Madras High Court in the case of ***P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others*** (W.P. No. 15732 of 2017, decided on 15.09.2017) and this Tribunal judgment in OA 366 of 2020, *Ex HFL Sarvesh Kumar vs. Union of India & Ors*, decided on 12.08.2021.

11. In rebuttal learned counsel for the respondents contended that the applicant had served for complete one year from the date of his last annual increment, but he had not been granted annual increment as on the date of his discharge i.e. 30.06.2017 as per policy in vogue since the date of annual increment falls on the following day i.e. 01.07.2017. Therefore, benefit of the Hon'ble Madras High Court order being *in personam* cannot be extended to the applicant and hence, Original Application is liable to be dismissed.

12. The law on notional increment has already been settled by the Hon'ble Madras High Court in the case of ***P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others*** (Supra). Against the said Judgment the Union of India had preferred Special Leave Petition (Civil) Diary No.22282 of 2018 which was dismissed by the Hon'ble Supreme Court vide order dated 23.07.2018. The relevant portion of the Judgment passed by the Hon'ble Madras Court is excerpted below:-

"5. *The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, i.e., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.*

6. *In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep. by its **Secretary to Government, Finance Department and others v. M. Balasubramaniam**, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.*

7. *The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

13. In view of law laid down by the Hon'ble Madras High Court, upheld by the Hon'ble Apex Court, we are of the view that since the applicant had completed one full year service as on 30.06.2017, but the increment fell due on the next day of his retirement 01.07.2017, on which date he was not in service, he has to be treated as having completed one full year of service.

14. Additionally, the Hon'ble Supreme Court in latest order dated 11.04.2023 passed in Civil Appeal No. 2471 of 2023 in the case of ***The Director (Adm & HR) KPTCL & Ors vs CP Mundinamani & Ors*** has held in para 7 of the aforesaid judgment as under:-

"In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs."

15. In view of the above, prayer clause 'B' of the Original Application succeeds and is also liable to be allowed.

16. With the aforesaid observation, the O.A. is **allowed**. Impugned order, if any, is set aside. The respondents are directed to revise the pay of the applicant @ Rs 46,200/- per month by granting upgradation as per ACP/MACP Schemes from the due date. We further direct the respondents to grant one notional increment due to the applicant on 01.07.2017 and pay the arrears accrued after fixation of pay and grant of notional increment within a period of four

months from the date of receipt of a certified copy of this order.

Default will invite interest @ 8% per annum till the actual payment.

16. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated :03.05.2022

rathore

(Justice Anil Kumar)
Member (J)

