

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 558 of 2021

Thursday, this the 16th day of May, 2024

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

Subedar Major Uttam Kumar Singh, No JC-762282Y
R/o Awadh Vihar Colony, Bagh No. 3, Kanpur Road, PO – Manas
Nagar, Lucknow UP
Presently posted at 842 Fd Wksp Coy EME (629 EME Bn),
C/o 56 APO

..... Applicant

Ld. Counsel for the Applicant: **Shri Ajit Singh Gaherwar** and
Shri SN Singh Gaherwar, Advocates

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), New Delhi.
2. C.O.A.S., Army HQ, DHQ PO, New Delhi – 11.
3. Additional Directorate General, Personnel Services, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi-110011.
4. Sr. Accounts Officer, PAO (OR) EME (LG-11/2) Secunderabad-21.
5. Commanding Officer, Veh Depot Wksp EME, C/o 56 APO.
6. Commanding Officer EME Record, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,
Central Govt. Standing Counsel

ORDER

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

- I- To issue an appropriate order or direction setting aside the order dated 10.09.2018 whereby ignoring the fact that the option could have been exercised till 31.07.2013 Sr. Accounts Officer, PAO (OR) EME (LG-11/2) Secunderabad vide order dated 10.09.2018 informed the Commanding Officer Veh Depot Wksp EME stated that while review it is observed that the 6 CPC option exercised by the applicant vide Part II Order No. 0/0279/011 dated 30.08.2011 is not in order as the same was published after the cut-off date i.e. 30/06/2011 and further an amount of Rs. 2,44,102/- has been recovered in the month of September, 2018 MPS. The PBOR pay has been fixed from 01/01/2006 instead of 01/04/2008 (date of promotion).*
- II- To issue a suitable order or direction to the respondent authorities directing them refund the amount recovered amounting to Rs. 2,44,102/- with interest @ 9% per annum to the applicant from the date of recovery, till repayment.*
- III- To issue a suitable order or direction to the respondent authorities directing them to settle the statement of account as per a letter dated 14.01.2019 which the Commanding Officer Veh Depot Wksp EME again sent to the Sr. Accounts Officer, PAO (OR) EME (LG-11/2) Secunderabad stating therein the anomaly in the recovery and seeking thereby early clarification of the order dated 10.09.2018 by*

mentioning the order dated 05.10.2017 passed by AFT Delhi in OA No. 494/2017, Sub Mahesh Kumar vs. Union of India & Ors in light o the decision of the tribunal mentioned hereinabove.

- IV- To issue a suitable order or direction to the respondent authorities directing them to give the benefit to the applicant based on the option exercised by him and thereafter compute the alludes of arrears that may become payable to the applicant.*
- V- To issue any other suitable writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- VI- Allow the Original Application with costs in favour of the applicant.”*

2. Briefly stated, applicant was enrolled in the Indian Army on 12.04.1994. The applicant was promoted to the rank of Havildar w.e.f. 12.01.2005, Naib Subedar w.e.f. 01.04.2008, Subedar w.e.f. 04.06.2014 and Subedar Major w.e.f. 01.03.2019. As per 6th C.P.C. orders issued on 11.10.2008, provisions of SAI 1/S/2008 were applicable to the PBORs for submitting option who were placed in higher pay scale between 01.01.2006 and 11.10.2008 on account of promotion to switch over to the revised pay structure from the date of promotion. The option was to be exercised within a period of three months from the date of notification of SAI 1/S/2008 which was extended till 31.03.2011 and further extended till 30.06.2011 vide Govt. of India, Ministry of Defence letter dated 11.12.2013. Since, the applicant was promoted to the rank of Naib Subedar w.e.f. 01.04.2008, the said provision was applicable to him but

applicant exercised his 6th CPC option w.e.f. 01.04.2008 vide Part II Order No. 0/0279/011/2011 dated 30.08.2011 after extended cut off date, i.e. 30.06.2011. The said Part II Order of option was erroneously adjusted by system in Monthly Pay Slip of 12/2011 but during audit, it was found by the Pay Account Office that applicant has exercised his option after cut off date, 30.06.2011, hence, Part II Order was cancelled by PAO (OR) EME and recovery of Rs. 2,44,102/- was made from the applicant. In this regard submission of applicant is that he has submitted his option before the cut off date as Govt. of India, Ministry of Defence vide letter dated 12.06.2013 has extended date for submission of option upto 31.07.2013. As per applicant, he has submitted his option vide Part II Order No.0/0279/011 dated 30.08.2011, before cut off date, hence, pay fixation from 01.01.2006 instead of w.e.f. 01.04.2008 has resulted recovery of Rs. 2,44,102/- which should be refunded to the applicant. The applicant's unit submitted letters dated 10.10.2018, 13.12.2018 and 14.01.2019 for correct fixation of pay and allowances of the applicant and refund of Rs. 2,44,102/- but the respondents have rejected prayer of the applicant. Being aggrieved, the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Army on 12.04.1994. The applicant was promoted to the rank of Naib Subedar w.e.f. 01.04.2008. As per 6th C.P.C. orders, issued on 11.10.2008, provisions of SAI 1/S/2008

and 2/S/2008 were applicable to the PBORs for revision of pay structure and submission of option for fixation of pay structure of JCOs/OR w.e.f. 01.01.2006. As per SAI 1/S/2008, option was to be exercised either from 01.01.2006 or from the date of promotion. Accordingly, applicant opted for the implementation of decision of the 6th CPC from the date of promotion of Naib Subedar, i.e. w.e.f. 01.04.2008 vide Part II Order No. 0/0279/011/2011 dated 30.08.2011. Later on, the date of submission of option was extended from 31.03.2011 to 31.07.2013 vide Govt. of India, Ministry of Defence letter dated 12.06.2013. Hence, as per applicant, submission of PAO (OR) EME vide order dated 10.09.2018 is wrong that option could have been exercised till 30.06.2011. The rejection of applicant's option Part II Order No. 0/0279/011/2011 dated 30.08.2011 by the PAO (OR) EME and recovery of Rs. 2,44,102/- in the Monthly Pay Slip of September, 2018 is illegal and arbitrary. The applicant's pay has been fixed from 01.01.2006 instead of 01.04.2008 (date of promotion) by the PAO (OR) EME in an arbitrary and unjust manner. Therefore, in view of the judgment passed by the Armed Forces Tribunal (PB), New Delhi in OA No. 494/2017, **Sub Mahesh Kumar vs. Union of India & Others**, decided on 05.10.2017, applicant's pay to be fixed in more beneficial manner, i.e. from the date of promotion to the rank of Naib Subedar and Rs. 2,44,102/- recovered from the applicant be refunded back to him with interest @ 9% per annum from the date of recovery.

4. Learned Counsel for the applicant further submitted that since the applicant was promoted to the rank of Naib Subedar w.e.f. 01.04.2008, the said provision was applicable to him and applicant exercised his 6th CPC option w.e.f. 01.04.2008 vide Part II Order No. 0/0279/011/2011 dated 30.08.2011. The applicant has submitted his option before the cut off date as per Govt. of India, Ministry of Defence letter dated 12.06.2013, extended till 31.07.2013, hence, recovery of Rs. 2,44,102/- is illegal. In this regard, applicant's unit submitted letters dated 10.10.2018, 13.12.2018 and 14.01.2019 to the respondents for correct fixation of pay and allowances of the applicant and refund of Rs.2,44,102/- but the respondents have not taken any action in this regard. However, during the course of final arguments, learned counsel for the applicant on the basis of supplementary rejoinder affidavit, submitted that he is willing to receive the amount of arrears of pay and allowances from 01.01.2006 to 31.01.2022 as per calculation sheet filed by the respondents vide their supplementary affidavit dated 22.09.2022 and prayed that Original Application be disposed off in light of calculation of arrears made in Supplementary Affidavit dated 22.09.2022 filed by the respondents.

5. On the other hand, Ld. Counsel for the respondents submitted that the applicant was promoted to the rank of Havildar w.e.f. 12.01.2005, Naib Subedar w.e.f. 01.04.2008, Subedar w.e.f. 04.06.2014 and Subedar Major w.e.f. 01.03.2019. As per 6th C.P.C. orders, issued on 11.10.2008, provisions of SAI 1/S/2008 were

applicable to the PBORs for submitting option who were placed in higher pay scale between 01.01.2006 and 11.10.2008 on account of promotion to switch over to the revised pay structure from the date of promotion. The option was to be exercised within a period of three months from the date of notification of SAI 1/S/2008 which was extended till 31.03.2011 and further extended till 30.06.2011 vide Govt. of India, Ministry of Defence letter dated 11.12.2013. Since, the applicant was promoted to the rank of Naib Subedar w.e.f. 01.04.2008, the said provision was applicable to him but applicant exercised his 6th CPC option w.e.f. 01.04.2008 vide Part II Order No. 0/0279/011/2011 dated 30.08.2011 after extended cut off date i.e. 30.06.2011. The said Part II Order was erroneously adjusted by system in Monthly Pay Slip of 12/2011 but during audit, it was found that applicant has exercised his option after cut off date, 30.06.2011, hence, Part II Order was cancelled by PAO (OR) EME and recovery of Rs. 2,44,102/- was made from the applicant.

6. Learned counsel for the respondents further submitted that provisions mentioned in Govt. of India, Ministry of Defence letter dated 11.12.2013 are not applicable to the applicant as it was applicable to the affected personnel as per revised option submitted by them upto 30.06.2011. Hence, anomaly in pay fixation is due to non exercising of the option within the extended cut off date, i.e. 30.06.2011. However, as per calculation sheet dated 22.02.2022 of PAO (OR) EME filed by the respondents on 22.09.2022 as Supplementary Affidavit, amount of arrears of pay

and allowances has been calculated from the date of promotion on validating the option exercised by the applicant and arrears from 01.01.2006 to 31.01.2022 as per recommendations of 6th CPC calculated and an amount of Rs. 5,76,480/- is shown as arrears of pay and allowances to be paid to the applicant.

7. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and gone through the material placed on record.

8. In the instant case, we find that applicant was promoted to the rank of Naib Subedar w.e.f. 01.04.2008 and accordingly, he has exercised his required option as per recommendations of 6th CPC for fixation of pay and allowances from the date of promotion, i.e. w.e.f. 01.04.2008 vide Part II Order No. 0/0279/011/2011 dated 30.08.2011. The said Part II Order was adjusted by the system of Pay and Account Office in Monthly Pay Slip of 12/2011, however, during audit, it was found by the Pay and Account Office that applicant has exercised his option after cut off date, 30.06.2011, hence, Part II Order of option of the applicant was cancelled by PAO (OR) EME and recovery of Rs. 2,44,102/- was made from the applicant.

9. During the course of final arguments, learned counsel for the respondents submitted that Original Application may be disposed off finally in terms of supplementary affidavit filed on behalf of the respondents in which complete amount of arrears of pay and

allowances with all consequential benefits has been calculated from 01.01.2006 to 31.01.2022 as per calculation sheet of PAO (OR) EME dated 22.02.2022 annexed with supplementary affidavit. This submission of learned counsel for the respondents has also been accepted by the learned counsel for the respondents during the course of final arguments and he has conceded to receive the amount of arrears of pay and allowances from 01.01.2006 to 31.01.2022 as per calculation sheet filed by the respondents vide their supplementary affidavit dated 22.09.2022 and prayed for disposal of Original Application in light of calculation of arrears made in Supplementary Affidavit dated 22.09.2022 filed by the respondents in which total amount of arrears is shown Rs. 8,08,470/-, out of which, Rs. 2,31,990/- is debited towards deduction of miscellaneous entries from serial No. 1 to 376 (page 1 to 5) as per DO II No. 0/1234/132/2022, shown in page No. 1 of calculation sheet/arrears report and balance amount of Rs. 5,76,480/- is shown as arrears of pay and allowances as per DO II No. 0/7890/123/2022 (shown in page Nos. 5 to 10 of calculation sheet/arrears report), to be paid to the applicant. Therefore, in view of aforesaid submissions made by the learned counsel for the parties, this Original Application is liable to be partly allowed, taking into consideration all the reliefs sought by the applicant.

10. In view of the above, the Original Application is **partly allowed**. The impugned order dated 10.09.2018 is set aside. The applicant is entitled to receive the arrears of pay and allowances

amounting to Rs. 5,76,480/- as per calculation made by the PAO (OR) EME vide letter dated 22.02.2022 filed alongwith Supplementary Affidavit dated 22.09.2022. The respondents are directed to pay arrears of pay and allowances amounting to Rs. 5,76,480/- to the applicant as per calculation made by the PAO (OR) EME vide letter dated 22.02.2022. The respondents are further directed to give effect to this order 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.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : May, 2024
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