

**E-Court****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO. 428 of 2022**

Tuesday, this the 01<sup>st</sup> day of November, 2022

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

No. 13992548Y Ex Hav (ACP Nb Sub) Dharendra Singh, S/o Sri Ram Singh, R/o: House No. 592/K, 512 Vikas Lane, Subhani Khera, 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 Kavita Mishra**, Advocate  
 Respondents. Central Govt Counsel

**ORDER (Oral)**

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 46,200/- as per directions issued by Govt of India on 26.02.2019 and in light of order passed in similar case by the Hon'ble ADFT with other consequential benefits.

(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 any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.

(d) To allow this application with cost.

2. The factual matrix on record is that the applicant was enrolled in the Army on 28.08.1995 and was discharged from service on 31.08.2021 (AN) having rendered 26 years and 04 days of service after fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules 1954. 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 27.12.2012 and was granted MACP III (Nb Sub Grade) with effect from 28.08.2019. 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) 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 7<sup>th</sup> 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 1<sup>st</sup> day of January, 2016." 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 issue. 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 7<sup>th</sup> 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 be submit form of option (option certificate) in writing regarding fixation of their revised pay as per 7<sup>th</sup> 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 band pay and thereafter pension. Learned counsel for the applicant has quoted that Hav Sajeev N, Hav Ashok Kumar and Hav Vimal Kumar Sah, though juniors to the applicant, are getting more pension than him. 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 7<sup>th</sup> 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. We have heard the learned counsel for the parties 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 5<sup>th</sup> 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 was not extended to the applicant 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 :-

***"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 their being any reasonable classification. The only ground for denial of the 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 than his colleagues in the same rank and service, due to which they will suffer heavy loss.

9. Thus, in the result, the O.A. succeeds and is **allowed**. The respondents are directed to revise the Pay of the applicant @ Rs 46,200/- per month by granting upgradation as per ACP/MACP Schemes with all retiral benefits from the due date. We direct the respondents to pay the arrears accrued after fixation of pay to Rs 46,200/- per month 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.

10. There shall be no order as to costs.

11. Pending application(s), if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 01.11.2022

*rathore*