

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 143 of 2022**Tuesday, this the 1st day of November, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 14682406L Hav/PA Vishal Bakshi
of Army Service Corps,
S/o Shri Prem Pal Bakshi
Presently posted at HQ 9 Infantry Division, Meerut Cantt,
PIN – 908409, C/o 56 APO

..... Applicant

Ld. Counsel for the Applicant: **Wg Cdr S N Dwivedi (Retd)**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi – 110011.
2. AG's Branch, ADG PS (PS-3), Room No. 5, Plot No. 108, L-Block, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Controller General of Defence Accounts, Ministry of Defence, Ulan Batar Road, Palam Delhi Cantt, Pin – 110010.
4. Officer-in-Charge Records, ASC (South), Bengaluru – 560007, C/o 56 APO.
5. The PAO (ORs), ASC (South), Agram Post, Bengaluru – 560007.

..... Respondents

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

ORDER (Oral)

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

- “(a) Issue/pass any order or direction to the respondents to fix/step up the applicant’s initial basic/minimum pay as Sepoy at Rs. 6460/-, instead of Rs. 6250/-, with effect from 01.01.2006 in terms of SAI 1/S/2008 r/w Govt. of India, MoF (Dept of Expenditure) instructions in the matter vide their order dated 28.09.2018 and which was circulated by the CGDA to all concerned vide their letter dated 04.10.2016, for implementation butt till date the same has not been implemented Suo Motu except by the order of the court.
- (b) Issue/pass any order or direction to the Respondents to calculate the monthly salary of the Applicant, including all other emoluments and allowances, on the basis of aforesaid basic/minimum pay fixed/stepped up as Sepoy w.e.f. 01.01.2006 and as Naik (w.e.f. 01.04.2010) and Havildar (w.e.f. 13.01.2012) which became applicable on promotion thereafter and pay the arrears with interest accrued thereon with effect from 01.01.2006.
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit, just and proper under the circumstances of the case, and
- (d) Allow this Original Application with costs.”

2. The factual matrix on record is that applicant was enrolled in the Indian Army as a Sepoy (Clerk) on 23.09.2005. As per recommendations of 6th CPC all directly recruited Sepoys on or after 01.01.2006 were given minimum pay @ Rs. 6460/- whereas pay of the applicant was fixed @ Rs. 6250/- w.e.f. 01.01.2006. The applicant was promoted to the rank of Naik on 01.04.2010 Havildar on 13.01.2012 but his pay was again fixed less due to difference of pay in fixation in the rank of Sepoy as on 01.01.2006 as compared to directly recruited Havildars and his pay on promotion to the rank of Havildar was fixed @ Rs. 8510/- instead of Rs. 8560/-. However, the respondents have not given the benefit of re-fixation of minimum pay of Rs. 8560/- to the applicant. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army as a Sepoy (Clerk) in EME on 23.09.2005. As per recommendations of 6th CPC all directly recruited Sepoys on or after 01.01.2006 were given minimum pay @ Rs. 6460/- whereas pay of the applicant was fixed @ Rs. 6250/- w.e.f. 01.01.2006. The applicant was promoted to the rank of Naik on 01.04.2010 but due to difference of pay in fixation in the rank of Sepoy as on 01.01.2006 his pay in the rank of Naik has been fixed less than other Naiks. The applicant was promoted to the rank of Havildar on 13.01.2012, his

pay was again fixed less as compared to directly recruited Havildars of post 01.01.2006 and his pay on promotion to the rank of Havildar was fixed @ Rs. 8510/- instead of Rs. 8560/-.

4. Learned counsel for the applicant further submitted that on 11.10.2008, Centre Government implemented recommendations of 6th 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. 2000/- | 6460/- | Sepoy |
| 2 | PB-1 | Rs. 2400/- | 7510/- | Naik |
| 3 | PB-1 | Rs. 2800/- | 8560/- | Havildar |
| 4 | PB-2 | Rs. 4200/- | 9300/- | Naib Subedar |
| 5 | PB-2 | Rs. 4600/- | 12540/- | Subedar |
| 6 | PB-2 | Rs. 4800/- | 13350/- | Subedr Major |

5. Learned counsel for the applicant further submitted that applicant is also entitled to the benefit of Re-fixation of his minimum pay of Rs. 8560/- in the rank of Havildar in accordance with Para 9(a)(ii) of SAI 1/S/2008 but respondents have not given the benefit of re-fixation of minimum pay of Rs. 8560/- to the applicant. He further

submitted that applicant's case is squarely covered by the order/judgment of AFT (PB), New Delhi in OA No. 72 of 2015, **Havildar/PA Kultar Singh Chauhan vs. Union of India & Others**, decided on 09.12.2015 and AFT RB) Lucknow judgment in OA No. 28 of 2015, **Hav/Clk Brijesh Singh vs. Union of India & Ors**, decided on 21.10.2016 and pleaded that applicant's basic pay be fixed at Rs. 6460/- in the rank of Sepoy as on 01.01.2006 in terms of SAI 1/S/2008 and Govt. of India, Ministry of Finance (Dept. Of Expenditure) order dated 28.09.2018 and his basic pay in the rank of Naik w.e.f. 01.04.2010 and in the rank of Havildar w.e.f. 13.01.2012 be stepped up accordingly.

6. Learned counsel for the respondents submitted that applicant was enrolled as a Sepoy on 23.09.2005 in EME Corps of Indian Army. He was promoted to the rank of Naik on 28.04.2010 and Havildar on 13.01.2012. Thereafter, he was remustered to the rank of Havildar/PA in Group 'X' w.e.f. 19.06.2014 after implementation of 6th CPC. Consequent to implementation of 6th CPC, pay of the applicant in the rank of Sepoy as been fixed at Rs. 6250/- as per rule 9 of SAI 1/S/2008 and his basic pay on promotion to the rank of Havildar on 13.01.2012 has correctly been fixed at Rs. 8460/- and his pay has been further fixed on the date of next increment i.e. 01.07.2012 after allowing two increments and pay fixed @ Rs. 8790/-. Thereafter,

applicant was re-mustered to Group 'X' in the rank of Havildar/PA w.e.f. 19.06.2014 and his pay was fixed at Rs. 9500/- as on 01.07.2014 on the date of increment and his pay has been fixed correctly as per para 14(b) of SAI 1/S/2008.

7. Learned counsel for the respondents further submitted that as per IHQ of MoD (Army) letter dated 19.04.2001 that recruits in the rank of Havildar will be stepped upto the entry pay level @ 8560/- and remustered Havildars are not covered under these provisions and whose pay has been fixed less than the entry level pay of Rs. 8560/- on or after 01.01.2006 shall remain unaffected under the provisions of para 2. 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. She 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 approval in 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. She pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and have perused the documents/material placed on record.

9. We find that was enrolled as a Sepoy on 23.09.2005 and he was promoted to the rank of Naik on 28.04.2010 and Havildar on 13.01.2012. Thereafter, he was re-mustered as Havildar/PA w.e.f. 19.06.2014. On implementation of 6th CPC, pay of the applicant in the rank of Sepoy as been fixed at Rs. 6250/- as per Rule 9 of SAI 1/S/2008 and his basic pay on promotion to the rank of Havildar on 13.01.2012 has been fixed at Rs. 8460/- and his pay has been further fixed/revised @ Rs. 8790/- on the date of next increment i.e. 01.07.2012 after granting two increments. Thereafter, applicant was re-mustered to Group 'X' in the rank of Havildar/PA w.e.f. 19.06.2014 and his pay was fixed at Rs. 9500/- as on 01.07.2014 as per Rule 14(b) of SAI 1/S/2008.

10. 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. 8560/- is misconceived.

11. In view of aforesaid, the applicant is held entitled to the Basic Pay of Rs. 6460/- in the rank of Sepoy instead of Rs. 6250/- as on 01.01.2006 in terms of SAI 1/S/2008 and para 8 of Govt. of India, Ministry of Finance (Dept. Of Expenditure) order dated 28.09.2018 and his basic pay in the rank of Naik w.e.f. 01.04.2010 to be re-fixed taking basic pay of Rs. 6460/- as on 01.01.2006 and in the rank of Havildar w.e.f. 13.01.2012 be stepped up @ Rs. 8560/- (as fixed for direct recruited Havildars as on 01.01.2006) in place of Rs. 8510/- and accordingly, it will be further stepped up from the date he was re-mustered as Havildar/PA, i.e. w.e.f. 19.06.2014, as per AFT (PB), New Delhi judgment in the case of **Kultar Singh Chauhan** (supra).

12. We also find that applicant's basic pay on promotion to the rank of Havildar on 13.01.2012 has been fixed at Rs. 8510/- and his pay has been further fixed @ Rs. 8790/- on the date of next increment i.e.

01.07.2012 after granting two increments. Thus, it appears that applicant's basic pay from 01.07.2012 onwards granting two increments on promotion seems correctly fixed. However, if there is any difference in fixation of basic pay after granting increments from 01.07.2012 onwards, the same be also rectified as per rules.

13. Resultantly, Original Application is **allowed**. The respondents are directed to revise/fix basic pay of the applicant at Rs. 6460/- in the rank of Sepoy instead of Rs. 6250/- as on 01.01.2006 and accordingly, it will be further revised on promotion to the rank of Naik, on promotion to the rank of Havildar @ Rs. 8560/- and on remustering in Group 'X' as Havildar/PA, his basic pay to be fixed further granting increments on Rs. 8560/- and not on 8510/-. On revision/refixation of basic pay, the respondents are directed to pay arrears accordingly. The Respondents are also directed to comply with the order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

14. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: November, 2022
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