COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

22.

OA 396/2024

Col Deepak Vashisht (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Maj Lauv Kumar, OIC, Legal Cell

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
07.02.2024

The present OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant being aggrieved by the incorrect pay-fixation of his pay in the 5th Central Pay Commission (CPC) resulting in continuous financial loss and disadvantage. The applicant has made the following prayers:

> *"(a) Call for the Records including the policies vide which the respondents have failed to issue necessary instruction for revising of pay of the applicant and other similarly situated persons retrospectively from the DNI in the rank of Maj on 11.06.1997 and Lt Col on 11.06.2004 which was more beneficial as a result of which the pay of the applicant was fixed as default from the date of promotion in such rank resulting in fixation of pay in the 6th CPC, 7th CPC as also at the time of promotion to the next ranks at a much lesser pay than the entitlement of the applicant and thereafter, quash such instructions including policy dated 07.08.2017.*
>
> *(b) Issue further direction to the respondents to revise the pay of the applicant upon his promotion in the rank of Maj and Lt Col in 5th CPC from the retrospective date in a*

manner which was more beneficial to him and thereafter, carry out necessary fixation of his pay in the 6th CPC w.e.f 01.01.2006 on the basis of such most beneficial revised pay.

(c) Issue further direction to the respondents to grant such fixation of pay upon his further promotion to the higher rank as also in the 7th CPC on the basis of rectified basic pay and grant him arrears as difference of pay with all other allowances, increments, fixation of pay to higher ranks as also subsequent pay commissions and post retirements benefits including pension on the bais of higher rectified pay upon grant of more beneficial option within a period of two months along with penal interest @ 18% p.a.

(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."

2. The applicant was commissioned in the Indian Army on **11.06.1988.** On **11.06.1997** he was promoted to the rank of Maj. Vide corrigendum issued on 08.05.2003 by the MoD the officers who were promoted on or after 01.01.1996 were given the option to get their pay fixed, on promotion, in the lower rank held prior to promotion if the same was more beneficial to them. However, as stated, the applicant did not get any such intimation as a result of which by default his pay was fixed from the date of promotion as Lt Col whereas his batch mates, who gave their options, were given the benefit of pay fixation at a higher level. Thereafter, on **11.06.2004,** the applicant was promoted to the rank of Lt Col by selection as at that time the rank was a selection grade rank. Further vide letter dated 07.10.2005 the MoD extended

time for the officers who could not exercise their option in terms of letter dated 08.05.2003.

3. The MoD vide SAI 2/S/2008 dated 11.10.2008 issued the notification for implementation of 6th CPC. On **11.06.2014**, the applicant was promoted to the rank of substantive Col. The Government of India in August 2016 issued pay Rules for fixation of pay as per the recommendations of 7th CPC wherein also due to wrong fixation of pay in the rank of Lt Col and also revision in 6th CPC, the applicant was brought at a lower pay level as compared to his batch mates. It is the submission of the applicant that as he could not exercise the option for want of any instructions received, his pay under the 6th and 7th CPC was also fixed one stage lower than his entitlement resulting in financial loss to him, hence this OA.

4. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC in respect of Officers/JCOs/ORs merely on the ground of option not being exercised within the stipulated time or applicants not exercising the option at all, and have issued orders that in all these cases the petitioners' pay is to be re-fixed with the most beneficial option as stipulated in Para 12 of the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect

pay-fixation and providing the most beneficial option in the case of JCOs/ORs has been exhaustively examined in the case of ***Sub M.L. Shrivastava and Ors*** Vs. ***Union of India [O.A No.1182 of 2018] decided on 03.09.2021.*** Similarly, in the matter of incorrect pay fixation in the 7th CPC, the issue has been exhaustively examined in ***Sub Ramjeevan Kumar Singh*** Vs. ***Union of India and Ors.,*** decided on 27.09.2021. Also in our order dated 05.08.2022 in ***Lt Col Karan Dusad*** Vs. ***Union of India and others [O.A. No.868 of 2020 and connected matters].*** In that case, we have directed CGDA to issue necessary instructions to review pay fixation of all officers of all the three Services, whose pay has been fixed on 01.01.2006 in 6th CPC and provide them the most beneficial option.

5. This specific issue of 5th CPC has already been settled in our order dated 08.07.2022 in OA 1579/2017 ***Gp Capt AVR Reddy & Anr*** Vs. ***Union of India and Ors.*** and order dated 24.08.2022 in OA 2857/2021 ***Col Rajesh Suredia (Retd)*** Vs. ***Union of India and Ors.***, wherein, we have examined the same issue and have directed the respondents to review the pay fixation on promotion in 5th CPC and re-fix the pay with the most beneficial option. Details of difference

in pay are well illustrated in Para 9 of OA 2857/2021, ***Col Rajesh Suredia (Retd)*** (supra) which is reproduced below:

> *9. On examination of the pay fixation details of the applicant it is seen that on being promoted to the substantive rank of Major on 16.01.2000, the applicant's pay was fixed at Rs 11,600 + Rs 1200 (Grade pay) and was paid four increments from 2001 to 2004. Subsequently on promotion to the rank of Lt Col on 16.12.2004, his pay was fixed from the date of promotion at Rs 13,500 + 1600 along with one increment as on 01.12.2005. Thus on transition to 6th CPC, the applicant's pre revised pay was therefore Rs 13,900 + 1600. In the 6th CPC the applicant's pay was again fixed as on 01.01.2006 at Rs 38,530 + 8000, as per the fitment table for PB-4 issued vide the amendment to SAI 2/S/2008 dated 21.04.2009. He continued to draw increments commencing 01.07.2006 to 01.07.2015, when he was promoted to Col (TS) on 16.12.2015, and then transited to 7th CPC with pay at Rs 1,70,400. In the light of this actual pay fixation, the pay details if the pay had been fixed from the date of his next increment on 01.02.2005, the details would be as under, where the applicant stood to a more financial advantage.*
>
> *(a) On 16.12.2004 the applicant would have continued with the pay of Major + rank pay of Lt col at Rs 13,225 + Rs 1600.*
>
> *(b) On fixing his pay from the date of next increment on 01.02.2005 his pay would have been fixed at Rs 13900 + 1600.*
>
> *(c) On transition to 6th CPC, prior to actual transition he would have got another increment in the pre revised scale as per letter of MoD dated 01/08/2012 and his pre revised pay now would have been Rs 14,300 + 1600.*
>
> *(d) Thus on transition into 6th CPC as per the fitment table for PB-4, his pay would have been Rs 39,600 + 8000; an increase of Rs 1160 from the pay actually fixed.*
>
> *(e) Subsequently earning increments commencing from 01.07.2006 to 01.07.2015, on promotion on 16.12.2015 his pay would have been Rs 58,050 + 8700.*
>
> *(f) This would then automatically make a difference in his pay on transition to 7th CPC, which would now be Rs 1,75,500 as compared to Rs 1,70,400 that was actually fixed; a difference of Rs 5100.*

6. In view of the above consideration, the OA is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant in the 5th CPC on his promotion on the rank of Maj/Lt Col and re-fix his pay with the most beneficial option.

(b) Subsequently, re-fix his pay in the 6th and 7th CPC and subsequent promotion(s) with the most beneficial option.

(c) To revise the applicant's pension and issue a corrigendum PPO accordingly.

(d) To pay the arrears within three months of this order.

7. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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