

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI**

1.

OA 16/2019

Ex Hav Clk Shibu Thampuran Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Alakananda Chakraborty, Advocate
Ms. L. Kalita, Advocate
For Respondents : Mr. P. Sharma, Advocate

CORAM

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

ORDER
25.09.2024

Vide our detailed order of even date, we have allowed the OA No.16/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

2. After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the matter, therefore oral prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/vks/

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Ex- Hav/Clk Sri Shibu Thampuran

... Applicant

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For Applicant

: Ms. Alaknanda Chakravarty, Advocate
Ms. L Kalita, Advocate

For Respondents

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CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a ret'd Hav of the Indian Army and is aggrieved by the incorrect fixation of pay in 6th CPC. The applicant has made the following prayers:

- (i) To re-fix the pay of the applicant w.e.f 01.01.2006 in terms of 6th CPC and grant arrear of pay and allowances of his service period from 01.01.2006 to 30.09.2008 with all consequential benefits.

(ii) To direct the respondent authorities revise the service family pension and the disability pension of the applicant w.e.f. 01.09.2008 and grant arrear pension and regular pension with all consequential benefits.

(iii) To direct the respondents to recalculate all other retirement benefits taking into consideration the re-fixed pay w.e.f. 01.09.2008 as per 6th CPC.

(iv) To direct the respondents to grant interest @12% on the amount accrued till the date of actual receipt with all consequential benefits.

(v) To grant any other relief or reliefs as to this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case of the applicant.

(vi) In the Interim; direction may be given to re-fix the pay and allowances of the applicant w.e.f 01.01.2006 and further re-fix the service family pension and disability pension as per 6th CPC.

Brief Facts of the Case

2. The applicant was enrolled in the Indian Army on 27.08.1991 and he was discharged from service on 30.09.2008 after serving for 17 years and 1 month under Rule 13 (3) Item III (v) of the Army Rules 1954, while being placed in a permanent lower medical category(LMC) and his disability was held aggravated by military service and was accepted at 20% for life by the Release Medical Board(RMB). Consequently, he was awarded a disability element via PPO No. DE/022554/2008 (ARMY) dated 14.01.2009. Furthermore, he was granted Pension Payment Order (PPO) No. S7047532/2008 (ARMY), fixing his monthly service pension at Rs. 2,714 based on his last drawn basic pay of Rs. 4,400. The applicant has now filed this OA for the re-fixation of his pay with effect from 01.01.2006 in terms of the 6th CPC and for the grant of arrears of pay and allowances for his service period from 01.01.2006 to 30.09.2008.

Arguments by the Counsel for the Applicant

3. The counsel for the applicant vehemently asserted that the GoI, MoD, has allowed the revision of pay and allowances with effect from 01.01.2006 as per the 6th CPC recommendations for all Central

Government employees, including service personnel. The applicant retired from service on 01.10.2008 and was in service on the date of effect of the revision of pay and allowances. Therefore, the applicant is entitled to all the revised benefits as per the 6th CPC from 01.01.2006, including pensionary benefits and disability element from 01.10.2008, in accordance with the revised pay and allowances. The counsel for the applicant further argued that respondent no. 3, via Corrigendum PPO No. S/CORR/162610/2009 (ARMY), re-fixed the applicant's last basic pay at Rs. 8,810 per month under the 6th CPC with effect from 01.01.2006, instead of the previous basic pay of Rs. 4,400 per month under the 5th CPC.

4. The counsel for the applicant contended that upon detailed examination of the re-fixation of pay by respondent no. 3, it was found that the applicant's revised service pay should have been fixed at Rs. 12,900 instead of Rs. 8,810 as re-fixed by the respondent authorities. However, according to a copy of the Data Sheet issued by Respondent No. 4 supporting the fixation of service pay for Personnel Below Officer Rank (PBOR), the applicant's revised service pay as of 01.01.2006 under the 6th CPC should have been re-fixed at Rs. 12,920 per month.

In support of the Applicant's claim, the following calculation in tabular form has been put forward:

<i>SI No</i>	<i>Particulars</i>	<i>Amount (in Rs)</i>	<i>Remarks</i>
(a)	<i>Basic Pay</i>	<i>4,200.00</i>	
(b)	<i>Dearness Pay</i>	<i>2,100.00</i>	
(c)	<i>Total</i>	<i>6,300.00</i>	
(d)	<i>Pay as on 1.1.2006 is to be re-fixed at</i>	<i>11,718.00</i>	<i>After taking into account 6th CPC recommendation, the multiplication factor 1.86 times of Rs. 6,300.00 P = 1.86 X Rs. 6,300.00 P = Rs, 11,718.00</i>

And according to the above calculation his last basic pay was required to be fixed at Rs.12,900/-. Calculation is as under:

<i>SI No</i>	<i>Basic Pay</i>	<i>Effective date</i>	<i>Remarks</i>
(a)	<i>Rs. 11,718.00</i>	<i>01.01.2006</i>	<i>As per 6th CPC revision</i>
(b)	<i>Rs. 12,100.00</i>	<i>01.07.2006</i>	<i>Increment @ 3% on the basic</i>

(c)	Rs. 12,500.00	01.07.2007	<i>pay will be added to the basic pay and rate will be admissible on rounded off at the next higher rate.</i>
(d)	Rs. 12,900.00	01.07.2008	

5. The counsel for the applicant argued that the last basic pay of the applicant as on 30.09.2008 was incorrectly fixed at Rs. 8,810 instead of Rs. 12,900 resulting in the applicant receiving a lesser amount of pension from 01.01.2006 to 30.09.2008 due to the respondent authorities' error in pay fixation and this error caused significant financial loss to the applicant.

6. The counsel for the applicant contended that to clarify the correctness of the re-fixed service pay as of 01.01.2006, the applicant approached Respondent No. 4 with a written representation, vide letter No. 15310290F/PERS/ST/2018 dated 11.10.2018, requesting a re-examination of the calculation of the revised service pay under the 6th CPC but the respondent authorities failed to take necessary action. The counsel for the applicant further argued that despite repeated representations, including formal representation No.

15310290F/PERS/ST/2018 dated 08.04.2019, the respondent authorities ignored the applicant's grievances, thereby depriving the applicant of his legitimate right to receive the revised pay, allowances, arrears, and enhanced pension as per the 6th CPC.

Arguments by the Counsel for the Respondents

7. The counsel for the respondents vehemently asserted that the Pay Account Office (Other Ranks) Bangalore is the competent authority for pay fixation and other financial matters. Therefore, the applicant's grievances were forwarded to the office of PAO (OR) Bangalore, which responded appropriately via letter NE/Court case/15310290F/gen Corr dated 17.06.2019. The letter stated that the applicant had added dearness pay of Rs. 2,100 to the existing basic pay of Rs. 4,200 as of 01.01.2006 (as per the 5th CPC) for pay fixation according to Special Army Instruction(SAI) 1/S/2008 New Delhi dated 11.10.2008 and Section II (a) (i) specifies that "the pay in the pay band/pay scale will be determined by multiplying the existing pay as of 1st January 2006 by a factor of 1.86." The counsel further emphasized that accordingly, the applicant's pension was fixed as per the 6th CPC, and there is no ambiguity and as such, he need not have waited 11 years from his

discharge date to claim wrongful pay fixation. The counsel vehemently asserted that the delay cannot be condoned, and the grievances raised in this OA are without merit. Furthermore, the counsel stated that the applicant is challenging the Army Instructions, which involve significant financial implications for the government; therefore, the case should be dismissed outright and that no injustice has been done to the applicant, and his pension has been revised according to the 6th CPC, and that this appears to be an afterthought action as a test case.

8. The counsel further contended that no mandatory legal notice has been served by the applicant to the respondents and in lieu of the same, the Tribunal should dismiss his plea outright as it lacks merit. The counsel further asserted that the applicant's pensionary benefits, including his service pension and disability elements, have been fixed according to the recommendations of the 6th CPC, with no further revisions and the data sheets regarding pay fixation provided by the Record Office Madras Engineer Group are approximate calculations and not authenticated. Moreover, the Record Office Madras Engineer Group is merely the processing authority for granting pensions and meets all the eligibility criteria as recommended by the 6th CPC.

9. The counsel for the respondents contended that, as noted on the data sheet, "PAO (OR) MEG has not received software to calculate the new pay as per the 6th pay commission so far. The new pay has been calculated manually by staff of Records MEG, which may have a few mistakes. Once new pay is fixed by PAO (OR), your claim will be forwarded to PCDA (P) correctly." The counsel further added that the applicant's pay and allowances have been fixed according to the 6th CPC recommendations as per Special Army Instructions, yet he is attempting to challenge this, which is baseless.

Consideration

10. We have examined the pay fixation records provided by PAO(OR) in respect of the applicant. The details are reproduced below:

<i>Basic Pay as on 01/01/2006</i>	<i>Rs 4200 (Old Basic Pay as per 5th CPC)</i>
<i>Basic pay fixed as on 01/01/2006 as per 6th CPC</i>	<i>7820/- + Grade Pay of 2800 (4200x1.86=7812/- rounded off to next 10 i.e. 7820/-)</i>
<i>Increment w.e.f 01/07/2006</i>	<i>Rs.8140/- (3% on 7820 + Grade Pay)</i>
<i>Increment w.e.f 01/07/2007</i>	<i>Rs 8470/- (3% on 8140 + Grade Pay)</i>
<i>Increment w.e.f 01/07/2008</i>	<i>Rs. 8810/- (3% on 8470 + Grade Pay)</i>

Last Pay as on date of discharge i.e. 30/09/2008

Basic Pay - Rs. 8810/- and Grade Pay Rs 2800/-

11. According to the Para 9 (a) (I) of the Special Army Instruction No. 1/S/2008 New Delhi dated 11.10.2008 which specifies that "the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as of 1st January 2006 by a factor of 1.86." The existing pay of the PBOR is to be multiplied by a factor of 1.86. And it is the applicants contention that the existing pay in his case includes the sum of basic pay and dearness pay. Whereas, according to the respondents the existing basic pay of the applicant only includes the basic pay received by the applicant just before the 6th CPC revision. The relevant para of SAI No. 1/S/2008 New Delhi are extracted below:

9. Fixation of Initial Pay in the Revised Pay Structure

(a) *The initial pay of PBOR who elects or is deemed to have elected under para 8 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall be fixed in the following manner:*

(i) *The pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1st day of January 2006 by a factor of 1.86.*

12. We have examined the policy and according to the definition of existing basic pay, it is the pay drawn in the prescribed existing scale of pay of the rank and pay group, including stagnation increments, but does not include any other type of pay like Special Pay, etc. The relevant para of the policy is extracted below:

3. "Existing Basic Pay" means pay drawn in the prescribed existing scale of pay of the rank and pay group, including stagnation increment(s), but does not include and other pay like 'Special Pay', etc.

13. The applicant retired from the rank of Hav on 30.09.2008 and was granted on a basic pay of Rs. 4,400. However as on 01.01.2006 his old basic pay was fixed at Rs.4,200 as per 5th CPC. This was further revised according to SAI No. 1/S/2008 dated 11.10.2008 to Rs 7,820 after multiplying it with a factor of 1.86 and rounding off to the next multiple of 10. The applicant further received increments of Rs. 8,140 w.e.f 01.07.2006, Rs. 8,470 w.e.f 01.07.2007 and Rs. 8810/- w.e.f 01.07.2008 with last pay drawn on his date of discharge i.e. 30.09.2008 being Basic pay of Rs. 8810/- and Grade Pay of Rs. 2800/-

14. After examining this calculation we have observed that the respondents have failed to add grade pay before calculating the increment dated 01.07.2006. According, to us the calculation in the case of the applicant should have been as follows:

Process	Havildar (Grp Y)
Pay in the pay Scale	4200
Transition to 6th CPC	$4200 \times 1.86 = 7812$ (7820 rounded off)
Hav Grade Pay + Y Gp Pay in 6th CPC	$7820 + 2800 = 10,620$
Increment w.e.f 01.07.2006(3%)	$10,620 + 320(3\%) = 10,940$
Increment w.e.f 01.07.2007(3%)	$10,940 + 330(3\%) = 11,270$
Increment w.e.f 01.07.2008(3%)	$11,270 + 340(3\%) = 11,610$
Last Pay as on date of discharge i.e. 30.07.2008	$11,610 + 2000(\text{MSP}) = 13,610$
Pension @ 50%	$13610/2 = 6,805$

Further, as far as Para 9 (a) (i) of SAI No. 1/S/2008 is concerned the applicants pay is to consider only existing basic pay when multiplying with the factor of 1.86.

15. In the light of the above considerations, we conclude that the applicant pay has been incorrectly fixed by the concerned authorities. Hence the OA is allowed. The respondents are directed to review and

re-fix the basic pay of the applicant from 01.01.2006 to 30.09.2008 as per 6th CPC and fix his pension accordingly.

16. The amount of arrears shall be calculated and paid by the respondents within three months, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

17. MA if any, stands disposed.

18. Pronounced in the open Court on 25th day of September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

/ashok/