

SEE RULE 102 (1)
ARMED FORCES TRIBUNAL, KOLKATA BENCH
TA No. 19 OF 2015
THIS DAY 22nd MARCH, 2016

CORAM**HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)****HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

APPLICANT(S)

Subedar Govind Singh Rawat
 GE(I) R and D, Chandipur,
 Balasore
 Orissa – 756 025.

Versus

RESPONDENT(S)

1. **The Union of India**
 Through Secretary
 Ministry of Defence
 New Delhi- 110 011.
2. **The Chief of Army Staff,**
 Through Adjutant General (ADGPS)
 IHQ of MOD (Army)
 New Delhi- 110 011.
3. **The CGDA**
 Ullan Battar Road
 Opposite IGI Airport
 Delhi Cantt,
 New Delhi – 10.
4. **The CDA (Army)**
 Meerut Cantt
 Uttar Pradesh.
5. **The PAO (ORs)**
 BEG and Centre
 Roorkee
 Pin – 247 667

For the Applicant(s) : Mr. K. Ramesh.
 Mr. S.K. Choudhury

For the Respondent(s) : Mr. Anand Bhandari.

ORDER**PER HON'BLE JUSTICE N. K. AGARWAL, HON'BLE MEMBER (JUDICIAL)**

1. This is an application under section 14 of the Armed Forces Tribunal Act, 2007 for correct fixation of pay and allowances in the light of VI pay commission with a further prayer for grant

of arrears with effect from September, 2008 with interest and costs. The facts, in brief, necessary for disposal of this application are as under :

2. The applicant was enrolled in BEG, Kirkee on August 28, 1990 in trade Soldier Clerk General Duty. Consequent to attaining diploma in Civil Engineering with effect from November 27, 2000 to November 01, 2003 at College of Military Engineering, Pune, his trade changed to JE (Civ) and was transferred to Bengal Engineer Group Records, Roorkee with effect from November 2, 2003. He has been promoted to the rank of Naib Subedar and Subedar with effect from May 10, 2006 and September 08, 2008 respectively. Thereafter, the applicant was posted on deputation in High Altitude Area in 151 FC Platoon (GREF) C/o 68 RCC (GREF). Meanwhile, in pursuance of recommendation of Sixth Central Pay Commission and the Government decisions thereon the applicant was required to exercise his option in terms of Special Army Instruction dated 11th October, 2008 which is reproduced below :

“SPECIAL ARMY INSTRUCTION

No. 1/S/2008 New Delhi, 11th October, 2008.

1/S/2008 – REVISION OF PAY STRUCTURE OF JUNIOR COMMISSIONED OFFICERS (INCLUDING HONORARY COMMISSIONED OFFICERS), NON-COMMISSIONED OFFICERS AND OTHER RANKS AND FIXATION OF PAY IN RUNNING BAND HEREIN WITH EFFECT FROM 01st JANUARY 2006 CONSEQUENT UPON THE IMPLEMENTATION OF THE DECISION OF THE GOVERNMENT WITH RESPECT TO THE RECOMMENDATIONS OF THE SIXTH CENTRAL PAY COMMISSION FOR ARMY

SECTION I : GENERAL

1. In pursuance of recommendations of Sixth Central Pay Commission and the Government decisions thereon, the existing scales of pay of Junior Commissioned Officers (JCOs), including Honorary Commissioned Officers, Non-Commissioned Officers (NCOs), Other Ranks (OR) of the Army, Defence Security Corps (DSC), Army Postal Services (APS) and Territorial Army (TA) when embodied, will be revised and pay fixed in the revised pay structure in accordance with the provision of this instruction with effect from 01 January 2006.

2. The provisions of this Special Army Instruction (SAI) will apply to all the above categories of personnel who were on the effective strength of the Army, DSC, APS and TA, if embodied, as on 1st day of January 2006 or who join the service thereafter. The provisions of Pay and Allowances Regulations for JCOs and OR, 1979 as amended from time to time and Government orders which are not affected by the provisions of this SAI will remain unchanged.

3. **Definitions.** In this instruction, unless the context otherwise requires :-

(a) **“Personnel Below Officer Rank (PBOR)”** Includes Honorary Commissioned Officers, Subedar Majors, Subedars, Naib Subedars, Havildars, Naiks, and Sepoys subject to Army Act 1950.

(b) **“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 any other type of pay like ‘Special Pay’ etc.

A. **Drawal of Pay in the Revised Pay Structure.** Save as otherwise provided in this instruction, a PBOR shall draw pay in the revised pay structure applicable to the rank which he is holding or to the post to which he is appointed, provided that :

(a) PBOR may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

(b) In cases where a PBOR has been placed in a higher pay scale between 1st day of January 2006 and the date of notification of this instruction on account of promotion, upgradation of pay scale etc., the individual may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc.

Explanation 1 - The option to retain the existing scale under the provisions to this rule shall be admissible only in respect of one existing scale.

Explanation 2 - The aforesaid option shall not be admissible to any PBOR appointed to a post on or after 1st day of January, 2006, whether for the first time in Government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

B. **Exercise of Option.**

(a) The option under the provisos to para 7 above shall be exercised in writing in the form given in **Appendix 'D'** to this SAI, so as to reach the concerned Pay Accounts Office, within three months of the date of publication of this instruction or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order. Provided that;

(i) In the case of a PBOR who is, on the date of such publication or as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the PAO(OR) within three months of the date of resuming his duties in India; and

(ii) Where a PBOR is under suspension on the 1st day of January, 2006, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub rule.

(b) The option shall be intimated by the PBOR to the concerned PAO through his unit.

(c) If the intimation regarding option is not received within the time mentioned in this SAI, the PBOR shall be deemed to have elected to be governed by the revised pay structure within effect from 1st day of January 2006.

(d) The option once exercised shall be final.

Note 1 - Persons whose services were terminated on or after the 1st day of January, 2006 and who could not exercise the option within the prescribed time limit, on account of discharge on the expiry of sanction posts, resignation, dismissal or discharge from service or disciplinary grounds, are entitled to the benefits of this rule.

Note 2 - Persons who have died on or after 1st day of January 2006 and could not exercise the option within the prescribed time limit are deemed to have opted for the revised pay structure on and from 01 January 2006 or such later date as is most beneficial to their dependents, if the revised pay structure is more favourable, and in such cases, necessary action for payment of arrears shall be taken by concerned Pay Accounts Office/Depot Battalion/ Record Office.

Note 3 - Persons who were on annual leave or any other leave on 1st day of January 2006 which entitled them to leave salary will be allowed the benefits of this rule.

C.T.C

*Sd/- xx xx xx xx
Lt Col/Major
Senior Record Officer
For OIC Records.”*

3. According to the aforesaid instruction, the applicant was required to exercise his option within three months of the date of publication of this instruction. Subsequently, vide the corrigendum dated 21.12.2010 Junior Commissioned Officers including Honorary Commissioned Officers, Non-Commissioned Officers and other Ranks were permitted to revise their options upto 31.3.2011 if the option is more beneficial to them (Annexure R-6). From the above it is clear that the intention behind the instruction was to give better option regarding pay fixation of the employee and was not to harm him in any way.

4. However, neither the intimation regarding the aforesaid circular nor the option form required to be filled up by an employee was communicated to the applicant. Also, the same was not communicated to the department where the applicant was serving at the relevant time. Later on, the option form was amended and was sent to all CE Zones for circulation and for publishing DO Part II in respect of option. Surprisingly, the same was also not circulated to the department where the applicant was serving nor was it communicated to him. Therefore, he could not opt for a better deal and taking too technical a view regarding last date of filing of option i.e. 31.3.2011, the better option opted by the applicant along with DO Part II sent by his department to the PAO (OR) Bengal Engineer Group and Centre, Roorke was turned down by the respondents.

5. Learned counsel for the applicant would submit that in order to exercise option knowledge of it was necessary. At the time when the circular was issued the applicant was serving in High Altitude Area. The circular and option form was neither communicated to the applicant nor was sent to his parent department with the purpose of its intimation to the applicant and, therefore, neither the applicant could exercise his option nor the department could send Part II order in this regard. It is also when he came to know about the more salary being paid to his immediate junior, he immediately asked for the same. His parent department sent the Part II order and the option to the concerned authority repeatedly requesting them and also appraising them regarding absence of applicant's knowledge but the respondents did not pay any heed to

above and based on the last date as 31.3.2011 have turned down the applicant's request, which is illegal.

6. On the other hand, supporting the order the learned counsel for the respondents would submit that the applicant has furnished option and Part II order after cut off date i.e. 31.3.2011 which was not admissible without sanction of Govt. of India and, therefore, the authorities have rightly turned down the applicant's case.

7. We have heard the learned counsel for the parties and perused the records. From the records it is clear as crystal that the applicant was not aware about the instructions regarding filling up option form and DO Part II for revised pay fixation with effect from September 2008 as the same was neither intimated nor was circulated in the High Altitude Area where he was serving at the relevant time. The letter dated 24th June, 2009 filed by the respondents (annexure R-7) would also reveal that it was to be circulated amongst so many departments but was not circulated to the applicant's department. Therefore, it can be reasonably presumed that it was not published for all practical purposes within the meaning of paragraph 8 of the Special Army Instructions dated October 11, 2008 and, therefore, it cannot be said that the same has been sent by the applicant belatedly or after expiry of cut off date. Even assuming the same has been sent by the applicant after the cut off date as per their own pleading, it was to be sent to Govt. of India for sanction. Surprisingly, the same was not sent to Govt. of India for sanctioning the applicant's claim after condoning delay, if any. It appears that by adopting too technical approach the applicant's claim for revised pension in accordance with his option has been turned down without going into the entire facts and circumstances of the case and even without sending the same to the government for consideration. Therefore, on the face the rejection of applicant's claim is not sustainable in law and facts.

8. For the reasons mentioned above, the application deserves to be and is hereby allowed. The respondents are directed to re-fix the pay and allowances in accordance with the Part II order sent by the applicant within a period of three months from the date of receipt of a copy of this order. The respondents are further directed to calculate all the arrears with effect from September 8, 2008 and pay the same to the applicant along with interest at the rate of 6% per annum within the same period.

9. With the above, the application is disposed of without any order as to costs.

10. Let a plain copy of this order, duly countersigned by the Tribunal Officer of this Tribunal, be supplied to the parties after compliance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE N.K. AGARWAL)
Member (Judicial)

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