COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

14.

OA 2056/2025 with MA 2882/2025

216938-T EX CPO LOG(MAT)
Diptesh Kumar Sharma ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Devendra Kumar, Advocate
For Respondents : Mr. Govind Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
14.07.2025

MA 2882/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 888 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors*** Vs ***Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh*** Vs ***Union of India & Ors*** (Civil Appeal No.

30073/2017 and the reasons mentioned, the MA 2882/2025 is allowed and the delay of 888 days in filing the OA 32056/2025 is thus condoned. The MA is disposed of accordingly.

OA 2056/2025

The 216938-T EX CPO LOG(MAT) Diptesh Kumar Sharma vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

(a) *To quash the impugned letter No.S/Auth/1024/CPGRAM/210594 dated 31.03.2023*

(b) *To direct the Respondents to rectify Basic pay fixation anomaly in salary of the applicant wef 01.03.2016 by re-fixing his basic pay and his pension as per the most beneficial option to applicant on implementation of 6th & 7th CPC and subsequent on the principles affirmed by Hon'ble Tribunal in OA No.1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.*

(c) *To direct the respondents to make payment of arrears of salary accrue to him on re-fixation of his basic pay and his pension, in accordance with most beneficial option, on the principles affirmed by Hon'ble Tribunal in OA No.1182/2018, Sub Mahendrea Lal Shrivastava Vs Union of India & Ors.*

(d) *To direct the respondents to pay interest @12%per annum on the arrears accrue to the applicant on arrears of payments on Re-fixation of basic pay.*

(e) *To pass any other order or direction in favour of applicant which maybe deemed just and proper under the facts and circumstances of the present case in the interest of justice."*

2. The applicant was enrolled in the Indian Navy on 31.07.2007 and was promoted to the rank of PO LOG(MAT) on 01.03.2016 and was subsequently promoted to the rank of CPO LOG(MAT) on 01.05.2021. The applicant submits that his basic pay in the migration period of 6th CPC and the 7th CPC has not been beneficial to him as his batchmate who exercised Option-II(date of increment) is drawing more basic pay than him and in order to get his grievances solved in regard to pay anomaly, the applicant sent several representations dated 05.07.2019, 15.01.2020 and 07.08.2020 respectively to the Naval Pay Office and in response to his representations, the Naval Pay Office vide Ref No. S/Auth/1029/Promotion dated 13.10.2020 replied/intimated to the applicant that the Option II i.e. transition to 7th CPC from the next date of increment on promotion has been

abolished for personnel promoted between 02 Jan. 2016 to 01 07.2016 and selected DNI option dated 27.05.2019 for promotion to the rank of PO LOG(MAT) has not been received by this office within the stipulated period of time as per IG 1678 and the same is not valid now. The applicant further submits that after his discharge, he again represented through CP GRAM dated 22.02.2023 which was replied by the Naval Pay Office vide their letter No.S/Auth/1024/CPGRAM/210594 dated 31.03.2023 intimating the applicant that his pay fixation on transition from the 6th CPC to the 7th CPC regime has been carried out correctly, however, the applicant had not exercised any transition option with the stipulated period of timeline of 01.02.2020 and therefore, as per NPR 2017, option I was exercised as default option for transition from 6th CPC to the 7th CPC wef 01.01.2016 whereas his coursemate Pankaj Srivastava, CPO LOG(MAT), 217287-K has exercised Option II within the stipulated period of timeline. The applicant further submits as per Para 14(b)(iv) of SAI I/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate and fix the pay of the individual on promotion in

more beneficial manner by keeping in view the views expressed by the Hon'ble Armed Forces Tribunal (PB) vide order dated 05.08.2022 in OA 1182/2018 titled ***Sub Mahendra Lal Shrivastava*** Vs ***Union of India & Ors***. and a catena of other orders of the Armed Forces Tribunal wherein also similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior.

3. We have examined numerous cases pertaining to the incorrect pay fixation in 6th CPC in respect of Officers/JCOs/ORs merely on the grounds of option not being exercised in the stipulated time or applicants not exercising the option at all. The matter in issue is no more *res judicata* in view of the order dated 24.08.2022 of the Armed Forces Tribunal (PB), New Delhi in the case of ***Col. Rajesh Suredia (Retd)*** Vs ***Union of India & Ors*** in OA 2857/2021 whereby vide paras 10 to 15 thereof it has been observed as under:

> ***"10. Unlike the 6th CPC, implementation instructions which has an explicit provision that no promotion, in the eventuality of the requisite option not being exercised by an officer, the most beneficial option of fixing the, either from date of promotion/next increment will be extended, the 5th CPC instructions does not have such a provision.***

Similarly, the 7th CPC too does not have such an explicit provision.

11. We have examined numerous cases pertaining to the incorrect pay fixation in-6th CPC in respect of Officers/JCO/OR merely on the grounds of option not being exercised in 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 14 of the SAI 1/S/2008 dated 11.10.2008.

The matter of incorrect pay fixation has been exhaustively examined in Sub M.L. Shrivastava v. Union of India. O.A No. 1182 of 2018 decided on 03.09.2021. Relevant portions are extracted below:

38. In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out adopted for each Individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the Issue for the serving soldiers, many of whom may not be knowledgeable about the Intricacies of these calculations, in the full knowledge that that no one will ever knowingly

opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.
39. In view of the above, the three OAs under consideration are allowed and we direct the Respondents to:—
(a) Review the pay fixed of the applicants and after due verification re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.
(b) Thereafter re-fix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.
(c) Re-fix all pensionary and post retiral benefits accordingly.
(d) Issue all arrears and fresh PRO where applicable, within three months of this order and submit a compliance report.
40. In view of the fact that there are a large number of pending cases which are similarly placed and fall Into Category A or B, this order will be applicable In rem to all such affected personnel. Respondents are directed to take suo motu action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.

12. Similarly, in the matter of incorrect pay fixation in the 7th CPC, the issue has been exhaustively examined in Sub Ramjeevan Kumar Singh v. Union of India decided on 27.09.2021 Relevant portions are extracted below:
12. Notwithstanding the absence of the option clause in 7th CPC, this Bench has repeatedly held that a solder cannot be drawing less pay than his junior, or be placed in a pay scale/band which does not offer the most beneficial pay scale, for the only reason that the solider did not exercise the required option for pay fixation, or exercised it late. We

have no hesitation in concluding that even under the 7th CPC, it remains the responsibility of the Respondents; in particular the PAO (OR), to ensure that a soldiers pay is fixed in the most beneficial manner.

13. In view of the foregoing, we allow the OA and direct the Respondents to:—
(a) Take necessary action to amend the Extraordinary Gazette Notification NO SRO 9E dated 03.05.2017 and include a suitable 'most beneficial' option clause, similar to the 6th CPC. A Report to be submitted within three months of this order.
(b) Review the pay fixed of the applicant on his promotion to Naib Subedar in the h CPC, and after due verification re-fix his pay in a manner that is most beneficial to the applicant, while ensuring that he does not draw less pay than his juniors.
(c) Issue all arrears within three months of this order and submit a compliance report.
(d) Issue all arrears within three months of this order and submit a compliance report.

13. As stated by the Counsel for the applicant, recently in our Order dated 08.07.2022 in OA 1579/2017 Gp Capt AVR Reddy (supra), 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. Also in our Order dated 05.08.2022 in OA 868 of 2020 Lt Col Karan Dusad & Ors 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. Relevant extracts are given below.
102 (a) to (j) xxxxxx.
(k) The pay fixation of all the officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006 merely because

they did not exercise an option/exercised it after the stipulated time be reviewed by CGDA/CDA (O), and the benefit of the most beneficial option be extended to these officers, with all consequential benefits, including to those who have retired. The CGDA to issue necessary instructions for the review and implementation. Directions

103. xxxx.

104. We, however, direct the CGDA/CDA(0) to review and verify the pay fixation of all those officers, of all the three Services (Army, Navy and Air Force), whose pay has been fixed as on 01.01.2006, including those who have retired, and re-fix their pay with the most beneficial option, with all consequential benefits, including re-fixing of their pay in the 7h CPC and pension wherever applicable. The CGDA to issue necessary instructions for this review and its implementation. Respondents are directed to complete this review and file a detailed compliance report within four months of this order.

14. It is evident from the above details that there indeed is a financial advantage to the applicants had their pay on promotion in Dec 2004 been fixed from the date of their next increment in March 2005. This would then also have resulted in appropriate financial advantage on transition to the 6th CPC on 01.01.2006 too. In this case, this advantage has been denied only on the grounds that the applicant had not exercised his option. This Tribunal is of the firm opinion that irrespective of whether an officer rendered his option or not, the organization and in particular the implementing agency and the paying agency are beholden to advice an officer and ensure that the most beneficial option in pay fixation is given to him. Merely because the provisions are there in the instructions, is inadequate methodology to ensure that all officers/men got the most beneficial

advantage from the way their pay is fixed. Even if the applicants had not exercised their option, we do not find any record that the Respondents did advice the applicants on the implications of pay fixation from date of promotion/DNI apart from issuing a letter and holding the officer responsible. There is just no reason to believe that anyone will knowingly opt for a less beneficial pay fixation option. Thus the applicants have exercised/not exercised options in the absence of full knowledge of the implication of their action, which in our opinion was the responsibility of the paying authority to ensure. Merely taking cover behind an argument that as per the implementation instructions the paying office was not required/barred from suo moto taking such necessary steps/initiatives does not hold water.

15. In the light of the above consideration, we find that the applicant prima facie has a case and the balance of convenience too is in his favour. We therefore, allow the OA and direct the Respondents to

(a) Review the pay fixed of the applicant on promotion to the rank of Lt Col in Dec 2004 under the 5th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Re-fix the applicants' pay on transition into 6th CPC with the most beneficial option, while ensuring that the applicants do not draw less pay than their juniors.

(c) Re-fix the applicants' pay on transition to 7th CPC and subsequent promotion and retirement accordingly.

(d) All pending similar cases pertaining to pay fixation on promotion in 5th CPC with the most beneficial option be similarly reviewed and pay re-fixed.

(e) Pay the arrears within three months of this Order and submit a compliance report."

4. Significantly, vide judgment dated **14.08.2024** in **Union of India & Ors** Vs **Col. Rajesh Suredia (Retd)** in **WP(C) 5477/2024**, the Hon'ble High Court of Delhi has upheld the said order of the Armed Forces Tribunal (PB), New Delhi in ***Col. Rajesh Suredia (Retd)*** Vs ***Union of India & Ors*** in OA 2857/2021 and has observed vide paras 3-5 thereof to the effect:

> *"3. After detailed arguments, learned counsel for the petitioners submits that taking into account that the directions issued by the learned Tribunal for reviewing the pay fixation qua all similarly placed persons as the respondents would involve examining of voluminous record, the exercise to comply with paragraph 15(d) of the order is likely to take at least further six weeks' time.*
> *4. In the light of this explanation given by the petitioners, we grant further six weeks' time to the petitioners to comply with the directions issued in the impugned order.*
> *5. The writ petition is accordingly disposed of in the aforesaid terms. "*

5. In the light of the above consideration, the OA 2056/2025 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant in a most beneficial manner after due verification and ensuring

that the applicant is not drawing less pay than that his coursemate/junior.

(b) Thereafter, re-fix the applicant's pay on transition to 7th CPC and subsequent promotion(s) in a most beneficial manner.

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

7. No order as to costs.

[JUSTICE ANU MALHOTRA]
MEMBER(J)

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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