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

42.

OA No.3051/2024 with MA 3366/2024

778557-L Sgt Jitendra Singh(Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Tatsat Shukla, Advocate
For Respondents : Mr Rajan Khosla, Advocate

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

O R D E R
14.07.2025

MA 3366/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 216 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 3366/2024

is allowed and the delay of 216 days in filing the OA 3051/2024 is thus condoned. The MA is disposed of accordingly.

OA 3051/2024

The applicant **778557-L Sgt Jitendra Singh(Retd)** vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

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

(b) *To direct the respondents to make payment of arrears of salary accrue to him on re-fixation of his basic pay, in accordance with most beneficial option, on the principles affirmed by Hon'ble Tribunal in OA 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.*

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

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

2. The applicant after having been found fit was enrolled in the Indian Air Force on 16.06.2003 was discharged from service on 30.06.2024. The applicant submits that he was promoted to the rank of LAC on 01.02.2006 i.e. prior to the issuance of SAI 1/S/2008 dated 11.10.2008. The grievances of the applicant are that he could not exercise the option for fixation of pay in most beneficial manner in the 6th CPC in time resulting in receiving less pay of Rs.1400/- per month than that his similarly placed batchmate/Junior Airman i.e. 779772-R Sgt Rohit Pandita, who had exercised option-II. However, he exercised the option for fixation of his basic pay as per the SAFI provisions and the policy in vogue, however, his option was not acted upon by the respondents at the time of implementation of the 6th CPC

w.e.f. 01.01.2006 and the 7th CPC w.e.f. 01.01.2016 just on the ground of late submission of option form due to which the default option was selected by the respondents while fixing his basic pay. The applicant further submits that his basic pay was fixed much lesser that other Airmen of the same group/trade and entrymade of the applicant and his pay was fixed much lesser only because the applicant has not exercised the option in the 6th CPC within the stipulated time.

3. The applicant has relied upon the order of the Armed Forces Tribunal(PB) dated 03.09.2021 passed in the case of ***Sub M .L. Shrivastava & Ors.*** Vs ***Union of India & Ors***. in OA 1182/2018 and a catena of other orders of the Armed Forces Tribunal.

4. The Hon'ble Supreme Court passed judgment dated 17.12.1996 in the case of ***Union of India & Ors*** Vs ***P Jagdish and Ors*****(SLP(C) No.020470/1995** wherein also similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior.

5. In P. Jagdish case(supra), the Hon'ble Supreme Court has observed that the principle of stepping up prevents violation of the principle of "equal pay for equal work". Applying the same principle of law here, a service personnel in the same rank cannot be allowed to draw a salary higher than his batchmate because that would be against the ethos of Article 39(d) of the Constitution which envisages the principle of "equal pay for equal work". Hence granting of stepping up is the only way out to remove the said anomaly, which results in a service personnel drawing a higher salary in the same rank than his batchmate. The only way to remove this anomaly is the stepping up of the salary of aggrieved personnel at par with other service personnel in the same rank. The rules and provisions which allow the said anomaly to exist and prohibit the stepping up are violative of the principle of natural justice and equity; and contrary to Article 39(d) of the Constitution which envisages "equal pay for equal work" and

contrary to the principle of law laid down by the Apex Court in its pronouncements.

6. 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, 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 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.

7. 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*** [O.A.

No.2000/2021] 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 solider 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 soldier's 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 7th 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."*

8. In respect of officers, the cases pertaining to pay-anomaly have also been examined in detail by the Tribunal in the case of ***Lt Col Karan Dusad*** Vs. ***Union of India and others*** [O.A. No.868 of 2020 and connected matters] decided on 05.08.2022. In that case, we have directed CGDA/CDA(O) 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) xxx*
>
> *(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. xxx*
>
> *104. We, however, direct the CGDA/CDA(O) 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 7th 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."*

9. In the light of the above considerations, the OA 3051/2024 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 6th CPC w.e.f. 01.02.2006 after due verification in a manner that is most beneficial to the applicant while ensuring that the applicant is not drawing less pay 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.

8. No order as to costs.

[JUSTICE ANU MALHOTRA]
MEMBER(J)

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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