

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

59.

OA 3184/2023 with MA 4366/2023 and MA No.1942/2025

JC-672168-A Ex Sub Krishna Gopal Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Vijendera Singh, Advocate

CORAM

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

ORDER
05.05.2025

MA 4366/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 91 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 4366/2023 is allowed and the delay of 91 days in filing the OA 3184/2023 is thus condoned. The MA is disposed of accordingly.

MA 1942/2025

This is an application filed under Rule 12(5) of the Armed Forces Tribunal (Procedure) Rules, 2008 for condonation of delay of 109 days in filing the counter affidavit. In view of the reasons mentioned, the delay of 109 days in filing the counter affidavit is condoned. The MA stands disposed of.

OA 3184/2023

The applicant JC-672168-A Ex Sub Krishna Gopal vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Direct the respondents to refix(step up) the applicant's basic pay in most beneficial manner as per VIth CPC..*
- (b) *Any other relief which the Hon'ble Tribunal deem fit and proper in the fact and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents."*

2. The applicant JC-672168-A Ex Sub Krishna Gopal, was enrolled in the Indian Army on 23.02.1993 and was promoted to the rank of Sub on 25.09.2018. The grievance

of the applicant is that on promotion to the rank of Sub his basic pay was fixed at Rs.49,000/- whereas the pay of his junior Sub. Rabindra Singh who was promoted to the rank of Sub on 01.01.2020 was fixed at Rs.52,000/- and thus his basic is less than his junior. The applicant further submits that his Unit had taken up the matter with ASC Records on 07.06.2022 and the concerned PAO(OR) vide letter No.4210/STF/SW/LC/ER dated 31.08.2002 but no response has been received from their end. The applicant retired from service on 28.02.2023 and was granted the service pension vide PPO No.240202300442 dated 01.04.2023. 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 05.10.2017 in OA 1092/2017 titled *Sub(TIFC) Dhyan Singh 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. The Hon'ble Supreme Court in *Union of India & Ors Vs P Jagdish and Ors*(SLP(C) No.020470/1995 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.

4. 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.

5. 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 soldier 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 soldier 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."

6. 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."*

7. In the light of the above considerations, the OA 3184/2023 is allowed and direct the respondents to:

(a) Review the pay fixed of the applicant under the 6th CPC w.e.f. 01.01.2006 after due verification in a manner that is most beneficial to the applicant

while ensuring that the applicant is not drawing less pay than 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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