

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

90.

OA 5168/2024 with MA 3589/2025

JC-673755X Nb Sub(MT) Manoj

Kumar Singh(Retd)

..... Applicant

Versus

Union of India & Ors.

.... Respondents

For Applicant : Mr. S.S. Pandey, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE LT GEN C P MOHANTY, MEMBER (A)

ORDER

26.08.2025

MA 3589/2025

This is an application filed under Rule 12(5) of the Armed Forces Tribunal (Procedure) Rules, 2008 for condonation of delay of 28 days in filing the additional counter affidavit. In view of the reasons mentioned, the delay of 28 days in filing the additional counter affidavit is condoned and the same is taken on record. The MA stands disposed of.

The applicant JC-673755X Nb Sub(MT) Manoj Kumar Singh(Retd) vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Direct the respondents to grant financial up-gradation of MACP Naib Sub from the date of next increment as Havildar as due on 01.07.2018 in consonance with financial upgradation of Nb Sub on 01.05.2018 instead of fixation of pay from the date of such upgradation on 01.05.2018 by quashing the order of such fixation and revise his pay accordingly by granting two increment(Promotion Increment +Annual Increment) on 01.07.2018 and further annual increment on 01.01.2019 to the Applicant after grant of MACP Nb Sub as per Addl Dte Gen Personnel Services letter dated 23.03.2021 as granted to his batch mates and juniors.*
- (b) *Direct the respondents to pay the applicant arrears of the difference of pay in the MACP Nb Sub and Naib Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA etc. earned till date alongwith interest @12% from the date it was payable till the date payment is made.*
- (c) *Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."*

2. The applicant was enrolled in the Indian Army on 01.05.1994 after having been found fit in all respects and was promoted from time to time up till the rank of Nb Sub. The applicant was financially upgraded to ACP Nk wef 01.05.2004 and was promoted to the rank of Nk wef 01.01.2008. The applicant was further upgraded to MACP Hav wef 01.05.2010 and then was promoted to the rank of Hav on 01.08.2015. The applicant submits that when he was granted MACP Nb Sub on 01.05.2018, he was not aware that he would have got more beneficial fixation by one additional increment, if he would have opted for fixation of pay upon grant of such MACP Nb Sub from the date of next increment on 01.07.2018 in the rank of Havildar and thereafter fixation of pay in the rank of MACP Nb Sub and thus default his pay was fixed from due date upon grant of financial upgradation as MACP Nb Sub. The applicant further submits that thereafter he was promoted to the rank of Nb Sub on 01.07.2019, however, due to wrong fixation of pay earlier when he was granted MACP Nb Sub, his pay was fixed as due instead of from the date of next increment as Havildar and thus his pay was fixed much lower than his juniors/batch mates even in the rank of Nb Sub. The applicant further

submits to the effect that the Addl Director General Personnel and Services vide Advisory No.11/2021 dated 23.03.2021 issued instructions for Exercise of DNI Option on promotion for the person(s) promoted or financially upgraded whose date of increment as per the previous rank/post is 01 July, if opted for DNI(Date of Next Increment), then, two increments(annual +promotion) will be given in July same year and one increment(annual increment) will be given on 01 January next year and in support thereof, the applicant has submitted comparative statement of Senior and Junior to the concerned authority for correct fixation of pay on 29.04.2022, however the respondents expressed their inability to provide requisite relief and thereafter he retired from service on 30.04.2022. The applicant further submits that the actions of the respondents of not granting the yearly increment for the year 2018 wef 01.07.2018 i.e. two increments(one annual increment +one on account of financial upgradation of MACP Nb Sub) and subsequent increments from 1st January every year by ignoring their legal obligation to grant the pay fixation which is more beneficial and fixed his pay in a manner resulting in his junior/batch mates getting more pay than the applicant just

because of non-receipt of option on time and thereafter not accepting the option so exercised to get his increment fixed in the 7th CPC on the ground that such option has been exercised late or opted incorrect option. The Advisory No.11/2021 dated 23.03.2021 was issued by the Addl Dte Gen Personnel Services notifying all Commands that as per the 7th CPC there are two dates for increment on 1st January and 1st July of every year depending on the date of appointment or promotion or financial up-gradation. The implications of the said letter(Annexure A-2) are detailed in the Advisory as under:

"3. The implication of DMA letter above are explained as under:

(a) When Date of Increment due on 01 Jul Every Year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jul	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jul same yr and one incr(annual incr) will be given on 01 Jan next yr#
(b)	02 Jan to 30 Jun	01 Jul	-do-
(c)	01 Jul	01 Jul	-do-
(d)	02 Jul to 31 Dec	01 Jul	If DNI option ex than two incre(annual+promotion) in Jul next yr and one annual incr on 01 Jan next to next yr#
#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm			

(b) When the date of Increment due on 01 Jan Every year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jan <u>same yr</u> and one incr(annual incr) will be given on 01 Jul next yr#
(b)	02 Jan to 30 Jun	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jan <u>next yr</u> and one incr(annual incr) will be given on 01 Jul next yar#
(c)	01 Jul	01 Jan	-do-
(d)	02 Jul to 31 Dec	01 Jan	-do-
#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm			

3. The applicant has submitted that the sole reason for such pay disparity is due to ignorance and wrong publication of OPTFIX on grant of financial upgradation of MACP Nb Sub wef 01.05.2018 whereas the Addl Dte Gen Personnel Services vide Advisory No.11/2021 dated 23.03.2021 notified all Commands that as per the 6th CPC, there are two dates for increment on 01 of January and 1st of July of every year depending on the date of his/her appointment or promotion or financial upgradation, if a person is promoted or financially upgraded from 2nd January to 30th July every year, and if opts for DNI(Date of Next Increment),

then two increment(annual+promotion) will be given in July of the same year and one increment(annual increment) will be given on 1st January next year and it is his specific case that as the applicant was financially upgraded to the rank of MACP Nb Sub on 01.05.2018 and his date of next increment in previous rank i.e. Havildar was 1st July every year, hence the applicant is entitled for two increments(annual+promotion) on 01.07.2018 i.e. same year and annual increment on 01.01.2019 i.e. next year and thus the next increment is to accrue only after completion of one year i.e. on 01.01.2020 which has already been granted, however, the annual increment which was due on 01.07.2018 was not granted. The applicant has further made a reference to the case of his junior, named, Nb Sub Hare Ram Pandey who is drawing basic pay of Rs.47,600/- whereas the applicant is drawing a basic pay of Rs.44,900/- only due to non-receipt of the option in time.

4. *Inter alia*, it has been stated on behalf of the applicant that the matter is no more *res integra* in view of the order dated 29.04.2019 of this Tribunal in OA No. 1701 of 2019 in the case of ***Lt Co. Vivek Singh Vs Union of India & Ors.***

5. The respondents have not refuted the contention of the applicant that he was entitled to the grant of next increment from

01.07.2018 after the grant of financial upgradation on 01.05.2018 but vide their counter affidavit dated 04.04.2025 have submitted vide para 2 that the applicant did not opt for any option, hence it was fixed automatically by the competent authority from the date of promotion of MACP Nb Sub i.e. 1st May 2018 instead of 1st July 2018 which would have most beneficial to him. As observed vide order dated 21.11.2023 in *Nb Sub/M.Tech(B Veh) Brijesh Singh vs Union of India & Ors.* in OA 163/2022 vide Paras 5, 6 and 7 thereof which reads as under:

“5. MoD vide its Office Memorandum dated 22.03.2018 (Annexure A-7) had intimated that anyone promoted may opt to have his/her pay fixed from the date of his/her next increment. The relevant extracts are reproduced below:

3. After due consideration in this matter, the following is decided as follows:

(i) Defence Personnel, who is promoted or upgraded from one rank to another, subject to fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him/her. Such, Defence Personnel may opt to have his/her pay fixed from the Date of his/her Next Increment (either 1st July or 1st January, as the case may be) accruing in the Level of the post from which he/she is promoted, except in cases of appointment on deputation basis to an ex-cadre post or on direct recruitment basis or appointment/promotion on ad-hoc basis, as applicable in the Defence Services.

(ii) In case, consequent upon his/her promotion, the Defence Personnel opts to have his/her pay fixed from the date his/her next increment (either 1st July or 1st January, as the case may be) in the Level of the post from which Defence Personnel is promoted, then, from the date of promotion till his/her DNI, the Defence Personnel shall be placed at the next higher cell in the level to the post to which he/she promoted.

Illustration:

1.	Level in the revised pay structure: Level 4	Pay Band	5200 – 20200		
2.	Basic Pay in the revised pay structure: 29600	Grade Pay	2000	2400	2800

3.	Granted promotion in Level 5.	Levels	3	4	5
		1	21700	25500	29200
		2	22400	26300	30100
4.	Pay in the upgraded Level i.e., Level 5: 30100 (next higher to 29600 in Level 5)	3	23100	27100	31000
		4	23800	27900	31900
		5	24500	28700	32900
5.	Pay from the date of promotion till DNI: 30100	6	25200	29600	33900
		7	26000	30500	34900
		8	26800	31400	35900
		9	27600	32300	37000
		10	28400	33300	38100

(iii) Subsequently, on DNI in the level of the post to which Defence Personnel is promoted, his/her Pay will be re-fixed and two increments (one accrued on account of annual increment and the second accrued on account of promotion) may be granted in the Level from which the Defence Personnel is promoted and he/she shall be placed, at a Cell equal to the figure so arrived, in the Level of the post to which he/she is promoted; and if no such Cell is available in the Level to which he/she is promoted, he/she shall be placed at the next higher Cell in that Level.

Illustration:

1.	Level in the revised pay structure: Level 4	Pay Band	5200 – 20200		
2.	Basic Pay in the revised pay structure: 29600	Grade Pay	2000	2400	2800
3.	Granted promotion in Level 5.	Levels	3	4	5
		1	21700	25500	29200
		2	22400	26300	30100
		3	23100	27100	31000
		4	23800	27900	31900
		5	24500	28700	32900
5.	Re-fixation on DNI: Pay after giving two increment in Level 4: 31400	6	25200	29600	33900
		7	26000	30500	34900
		8	26800	31400	35900
		9	27600	32300	37000
		10	28400	33300	38100
6.	Pay in the upgraded Level i.e. Level 5 : 31900 (either equal to or next higher to 31400 in Level 5)				

6. The above details were further clarified and promulgated to the subordinate formations vide Army HQ letter dated 23.03.2021 – “Ex of DNI Option on Promotion” (Annexure A-6). Relevant options are extracted below:

2. As per 7th CPC, there are two dates for increment on 01 Jan and 01 Jul of every year, depending on the date of his appointment or promotion or financial up gradation.

3. The implication of DMA letter above are explained as under:-

(a) When Date of Increment due on 01 Jul Every Year**.

Ser No	Personnel Promoted or Financially Upgraded	Date of Incr as per previous rank/Post	Remarks
(a)	01 Jan	01 Jul	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jul same yr and one Incr (annual incr) will be given on 01 Jan next yr #
(b)	02 Jan to 30 Jun	01 Jul	-do-
(c)	01 Jul	01 Jul	-do-
(d)	02 Jul to 31 Dec	01 Jul	If DNI option ex than two incr (annual + promotion) in Jul next yr and one annual incr on 01 Jan next to next yr #
# The next increment thereafter is to accrue only after completion of one year. ** Pl check previous record/ previous pay slips to confirm.			

(b) When Date of Increment due on 01 Jan Every Year.**

Ser No	Personnel Promoted or Financially Upgraded	Date of Incr as per previous rank/Post	Remarks
(a)	01 Jan	01 Jan	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jul <u>same yr</u> and one Incr (annual incr) will be given on 01 Jan next yr #
(b)	02 Jan to 30 Jun	01 Jan	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jan <u>next yr</u> and one incr (annual incr) will be given on 01 Jul <u>next year</u> #
(c)	01 Jul	01 Jan	-do-
(d)	02 Jul to 31 Dec	01 Jan	-do-
# The next increment thereafter is to accrue only after completion of one year. ** Pl check previous record/ previous pay slips to confirm.			

7. It is evident from the details in the letter dated 24.09.2018 (Annexure A-1) that the applicant's date of last increment in the 6th CPC was on 01.07.2015. Thus, as per Para 3 (a and b) of Army HQ letter dated 23.03.2021 (Annexure A-6), since the applicant was promoted on 01.05.2016 and that is between 02nd Jan and 30th Jun and as opted for fixing his pay from the next increments, he is entitled for two increments; one for his promotion and one his annual increment, Jul 2016 and his next annual increment would be due on 01.01.2018.”,-

as the applicant was financially upgraded on 01.05.2018 and opted for fixation of his pay from the next of increment, then he is entitled for two increments i.e. the promotion increment and the

annual increment on grant of financial upgradation on 01.07.2018 with his next annual increment being due on 01.01.2019.

6. The applicant further submits that the actions of the respondents of denial of the revised pay scale to the applicant creating a situation wherein the applicant is being granted basic pay lesser than his batch mates as well as his juniors on a specious plea of putting the onus on the applicant for not submitting the option on promotion in time, despite the obligation on their part to fix the pay of the applicant in a manner which is more beneficial to him are highly illegal, arbitrary and discriminatory as well as against the mandate of equality and equal pay for equal work and also contrary to the order dated 29.04.2019 of this Tribunal in OA 1701 of 2016 titled *Lt Col. Vivek Singh vs Union of India & Ors.*

7. 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 12 of the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect pay-

fixation and 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.

8. In the light of the above considerations, the OA 5168/2024 is thus disposed of with directions to respondents to the effect:

- a) To fix the pay of the applicant from the date of his next increment as Havildar from 01.07.2018 consequent to the grant of financial upgradation of MACP Nb Sub on 01.07.2018
- b) On re-fixing his pay in the 7th CPC on 01.07.2018, the applicant be granted two increments' one for promotion and the other for annual increment.
- c) His subsequent pay be recalculated accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(LT GEN C P MOHANTY)
MEMBER (A)

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