

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

13.

OA 1329/2025

MR-06829X Col Abhinav Tewari Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Mr. Reetesh Aggarwal, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE Ms RASIKA CHAUBE, MEMBER (A)

ORDER
02.05.2025

The applicant MR-06829X Col Abhinav Tewari vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *Call for the records based on which the Respondent No.4 and 5 are not extending the benefit of fixation of pay upon promotion as Lt.Col. on 03.07.2007 @ Rs.38,530/- to the applicant who was promoted to such Rank prior to 11.10.2008 and thus entitled to such fixation instead fixing his pay as Lt.Col.@ Rs,37,400/- thereby denying him the*

more beneficial manner of fixation pay even when the Respondent No.1 has already issued instruction to extend the benefit in term of the order dated 17.07.2020 to do the needful and thereafter call for the records based on which the order dated 25.01.2021 has been passed by Respondent No.1 vide which the general proposal to upgrade the pay of all post 01.01.2006 promotee Lt.Cols irrespective of the date of promotion Rs.38,530/- as submitted by8 the TRIPAS has been rejected and thereafter quash all such orders including the order dated 25.01.2021.

- (b) Issue further direction to revise the pay of the applicant for all subsequent stages including upon his promotion as Col. and even in the 7th CPC on the basic pay of Lt.Col. upon his promotion as Lt.Col. w.e.f. 03.07.2007 @ Rs.38530/- without making him lose the benefit of pay fixation in the 6th CPC in the Rank of Maj from 01.01.2006 till 28.04.2007 and accordingly grant him all such consequential benefits including arrears on difference of pay upon such fixation of pay with the penal interest @18%.
- (c) Direct the respondent to fix the pay on promotion to the rank of Col. from the Date of Next Increment consequent upon grant of promotion of Col. w.e.f. 03.07.2020.
- (d) 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 commissioned in the Indian Army on 22.07.1995 after having been found fit in all respects and was promoted to the rank of Lt.Col. on 03.07.2007 and he

was granted the pay in the pre-revised scale of Lt.Col. Rs.13500-400-17100/- alongwith Rank pay of Rs.1600/- which was part of the basic pay and his pay upon such promotion was fixed @ Rs.15,100/- in the 5th CPC when the recommendations of the 6th CPC were yet to be implemented. The Government of India accepted and finalized the recommendations of the 6th CPC which were made effective w.e.f. 01.01.2006. The implementation instructions for the 6th CPC were issued vide SAI/02/S/2008 in the case of officers. The applicant submits that his request for pay fixation based on option to ensure that more beneficial pay scale is given to him on the ground that the same cannot be done after 30.06.2011 and the affected persons filed an OA No.113/2014 and vide order dated 10.12.2014, the Armed Forces Tribunal(PB) New Delhi held that the respondents ought to have granted the benefit of pay fixation in terms of Para 14 of SAI 1 which was more beneficial and it was also held that in respect of all those persons who exercised their option that in any case the option exercised till 11.12.2013, the same cannot be rejected and due to non-acceptance of option and wrong fixation of

pay in the 6th CPC, the pay of the applicant in the 7th CPC was also fixed lesser than his rightful entitlement wef 01.01.2006. The applicant further submits that despite the fact that fixation of pay in the 6th CPC from the date of promotion as Lt.Col. was more beneficial for the applicant, the respondents have not taken any corrective step to rectify the same. However, because of the wrong fixation of pay, his pay was fixed much lower than his entitlement and thus he was denied the benefit of fixation of pay in a more beneficial manner in the 5th CPC, 6th CPC and during the regime of the 7th CPC and such pay disparity continued due to initial wrong fixation of pay during the transition period of the 5th CPC and the 6th CPC.

3. The applicant has relied on a catena of orders of the Armed Forces Tribunal whereby the request of the individual for fixation of pay in a more beneficial manner was accepted.

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, 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 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.

4. 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."

5. 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."

6. In the light of the above considerations, the OA 1329/2025 is allowed and direct the respondents to:

(a) Review the pay fixed of the applicant on his promotion to the rank of Lt. Col. on 03.07.2007 in the 5th CPC and further promotion after due verification re-fix his pay in a manner that is most beneficial to the applicant in the 6th CPC.

(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)]

[Ms RASIKA CHAUBE]
MEMBER (A)]

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