

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

16.

OA 1500/2025

778127-S JWO Pankaj Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr FM Khan, Advocate

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

ORDER
19.05.2025

The applicant 778127-S JWO Pankaj Kumar 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 Mahendra 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 on OA No.1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.*
- (c) To direct the respondents to pay interest @12% p.a. on the arrears accrue to the applicant on arrears of payments on Re-fixation of basic pay.*
- (d) To pass any other order or direction in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."*

2. The applicant 778127-S JWO Pankaj Kumar, after having been found fit was enrolled in the Indian Air Force on 16.12.2002 and was promoted to the rank of LAC on 01.02.2006 in the transition period of the 6th CPC. The grievances of the applicant are that the basic pay fixed by the respondents during the transition period of the 6th CPC is not beneficial to him as his batchmate/junior Airmen who exercised Option-II(date of next increment) are drawing more basic pay than him and the same is causing recurring financial loss every month and the respondents' action

wherein the applicant's basic pay has been fixed lesser than his entitlement as per more beneficial option is violation of the Para 14(b(iv) of SAI 1/S/2008 which stipulates that if no option is exercised by the individual, the PAO(OR) will regulate fixation on promotion ensuring that the more beneficial option is allowed to the PBOR and his case is squarely covered by the order of the Armed Forces Tribunal(PB) in OA No.1182/2018 titled *Sub Mahendra Lal Shrivastava Vs Union of India & Ors.* wherein the AFT(PB) held that the respondents cannot deny the most beneficial pay scale to the applicant just on the ground that the applicant had not exercised the beneficial option for pay fixation or had exercised it late.

3. The Hon'ble Supreme Court in the case of *Union of India & Ors Vs P Jagdish and Ors*(SLP(C) No.020470/1995 wherein similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior and 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. Furthermore, it is essential to observe that the order dated 03.09.2021 in OA 1182/2018 in case of *Sub Mahendra Lal Shrivastava(Retd) v Union of India & Ors.* and two other connected matters in OA 1314/2018 in *Sub Sattaru Lakshmana Rao v Union of India & Ors.* and OA 892/2019 in *Sub(TIFC) Jaya Prakash v Union of India & Ors.* has been upheld by the Hon'ble High Court of Delhi vide judgment dated 05.05.2025 in WP(C) 5880/2025 in *UOI & Ors. vs. Sub Mahendra Lal Shrivastava(Retd)* with observations in Para-24 and 25 thereof to the effect:-

"24. There are various reasons why, in our view, this writ petition cannot succeed:

(i) Firstly, the writ petition has been preferred more than 3½ years after the passing of the impugned judgment, without even a whisper of justification for the delay.

(ii) The writ petition is, therefore, liable to be rejected even on delay

and laches. Nonetheless, as the issue is recurring in nature, we have examined it on merits.

(iii) It appears that the earlier decision of the AFT in Sub Chittar Singh has never been challenged by the petitioner. It is well settled that the UOI cannot adopt a pick and choose policy, and leave one decision unchallenged, while challenging a later decision on the same issue. Moreover, we find that the AFT, in the impugned order, has placed reliance on the decision in Sub Chittar Singh which, as we note, remains unchallenged.

(iv) Even on merits, there is no substance in the present petition. The reasoning of the AFT is unexceptionable. Though para 8 of the SAI required persons to exercise the option regarding the manner in which they were to be extended the benefit of the revised pay scales within three months of the SAI, which was issued on 11 October 2008, it was extended twice. It was first extended by letter dated 21 December 2010 till 31 March 2011. Subsequently, by letter dated 11 December 2013, it was directed that applications for change of option received till 30 June 2011 would be processed. Though it is correct that the respondents did not exercise their option within that period, it is also clear that each of the respondents had exercised their option prior to 30 December 2013.

(v) Moreover, we are also in agreement with the AFT's reliance on clause 14(b)(iv) of the SAI, which

mandated that, if no option was exercised by the individual, the PAO would regulate the fixation of pay of the individual on promotion to ensure that he would be extended the more beneficial of the two options, i.e., of either of re-fixation of pay with effect from 1 January 2006 or w.e.f. the date of his next promotion.

(vi) We are in agreement with the AFT that, given the fact that the instruction was pertaining to officers in the army, and was inherently beneficial in nature, it has to be accorded an expansive interpretation. The AFT has correctly noted that the very purpose of granting extension of time for exercise of option was to cater to situations in which the officers concerned who in many cases, such as the cases before us, were not of very high ranks, would not have been aware of the date from which they were required to exercise their option and therefore may have either exercised their option belatedly or failed to exercise their option. It was, obviously, to ensure that an equitable dispensation of the recommendations of the 6th CPC that clause 14(b)(iv) place the responsibility on the PAO(OR) to ensure that the officers were given the more beneficial of the options available to them.

(vii) There is no dispute about the fact that, by re-fixing the pay of the respondents w.e.f. 1 January 2006 instead of the date from which they

were promoted to the next grade between 1 January 2006 and 11 October 2008, the respondents suffered financial detriment. They, therefore, were not extended the most beneficial of the two options of pay of fixation available to them, as was required by clause 14(b)(iv) of the SAI. 25.

25. We, therefore, are in complete agreement with the impugned judgment of the AFT and see no cause to interfere therein."

6. 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."

7. 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."*

8. In the light of the above consideration, the OA 1500/2025 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 6th CPC 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)

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[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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