

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

2.

OA 1520/2025

794596-H Sgt Vinit Kumar(Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr J S Yadav, Advocate

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE LT.GEN. C.P.MOHANTY, MEMBER (A)

ORDER
20.05.2025

The applicant 794596-H Sgt Vinit Kumar(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 Review the pay of the applicant and re-fix his pay in the 6th CPC in a manner that is most beneficial to the applicant and thereafter to re-fix his pay on all subsequent promotions and on transition to 7th CPC in a manner that is mot beneficial to the applicant.

- (b) To direct the respondents to step up the basic pay of applicant after rectification of Pay Fixation anomaly on implementation of 6th and subsequent CPCs and make payment of arrears of pay due to the applicant, in accordance with most beneficial option on the principles affirmed by Hon'ble Tribunal in OA No.1092/2017, titled as Sub Dhyan Singh Vs Union of India & Ors and OA No./1182/2018, Sub Mahendra Lal Shrivastava Vs UOI.*
- (c) To direct the respondent to re-fix all retiral benefits, pension benefits and post-retiral benefits accordingly and pay the arrears accrued to the applicant on account of Re-fixation of basic pay at enhanced scale.*
- (d) To direct the respondents to pay all arrears alongwith interest @ 12% p.a. and issue fresh PPO accordingly .*
- (e) To pass other appropriate order or grant relief, which this Hon'ble Tribunal deems fit and proper under facts and circumstances of the case, anytime during the proceedings of this case."*

2. The applicant 794596-H Sgt Vinit Kumar(Retd) after having been found fit was enrolled in the Indian Air Force on 28.09.2004 was discharged from service on 30.09.2024. 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 had 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 than other Airmen of the same group/trade and entry made 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 applicant further relied upon the judgment dated 17.12.1996 of the Hon'ble Supreme Court passed 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 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."

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 1520/2025 is allowed and the respondents are directed 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)

[LT.GEN. C.P. MOHANTY]
MEMBER (A)

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