

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

1.

OA 1810/2025

IC-54086X Col. Jai Prakash Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate
For Respondents : Mr. Rajan Khosla, Advocate

CORAM

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

ORDER
24.07.2025

The applicant IC-54086X Col. Jai Prakash Singh vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (i) *Quash and set aside impugned order dated 21.03.2025. And*
- (ii) *Direct respondents to re-fix the pay of the applicant in more beneficial manner from the date of promotion to the rank of Col. wef 09.12.2021 and Rs.2,03,500/- wef 01.07.2024 and re-fix service pension by taking into consideration the revised basic pay. And/*

- (iii) *Direct respondents to make payment of due arrears after re-fixing of pay/pension and retiral benefits with effect from the date of re-fixation with interest @12% per annum.*
- (iv) *Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case mentioned above."*
2. Vide order dated 03.07.2025, it was directed to the effect:

"4. It is considered essential that the applicant places on record a copy of the Part-II Order No.0011/2021 dated 21.12.2021 as stated to be published by 30 ASSAM Bn NCC, as averred in the list of events submitted by the applicant.

5. Re-list the matter on 24.07.2025.

6. The respondents shall also ascertain the issuance of the said Part-II Order for the next date of hearing."

On 24.07.2025, the respondents submitted a copy of the Part-II Order dated 21.12.2021 qua the applicant in terms of directions dated 03.07.2025, which reads as under:

Sr No.	Casualty Code	Nature of Casualty	From date dd/mm/yyyy	To date dd/mm/yyyy	Data 1	Data 2	Data 3	Data 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	SUBPROM	Granted Substantive promotion to the Rank of Col(TS) wef 09/12/2021 vide Promotion sanction letter NO.376852/Col(TS)/2020/II/MS-8A dated 25/06/2021	09/12/2021			15	37852/Col(TS)/2020/II/MS-8A	25/06/2021

and the same is taken on record.

3. The applicant was commissioned in the Indian Army and assumed the rank of Colonel on 09.12.2021 on completion of 26 years of service. The applicant submits that he had exercised option for fixation of his basic pay and accordingly Part-II Order No.0011/2021 dated 21.12.2021 was published by 30 ASSAM Bn NCC and the same was forwarded to the CDA(O) and all concerned offices of the respondents. The applicant submits though Part-II Order for fixation of basic pay in a more beneficial manner was published by the respondents but still the anomaly of his pay is not cured and his basic pay has been fixed less as compared to his entitlement. The applicant further submits that he has raised his grievances on 12.03.2025 for re-fixation of his basic pay correctly as he had already opted for fixation of pay in a more beneficial manner as per the Part-II order published by the respondents. However, the respondents have rejected his prayer for fixation of his basic pay in a more beneficial manner stating that neither Part-II Order nor the option has been received in their office and they are not in a position to act upon on your form of option exercised at this belated stage. The applicant further submits that the recommendations of the 6th CPC were implemented

wef 01.01.2006 and the competent authority issued SAI 02/S/08 dated 11.10.2008 and the matter of incorrect pay-fixation and providing the most beneficial option in the case of JCOs/OR has been examined by the Armed Forces Tribunal in OA No.1182/2018 titled **Sub M.L.Shrivastava & Ors Vs Union of India & Ors** on 03.09.2021 and a catena of other orders of the Armed Forces Tribunal. The applicant submits that because of the wrong fixation of pay, his pay was fixed much lower than his juniors only on the ground that he had not exercised the option for fixation of his basic pay on promotion during the transition period of 01.01.2006 to 11.10.2008 within the stipulated time and the benefits of fixation of the pay in the 6th CPC from the date of promotion to the rank of Lt. Col. which was more beneficial instead of w.e.f. 01.01.2006 from the date of implementation of the recommendations of the 6th CPC were denied to him and such pay disparity continued due to initial wrong fixation of pay during the transition period of the 7th CPC in the rank Col.

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 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.

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. 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. As laid down by the Hon'ble Supreme Court in *Lt Col Suprita Chandel vs Union of India and Ors* (Civil Appeal No. 1943 of 2022) that it is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court.

9. In the light of the above considerations, the OA 1810/2025 is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant on his promotion to the rank of Col. wef 09.12.2021 and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(b) Thereafter, re-fix the applicant's pay/pension and retiral benefits with effect from the date of re-fixation of pay.

(c) To pay the arrears within three months of this order.

10. No order as to costs.

**[JUSTICE ANU MALHOTRA)
MEMBER(J)**

**(REAR ADMIRAL DHIREN VIG)
MEMBER (A)**

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