

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

89.

OA No.1916/2022

655995-K EX MWO B L Yadav Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Praveen Kumar Advocates
For Respondents : Mr Niranjan Das, Advocate
Sgt Pradeep Sharma, DAV In-charge, Legal
Cell

CORAM

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

ORDER

23.09.2025

The applicant 655995-K EX MWO B L Yadav
vide the present OA filed under Section 14 of the Armed
Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Call for the records of the junior*
- (b) *Issue/Pass an order or direction of appropriate nature to the respondents to review and fixed of the applicant's pay under 7th CPC in a manner that is most beneficial and thereafter re-fix pay in subsequent rank as per the existing entitlement so not drawing less pay/pension than his junior in terms of Law upheld in Sub Mahendra Lal Shrivastava Vs Union of India & Ors. and AVM Babu(Supra): and/or*

(c) *Issue/pass an order or direction of appropriate nature to the respondents to re-fix the basic pay of the applicant with effect from 01 Aug 2016 Rs.@ 60,400/- PM and pension to be calculated accordingly wef 01 July, 2019 PM and arrears as well as difference in retiral benefits are to be paid accordingly with 10% interest; and/or “*

2. The applicant after having been found fit was enrolled in the Indian Air Force on 29.10.1980 was promoted from time to time and finally discharged from service on 30.06.2019 on superannuation with more than 38 years of service. The applicant submits that his pay anomalies were not redressed despite repeated visits to the Accounts Section of the respondents and despite raising his concerns that his juniors are drawing more pay since 2016 as the basic pay of his junior was fixed at Rs.60,400/- whereas his basic pay was fixed at Rs.58,600/-. The applicant submits that he was promoted to the rank of Warrant Officer on 01.02.2012 whereas his junior was promoted to the rank of Warrant Officer on 01.08.2012. The applicant further submits that he submitted his online representation dated 05.10.2017 and

the respondents vide their reply dated 27.12.2017 rejected his request by stating that “ applicant was in group III while fixation of pay during V CPC whereas mention JR was in Group II while fixation of pay during V CPC. Hence he is drawing more pay.”

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. In the case of *Union of India & Ors Vs P Jagdish and Ors(SLP(C) No.020470/1995)*, 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 batch-mate. 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 1916/2022 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 7th 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 course-mate/junior.

(b) 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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