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

1.

OA 1983/2025

21086-S Gp Capt G Mahesh Kumar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr Anil Kumar Gautam, Sr CGSC

CORAM

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

ORDER  
17.07.2025

In terms of proceedings dated 10.07.2025, the records  
of OA 976/2025 have been put up.

2. A perusal thereof indicates that vide order dated  
07.05.2025 in OA 976/2025 it was directed to the effect:-

*"The matter was heard and on  
15.04.2025 it was orally indicated that  
the OA could be allowed. However,  
upon examining the records, certain  
difficulties arose, and therefore, the  
matter was listed for hearing today.*

*2. Today, the learned counsel for the applicant seeks permission to withdraw the OA to make amendments in the pleadings with liberty to file a fresh OA thereafter. Permission is granted.*

*3. Accordingly, the OA is disposed of as withdrawn with liberty as prayed for.,*

thereby liberty having been granted to the applicant to institute a fresh OA with permission also having been granted to make amendments in the pleadings in the OA that had been filed.

3. In view thereof, OA 1983/2025 is taken up for consideration. Notice of the OA is issued to the respondents and accepted on their behalf. Though a submission has been made on behalf of the respondents whilst accepting notice of the OA that the averments made in para 4.4 of the OA read to the effect:-

*"4.4 As per Pay Slip of Oct 2022, the Applicant was drawing Basic pay of Rs. 2,09,600/- whereas his coursemate named Gp Capt V Deivraj (21083-G) AE(M) was drawing basic pay of Rs. 2,15,900/-, making the difference of Rs. 6,300/- per month and causing huge financial loss to the Applicant. The Applicant is facing huge financial loss because of this error on the part of the Respondent.*

*Copy of Pay slip of the Applicant and his coursemate for the month of October 2022 is annexed as Annexure A-2(Colly)."* \_

and that thereby the applicant has sought comparison with a coursemate named Gp Capt V Deivraj (21083-G), the submission made on behalf of the applicant is to the effect that all that the applicant seeks redressal through the present OA is the grant of the benefit of the settled law in terms of the orders of this Tribunal in *Sub Chittar Singh vs Union of India and others* in OA 113 of 2014, *Wg Cdr Bharat Malik vs Union of India* in OA 1923 of 2017.

4. The principle laid down in OA 1182 of 2018 in the case of *Sub M.L Shrivastava and Ors. Vs UoI* decided on 03.09.2021 and *Col Karan Dusad Vs. Union of India and others* in OA 868/2020 and connected matters decided on 05.08.2022, as also upheld in *M.L Shrivastava and Ors.* is in relation to the aspect that none of the personnel of the Armed forces could be believed knowingly to have not exercised their options or had opted to choose the less beneficial pay fixation option deliberately.

5. In these circumstances, the prayers made by the applicant 21086-S Gp Capt G Mahesh Kumar vide para 8 of the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 are as under:

- (a) *"To direct the respondents to resolve the anomaly in the pay of the applicant as per the most beneficial option.*
- (b) *To direct the respondents to fix the basic pay of the applicant and fix pay in a manner that is most beneficial to the applicant and other allowances wef 01.01.2006(VIth CPC), 16.12.2004(Wg Cdr), 01.01.2016(VIIth CPC) and 03.01.2017(Gp Capt).*
- (c) *To direct the respondent to pay @12% interest on the arrears accrued to the applicant.*
- (d) *To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case."*

are taken up for consideration.

6. The applicant 21086-S Gp Capt G Mahesh Kumar after having been found fit was enrolled in the Indian Air Force on 04.03.1991 and was promoted from time to time to the rank of Sq. Ldr on 09.03.2000, to the rank of Wg Cdr on 16.12.2004

and to the rank of Gp Capt. on 03.01.2017. The applicant submits that his pay was wrongly fixed in the 6<sup>th</sup> CPC as well as in the 7<sup>th</sup> CPC i.e. wef 01.01.2006 and 01.01.2016 respectively. The applicant further submits that he was not guided properly to choose the best option nor was he aware what was the most beneficial option at the time of implementation of the recommendations of the 6<sup>th</sup> CPC and on promotion he has continuously suffered huge financial loss since 2006 and as per the pay slip for the month of October, 2022, he was drawing the basic pay of Rs.2,09,600/- whereas his course-mate, named, Gp Capt V Deivraj(21083-G)AE(M) was drawing basic pay of Rs.2,15,900/- thus making the difference of Rs.6,300/- per month. The applicant further submits that despite repeated representations, the respondents vide Letter No. AFND/408/1/P2 dated 22.08.2016 replied and subsequently on 21.10.2016 conveyed that the applicant had not exercised the Date of Next Increment(DNI) option for fixation of his pay and denial of entitlement to revise his pay from the Date of Next Increment(DNI) which has caused

financial loss. The applicant submits that the respondents have not adhered to settled laws on the subject matter of pay fixation in the case of *Sub Chittar Singh Vs Union of India & Ors in OA 113/2014* wherein the import and implications of the late exercise of option has been set aside.

7. Apparently, the grievances of the applicant are **that he could not exercise the option for fixation of his pay in most beneficial manner in the 6<sup>th</sup> CPC in time** resulting in receiving less pay of Rs.6,300/- per month than that of his similarly placed batch-mate who had exercised such an option. However, he exercised the option for fixation of his basic pay as per the SAFI provisions and the policy in vogue but his option was not acted upon by the respondents at the time of implementation of the 6<sup>th</sup> CPC w.e.f. 01.01.2006 and the 7<sup>th</sup> 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.

8. We have examined numerous cases pertaining to the incorrect pay fixation in 6<sup>th</sup> 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. The matter in issue is no more *res integra* in view of the order dated 24.08.2022 of the Armed Forces Tribunal (PB), New Delhi in the case of *Col. Rajesh Suredia (Retd) Vs Union of India & Ors* in OA 2857/2021 whereby vide paras 10 to 15 thereof it has been observed as under:

*"10. Unlike the 6<sup>th</sup> CPC, implementation instructions which has an explicit provision that no promotion, in the eventuality of the requisite option not being exercised by an officer, the most beneficial option of fixing the, either from date of promotion/next increment will be extended, the 5<sup>th</sup> CPC instructions does not have such a provision. Similarly, the 7<sup>th</sup> CPC too does not have such an explicit provision.*

*11. We have examined numerous cases pertaining to the incorrect pay fixation in-6th CPC in respect of Officers/JCO/OR 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 has been exhaustively examined in Sub M.L. Shrivastava v. Union of India. O.A No. 1182 of 2018 decided on 03.09.2021. Relevant portions are extracted below:*

*38. In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out adopted for each Individual, this has not been implemented with requisite seriousness and commitment by the*

Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement. This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the Issue for the serving soldiers, many of whom may not be knowledgeable about the intricacies of these calculations, in the full knowledge that that no one will ever knowingly opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.

39. In view of the above, the three OAs under consideration are allowed and we direct the Respondents to:—

- (a) Review the pay fixed of the applicants and after due verification re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.
- (b) Thereafter re-fix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.
- (c) Re-fix all pensionary and post retiral benefits accordingly.
- (d) Issue all arrears and fresh PRO where applicable, within three months of this order and submit a compliance report.

40. In view of the fact that there are a large number of pending cases which are similarly placed and fall into Category A or B, this order will be



*applicable In rem to all such affected personnel. Respondents are directed to take suo motu action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.*

*12. Similarly, in the matter of incorrect pay fixation in the 7th CPC, the issue has been exhaustively examined in Sub Ramjeevan Kumar Singh v. Union of India 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.*

*13. As stated by the Counsel for the applicant, recently in our Order dated 08.07.2022 in OA 1579/2017 Gp Capt AVR Reddy (supra), we have examined the same issue and have directed the Respondents to review the pay fixation on promotion in 5th CPC and re-fix the pay with the most beneficial option. Also in our Order dated 05.08.2022 in OA 868 of 2020 Lt Col Karan Dusad & Ors we have directed CGDA 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) xxxxxx.*

*(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. xxxx.*

*104. We, however, direct the CGDA/CDA(0) 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.*

*14. It is evident from the above details that there indeed is a financial advantage to the applicants had their pay on promotion in Dec 2004 been fixed from the date of their next increment in March 2005. This would then also have resulted in appropriate financial advantage on transition to the 6th CPC on 01.01.2006 too. In this case, this advantage has been denied only on the grounds that the applicant had not exercised his option. This Tribunal is of the firm opinion that irrespective of whether an officer rendered his option or not, the organization and in particular the implementing agency and the paying agency are beholden to advice an officer and ensure that the most beneficial option in pay fixation is given to him. Merely because the provisions are there in the instructions, is inadequate methodology to ensure that all officers/men got the most beneficial advantage from the way their pay is fixed. Even if the applicants had not exercised their option, we do not find any record that the Respondents did advice the applicants on the implications of pay fixation from date of promotion/DNI apart from issuing a letter and holding the officer responsible. There is just no reason to believe that anyone will knowingly opt for a less beneficial pay fixation option. Thus the applicants have exercised/not exercised options in the absence of full knowledge of the implication of their action, which in our opinion was the responsibility of the paying authority to ensure. Merely taking cover behind an argument that as per the implementation instructions the paying office was not required/barred from suo moto taking such necessary steps/initiatives does not hold water.*

*15. In the light of the above consideration, we find that the applicant prima facie has a case and the balance of convenience too is in his favour. We*

*therefore, allow the OA and direct the Respondents to*

*(a) Review the pay fixed of the applicant on promotion to the rank of Lt Col in Dec 2004 under the 5th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.*

*(b) Re-fix the applicants' pay on transition into 6th CPC with the most beneficial option, while ensuring that the applicants do not draw less pay than their juniors.*

*(c) Re-fix the applicants' pay on transition to 7th CPC and subsequent promotion and retirement accordingly.*

*(d) All pending similar cases pertaining to pay fixation on promotion in 5th CPC with the most beneficial option be similarly reviewed and pay re-fixed.*

*(e) Pay the arrears within three months of this Order and submit a compliance report."*

9. Significantly, vide judgment dated **14.08.2024** in **Union of India & Ors Vs Col. Rajesh Suredia (Retd)** in **WP(C) 5477/2024**, the Hon'ble High Court of Delhi has upheld the said order of the Armed Forces Tribunal (PB), New Delhi in **Col. Rajesh Suredia (Retd) Vs Union of India & Ors** in OA 2857/2021 and has observed vide paras 3-5 thereof to the effect:

*"3. After detailed arguments, learned counsel for the petitioners submits that taking into account that the directions issued by the learned Tribunal for reviewing the pay fixation qua all similarly placed persons as the respondents would involve examining of voluminous record,*

*the exercise to comply with paragraph 15(d) of the order is likely to take at least further six weeks' time.*

*4. In the light of this explanation given by the petitioners, we grant further six weeks' time to the petitioners to comply with the directions issued in the impugned order.*

*5. The writ petition is accordingly disposed of in the aforesaid terms. "*

10. In view of the judgment of the Hon'ble Supreme Court in Civil Appeal 1943/2022 in *Lt Col Suprita Chandel vs. UOI & Ors.* whereby vide Paras-14 and 15 thereof, it has been observed to the effect:-

*"14. It is a well settled principle of law that where a citizen is 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. [See *Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others*, (1975) 4 SCC 714]*

*15. In *K.I. Shephard and Others vs. Union of India and Others*, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-*

*"19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior*

*to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. ...."*

*(Emphasis Supplied)",*

all persons aggrieved similarly situated may not litigate on the same issue and would be entitled to the grant of the benefits of which have already been extended to others similarly situated .

11. In the light of the above considerations, the OA 1983/2025 is allowed and the respondents are directed to:

- (a) Review the pay fixed of the applicant under the 6<sup>th</sup> 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 7<sup>th</sup> CPC and subsequent promotion(s) in a most beneficial manner.

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

12. No order as to costs.

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

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

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