

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

11.

**OA 2502/2025**

JC-761133Y Sub/MACH Vinayak Dalavi..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. SS Pandey, Advocate  
For Respondents : Mr. Sarvan Kumar , Advocate

**CORAM**

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

**ORDER**  
**27.08.2025**

The applicant JC-761133Y Sub/MACH Vinayak Dalavi vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

(a) *"Call for the records based on which the respondents No.1 has taken a decision not to issue amendment in the policy dated 11.12.2023 in the light of judgment of this*

*Hon'ble Tribunal dated 10.12.2014 in OA 113 of 2014 and judgment dated 05.10.2017 in OA 1092 of 2017 by extending the benefit of pay fixation from the date of promotion instead of 01.01.2006 by applying Para 14 of 1/S/2008 thereby denying the applicant his rightful claim of equal pay for equal work for want of exercise of option by the applicant and thereafter quash the same.*

- (b) Direction the respondents to extend the benefit of option of fixation of pay in the 6<sup>th</sup> CPC from the date of promotion of the applicant in the rank of Nb Sub wef 17.01.2007 being more beneficial and thereafter direct he respondents to revise the pay of the applicant accordingly in the rank of Sub wef 01.11.2010.*
- (c) Issue further directions to the respondent upon such pay fixation in each rank to grant the applicant arrears of the difference of pay in the rank of Nb Sub, and Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA etc. earned till date alongwith interest @12% from the date it was payable till the date of payment is made.*
- (d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."*

2. The applicant JC-761133Y Sub/MACH Vinayak Dalavi, was enrolled in the Indian Army on 05.06.2000 and was promoted to the rank of Hav Major Technician on 08.12.2004 and thereafter again promoted to the rank of Nb Sub on 17.01.2007 whilst the recommendations of the 6<sup>th</sup> CPC were yet to be implemented which were later on accepted and implemented by the Government for which Special Army(SAI) Instruction dated 11.10.2008 to be effective from 01.01.2006 was issued. The applicant submits that SAI had a provision for fixation of pay from the date of promotion to all those persons who were granted promotion after 01.01.2006 based on the option to continue in the pre-revised scale till the date of next promotion and get the pay fixed from the date of promotion instead of wef 01.01.2006 i.e. from the date of implementation of the recommendations of the 6<sup>th</sup> CPC. The applicant submits that by default, he could not exercise the option and he was put by default in the new pay scale wef 01.01.2006 without considering the spirit of

the recommendation of the 6<sup>th</sup> CPC and without making any effort to examine what would be more beneficial to the applicant in relation to fixation of pay and thus due to the wrong policy of fixation, the pay of the applicant was fixed at a level much lower than his juniors in the rank of Nb Sub as well as in Sub who either exercised the option or were holding the rank of Nb Sub as on 01.01.2006. The applicant submits although the respondents had given time for three months for exercise of option which was later on extended from time to time till 30.06.2011 only in terms of order dated 11.12.2013 but he was not aware of the same and despite making request to the respondents to fix his pay in a more beneficial manner from the date of promotion, however the respondents declined to accept his request by stating that the same cannot be done after 30.06.2011. The applicant further submits that despite the directions passed in OA 113 of 2014 by the Armed Forces Tribunal (PB) titled Sub Chhitar Singh & Ors Vs Union of India &

Ors. wherein it was held that the respondents ought to have granted the benefit of pay fixation in terms of Para 14 of SAI which was more beneficial and in respect of all those persons who exercised their option, it was also held that, in case, the option is not exercised till 11.12.2013, the same cannot be rejected. The applicant further submits as per Para 14(b)(iv) of SAI I/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate and fix the pay of the individual on promotion in a more beneficial manner by keeping in view the views expressed by the Hon'ble Armed Forces Tribunal(PB) vide order dated 05.10.2017 in OA 1092/2017 titled *Sub(TIFC) Dhyan Singh Vs Union of India & Ors.* and a catena of other orders of the Armed Forces Tribunal wherein also similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior.

3. The Hon'ble Supreme Court in *Union of India & Ors Vs P Jagdish and Ors*(SLP( C) No.020470/1995 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 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, 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. Similarly, in the matter of incorrect pay fixation in the 7<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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 6<sup>th</sup> 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 7<sup>th</sup> 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."

6. 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 6<sup>th</sup> 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 7<sup>th</sup> 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."*

7. In the light of the above considerations, the OA 2502/2023 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 from the date of promotion while ensuring that the applicant is not drawing less pay than his course-mate/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.

8. No order as to costs.

(JUSTICE ANU MALHOTRA)  
MEMBER(J)

(LT GEN C P MOHANTY)  
MEMBER (A)

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