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

3.

OA 2762/2025

DR-10490M Col Bidyut Kumar Borgohain ..... Applicant
Versus
Union of India & Ors. .... Respondents

For Applicant : Mr. Prashant Negi & Ms Shruti Rawat Advocates
For Respondents : Mr.Sarvan Kumar, Advocate

CORAM

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

ORDER
10.09.2025

The applicant DR-10490M Col Bidyut Kumar Borgohain vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

(a) *"Call for the records wherein the Respondents have fixed the pay of the Applicant in the 6th CPC in the Rank of Maj. wef 01.01.2006 and thereafter despite repeated directions, the respondents have not rectified the fixation of the pay of the*

applicant in the rank of Lt Col which was more beneficial to him at the time of 6th CPC and thereafter quash the same.

(b) *Issue further direction to the respondents to re-fix the pay of the applicant in the 6th CPC from the date of promotion as Lt Col on 01.07.2007 in 6th CPC in a manner that is more beneficial to the applicant with further direction to re-fix the pay of the applicant in the rank of Col. as well as on the 7th CPC based on such fixation of pay in a more beneficial manner.*

(c) *Direct the respondents to pay the difference of pay after all necessary adjustments as arrears on all such fixation with a penal interest @18% in a time bound manner.*

(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 was commissioned in the Indian Army on 01.07.1996 after having been found fit in all respects and was promoted to the rank of Lt Col on 01.07.2007 before the acceptance and the implementation of the recommendations of the 6th CPC. The implementation instructions of the 6th CPC were issued vide SAI/02/S/2008 in the case of officers. The applicant submits that because of the wrong fixation of pay, his pay was fixed much lower than his juniors on account of the fact that the

applicant had not exercised the option of how his pay was to be fixed on promotion during the transition period of 01.01.2006 to 11.10.2008 within the stipulated time and many officers including the applicant were denied the benefits of fixation of the pay in the 6th CPC from the date of promotion to the rank of Lt Col on 01.07.2007 which was more beneficial instead of w.e.f. 01.01.2006 from the date of implementation of the recommendations of the 6th CPC and thus his pay was fixed much lesser on promotion to the rank of Lt Col as compared to his batch-mates/juniors and such pay disparity continued due to initial wrong fixation of pay during the transition period of the 6th CPC in the rank Lt Col. The applicant was further promoted to the rank of Col on 01.07.2019 and submits that despite the direction passed by ADG PS(Pay Commission Section) dated 04.08.2020 and CGDA letter dated 08.11.2021, the respondents have not re-fixed the pay of the applicant in the 6th CPC. The applicant further submits that the

respondents on 21.12.2010 amended the SAI No.2/S/2008 and Para 6(d) which earlier read as :

'the option once exercised shall be final' was substituted by the following:

'All officers.....can revise their option upto to 31.03.2011 if the option is more beneficial to them', which time limit was further extended till 30.06.2011. The applicant further submits that the Armed Forces Tribunal vide order dated 05.08.2022 in OA 868/2020 titled **Lt Col Karan Dusad** Vs **Union of India & Ors** had directed the respondents to review and verify the pay fixation of all those officers whose pay has been fixed as on 01.01.2006 including those who have retired and re-fix their pay in the most beneficial manner with all consequential benefits, however the respondents till date have not executed the said order of the Armed Forces Tribunal.

3. 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.***

4. 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."

5. 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 solider 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 solider 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."

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 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."

7. In the light of the above considerations, the OA 2762/2025 is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant on his promotion to the rank of Lt Col on 01.07.2007 in the 6th CPC 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 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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