

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

7.

OA 2644/2025

IC-52653W Col Ajay Bafila(Retd)

..... Applicant

Versus

Union of India & Ors.

.... Respondents

For Applicant : Mr Sukhbir Singh, Advocate

For Respondents : Ms Barkha Babbar, Advocate

CORAM

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

ORDER

22.12.2025

The applicant IC-52653W Col Ajay Bafila(Retd) vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Quash and set aside impugned Letter No. LW/11/77/181629X dated 26.11.2024. And*
- (b) *Direct the respondents to re-fix the pay of the applicant in more beneficial manner from the date of promotion to the rank of Colonel(TS) wef 01.09.2020 and re-fix service-pension by taking into consideration the revised basic pay. And/or*
- (c) *Direct the 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.*

(c) *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. The applicant was commissioned in the Indian Army after having been found fit in all respects and was granted the substantive rank of Colonel(TS) wef 01.09.2020. The Part II Order No.0009/2022 dated 20.08.2022 was published by the Unit 65 GL Sec Type C and was forwarded to the PCDA(O). The applicant submits that his basic pay was fixed less as compared to his entitlement and the issue in question was raised with the respondents but nothing was done on his query whereas the respondents/concerned departments are duty bound to fix the pay of their employee in a more beneficial manner. The applicant submits that he submitted his grievance on 25.10.2024 for re-fixation of his basic pay correctly but the respondents rejected the same vide para 2 of the impugned order dated 26.11.2024 which is to the effect:

*"2. As per records held in this office, it is seen that you have not exercised the Option for fixation of Basic pay at the*

time of promotion to the rank of Col (i.e. on 04.09.2020). Option Form duly exercised by the individual within stipulated period of 03 months from the Date of Promotion(DOP)for fixation of Pay from DNI had not been received in this office. Hence, your pay was fixed from DOP which is default option as per 7<sup>th</sup> CPC. Please refer to MoD D(Pay/Services) OM No.1(20)/2017/D (Pay/Services) dated 27<sup>th</sup> February 2019, wherein it stipulates that "Option has to be exercised within three months from the date of Promotion, to have pay fixed under these provisions from the date of such promotion or to have the pay fixed from the date of accrual of next increment in the scale of the pay in the lower grade.

3. In your CPGRAM application, you are mentioning that you had filled your Option after retirement through Col-Veteran of HQ UB Area about a month back i.e. may be somewhere in September, 2024. In this regard, it is clarified that this office has no authority to accept and take affirmative action on belated submission of Option. In case if you have any order issued by GoI directing to take action on such Options exercised belatedly in Sep 2024 then the same may be shared with this office."

3. The applicant further submits that as per Para 21 of 1/SAI/2008, the power has been given to the competent authority for relaxing the rule in case of undue hardship and my case clearly demonstrates that it was a case of extreme hardship if he is given less salary due to a technical default when compared with other person in the same rank, discharging same duties and holding the same post. The applicant has relied upon a catena of orders passed by the Armed Forces Tribunal wherein the respondents have been directed to review the pay fixed of the applicant on his promotion after due verification in a manner that is most beneficial to the applicant.

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 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 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."*

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 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."*

8. Vide orders of this Tribunal in *Sub M.L Shrivastava and others Vs Union of India and others* (O.A No. 1182 of 2018 decided on 03.09.2021) which has been upheld by Hon'ble High Court of Delhi vide judgment dated 05.05.2025 in WP (C) 5880/2025 in *Union of India and others* versus *Sub Mahendra Lal Shrivastava Retd* vide observations in Paras 24 and 25 thereof already reproduced hereinabove in Para 7, it is apparent that the

mere non exercise of the beneficial option by the applicant or non exercise thereof within the stipulated period of time cannot be a ground to dis-entitle the applicant of the most beneficial option for implementation of the 7th CPC recommendations and the fixation of the pay and the pension of the applicant, merely because the promotion of the applicant had not taken place in the period of transition from the 6<sup>th</sup> CPC to the 7<sup>th</sup> CPC.

9. 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 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 .

10. In the circumstances, we express our deep anguish *qua* the averments made in Paragraph 4.5 of the counter affidavit/reply dated 12.12.2025 filed on behalf of the respondents which states to the effect:

*"It is further submitted that the Implementation Order from Ministry of Defence pertaining to the Hon'ble Armed Forces Tribunal(Principal Bench) at New Delhi's Order dated 05.08.2022 passed in OA No.868/2020 in the case of Lt Col Karan Dusad Versus Union of India & Ors has not been received in this case till date.*

11. We consider it essential to advert to the order dated 15.12.2025 passed in OA 3952/2025 of this Tribunal wherein it has been observed vide Para 9 and 10 thereof to the effect:

*"8. In a catena of orders of this Tribunal similar prayers have been upheld. It is essential to observe that despite the repeated orders in Sub Chittar Singh, Sub Mahendra Lal Shrivastava(Retd) as well as the judgment dated 05.05.2025 of the Hon'ble High Court of Delhi upholding the orders of this Tribunal in Sub Mahendra Lal Shrivastava(Retd) and there having been no challenge to the order of the Armed Forces Tribunal in Sub Chittar Singh by the respondents, the respondents continue to not grant the non beneficial option*

to the PBOs and the Officers merely on the premise that the most beneficial option has not been exercised. The present case is a clear indicator of the same whereby the impugned order states to the effect:-

***“PIFA is not agree to concur the instant AFT order(in-rem), therefore case may be treated as closed.”***

Nothing could be sadder for the system.

9. It is essential to observe that vide judgment dated 09.12.2024 in *Lt Col Suprita Chandel(Retd) vs UOI & Ors.* (2024) SCC Online SC 3664, it has been observed by the Hon'ble Supreme Court vide Paras-14 and 15 thereof to the effect:-

*“14. 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. [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)”*,

thus observing categorically 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. It is expected that the respondents authorities adhere to the law and do not compel persons to litigate and add to litigation causing unnecessary trauma to the litigants and expense to the litigant and also unnecessary burden on the exchequer of the Union of India and the respondents.

10. In the light of the above considerations, the OA 2644/2025 is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant on his promotion to the rank of Col on 01.09.2020 and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

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

11. No order as to costs.

12. Copy of this order is directed to be sent to Secretary, DMA and Chief of all three Forces and to the Defence Secretary to ensure compliance of the directions in *Sub Mahendra Lal Srivastava(Retd)*, *Sub Chittar Singh* 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 Srivastava(Retd)* in view of the law laid down by the Hon'ble Supreme Court in *Lt Col Suprita Chandel(Retd) vs UOI & Ors.* vide paras-14 and 15 referred to hereinabove.

(JUSTICE ANU MALHOTRA)  
MEMBER(J)

(REAR ADMIRALDHIREN VIG)  
MEMBER (A)

/Chanana/