

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

20.

OA 2862/2024

JC274542H Sub Maj Krishan Kumar(Retd)..... Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Pankaj Balwan & Utkarsh
Advocates
For Respondents : Mr. Sarvan Kumar, Advocate

CORAM

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

ORDER
30.10.2025

The applicant JC274542H Sub Maj Krishan Kumar(Retd) vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *“Summon all the relevant records including files and instruct concerned PAO(OR) to verify records and re-fix the pay from the date of promotion i.e. 01.06.2017.*

- (b) *Direct the respondents to fix the anomaly in the basic pay of the applicant as per option beneficial to the applicant.*
- (c) *Direct the respondents to step up the basic pay with effect from 01.06.2017 alongwith DA of the applicant and fix the pension from 01.06.2021 accordingly.*
- (d) *Direct the respondents to pay 18% interest on the arrears accrue to the applicant.*
- (e) *Award the cost of litigation in favour of the applicant*
- (f) *Pass any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

2. On behalf of the respondents, a document has been submitted to indicate that the costs as imposed vide order dated 10.07.2025 have been deposited. The counter affidavit has not till date been filed by the respondents.

3. In reply to a specific Court query, the learned counsel for the applicant submits that the prayers made in the present OA are confined to the prayers 8(a), 8(b), 8(e) and 8(f) only and the prayers 8(d) and 8(e) are not pressed. In view thereof, the prayers 8(d) and 8(e) are dismissed as withdrawn. The prayers in 8(c) are only consequential prayers on disposal of the OA as would be directed herein.

4. The applicant **JC-672168-A Ex Sub Krishna Gopal**, was enrolled in the Indian Army on 04.08.1990 and was promoted

to the rank of Sub Maj on 01.06.2017. The grievance of the applicant is that on promotion to the rank of Sub Maj his basic pay was fixed at Rs.49,000/-.The applicant submits that there was no established provision for the fixation of pay upon promotion from the date of next increment and the policy for fixation of pay on promotion from the date of next increment was issued by the Ministry of Defence in March 2018 and accordingly he applied for the fixation of pay upon promotion effect from the date of next increment with request for re-fixation of pay with the inclusion of two increments in the Pay Level-7 and thereby fixing his basic pay at Rs.52,000/-. The applicant further submits that the Ministry of Defence vide letter No. 1(20)/2017/D(Pay/Services) dated 22.03.2018 communicated this policy where it was clearly stated that on DNI(Date of Next Increment) in the level of the post to which the Defence personnel is promoted his basic pay will be re-fixed and two increments, one accrued on account of promotion and the second accrued on account of promotion may be granted in the level from which the Defence personnel is promoted. It is further the case of the applicant that the respondents once again introduced a new format for the option certificate pertaining to the fixation of basic

pay upon promotion effective from the date of next increment and this directive requires the submissions of the option certificate by the eligible individual as outlined in letter No.C/7099/Policy/SACPS/2019 issued by the Integrated Headquarters of the Ministry of Defence(Army) on March 8, 2019 and he thus filled out the Option Certificate as per the specified format and submitted the same on 16.04.2019, however, the respondents despite this formal request neither fix his basic pay nor any satisfactory reply was received. 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 more beneficial manner by keeping in view the views expressed by the Hon'ble Armed Forces Tribunal(PB) vide order dated 03.09.2021 in OA 1182/2018 titled *Sub M L Shrivastava and Ors 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.

5. 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.

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. 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."

8. 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 5th 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."

9. 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. 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 6th CPC to the 7th CPC.
11. 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 .

12. In the light of the above considerations, the OA 2862/2024 is allowed and direct the respondents 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.

11. No order as to costs.

[JUSTICE ANU MALHOTRA]
MEMBER(J)

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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