

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

7.

OA No.2934/2025

916264-S Sgt Dinesh Kumar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Tatsat Shukla & Mr Rajeev  
Kumar Advocates  
For Respondents : Sgt Pankaj Sharma, DAV Legal Cell

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

ORDER  
23.09.2025

The applicant 916264-S Sgt Dinesh Kumar vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"To direct the respondents to rectify Basic pay fixation anomaly in the salary of the applicant by re-fixing his basic pay as per the most beneficial option i.e. from the Date of Next Increment(DNI) from the rank of SGT, in accordance with the principles affirmed by Hon'ble Tribunal in OA*

No.1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.

- (b) To direct the respondents to make payment of arrears of salary accrue to him on re-fixation of his basic pay, in accordance with most beneficial option, on the principles affirmed by Hon'ble Tribunal in OA 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.
- (c) To direct the respondents to pay interest @12% per annum on the arrears accrue to the applicant on arrears of payment on Re-fixation of basic pay.
- (d) To pass any other order or direction in favour of applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

2. The applicant after having been found fit was enrolled in the Indian Air Force on 27.12.2005 and was promoted to the rank of Sergeant(Sgt) on 02.01.2019. The applicant submits that he represented to the Respondents for considering his case for fixation of his basic pay as per the most beneficial manner as he inadvertently opted for fixation of his basic pay from the Date of Promotion(DOP) instead of from the Date of Next Increment(DNI) which would have been the more suitable and financially beneficial option and selection of

this wrong option(DOP) has resulted in a lower basic pay compared to similarly placed Airmen and thus he is suffering a recurring loss of Rs.1400/- per month. The applicant further submits that in reply to his Query/Representation dated 23.07.2025, the respondents vide Impugned Order dated replied to the effect:

*"Individual submitted the DNI option as 'Date of Promotion' thinking his SGT promotion date as 01 Jan 19. But as per the UCSR his SGT promotion date is 02 Jan 2019. Therefore, option 'Date of Next Increment' is more beneficial for him. Hence requested to cancel the POR at your end to enable the Airwarrior to resubmit his DNI option form.*

*23 July 2025 1345 hrs*

*Cancellation of MACP POR on the basis of change of option is not feasible. According to the Extant Govt Pay Rules, option once exercised is final. Further, Para 2 of subject option from submitted by you also states that "I am also aware that the option exercised above is final and cannot be re-exercised unless re-authorized by Govt. As a special dispensation." For obtaining any further assistance on ibid issue, you may contact on IP 2329-7439."*

3. The applicant has relied upon the order of the Armed Forces Tribunal(PB) dated 03.09.2021 passed in the case of *Sub M .L. Shrivastava & Ors. Vs Union of India & Ors.* in OA 1182/2018 and a catena of other orders of the Armed Forces Tribunal.

4. The Hon'ble Supreme Court passed judgment dated 17.12.1996 in the case of *Union of India & Ors Vs P Jagdish and Ors(SLP( C) No.020470/1995* wherein it has been 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.

5. 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.

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. In the light of the above considerations, the OA 2934/2025 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 7<sup>th</sup> CPC from the Date of Next Increment(DNI) 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.

9. No order as to costs.

(JUSTICE ANU MALHOTRA)  
MEMBER(J)

(LT GEN C P MOHANTY)  
MEMBER (A)

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