

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

3.

OA 3347/2025

V-00502H Col Shomir Bhatnagar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Rajan Khosla, Advocate

CORAM

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

ORDER
11.11.2025

The applicant V-00502H Col Shomir Bhatnagar 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 in the 7th CPC from the date of promotion to the Rank of Col wef 07.02.2019 instead of date of next increment i.e. 01.07.2019 thereafter despite repeated directions, the respondents have not rectified the fixation of the pay of the applicant from the date of promotions in the Rank of Lt Col and from the*

next date of increment consequent to grant of promotion to the rank of Col on 07.02.2019 which were more beneficial to him at the time of his transition from 5th CPC to 6th CPC as Lt Col and in the 7th CPC from the date of next increment 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 07.08.2006 and also in 7th CPC from the date of next increment on 01.07.2019 consequent to promotion to the rank of Col on 07.02.2019 in a manner that is more beneficial to the applicant.*
- (c) Direct the respondents to pay the difference of pay after all necessary adjustments as arrears on all such fixation firstly consequent to his promotion as Lt Col on 07.08.2006 in the 6th CPC and thereafter from the date of next increment on 01.07.2019 consequent to promotion to the rank of Col on 07.02.2019 in the 7th CPC with a penal interest @18% in a time bound manner.*
- (d) Pass any other order/orders 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 07.08.1995 after having been found fit in all respects was promoted to the rank of Capt on 07.08.1997 and to the rank of

Major on 07.08.2001. The applicant thereafter was promoted to the rank of Lt. Col. on 07.08.2006. The applicant submits that the recommendations of the 6th CPC were finally accepted and implemented from retrospective date w.e.f. 01.01.2006 in terms of SAI 02/S/2008 in the case of officers. The applicant submits that his pay was not fixed as beneficial to him i.e. from the date of promotion and instead the same was fixed in default for lack of option from 01.01.2006 in the rank of Maj. as the same was based on exercise of option for which the time limit was stipulated but in most of the cases, due to lack of instructions, the options were either not exercised or not processed even if exercised and a result of which many officers were denied the benefit of pay fixation in the 6th CPC from the date of promotion which was more beneficial to him and for want of option, his pay was fixed as Maj wef 01.01.2016 instead of from the date of promotion to the rank of Lt Col i.e. from 07.08.2006 which was more beneficial to him. 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 of the 6th CPC and 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 07.08.2006 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 7th CPC in the rank Col. promoted on 07.02.2019 during the implementation of the recommendations of the 7th CPC 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 from the date of promotion to the rank of Lt Col. 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 despite the repeated requests, the respondents did not accept his request for fixation of pay in a manner that is more beneficial only on the ground of not exercising the option within the stipulated period of time i.e. 30.06.2011.

3. The applicant further submits that he was again promoted to the rank of Col on 07.02.2019 and such pay disparity continued due to initial wrong fixation of pay. The applicant further submits that vide the Advisory No.11/2021 dated 23.03.2021, the Addl Dte Gen Personnel Services notified all Commands that as per the 7th CPC there are two dates for increment on 1st Jan and 1st July of every year depending on the date of appointment or promotion or financial up-gradation. The implications of the said letter(Annexure A-3) are detailed in the Advisory as under:

“3. The implication of DMA letter above are explained as under:

(a) When Date of Increment due on 01 Jul Every Year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jul	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jul same yr and one incr(annual incr) will be given on 01 Jan next yr#
(b)	02 Jan to 30 Jun	01 Jul	-do-
(c)	01 Jul	01 Jul	-do-
(d)	02 Jul to 31 Dec	01 Jul	If DNI option ex than two incre(annual+promotion) in Jul next yr and one annual incr on 01 Jan next to next yr#

#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm

(b) When the date of Increment due on 01 Jan Every year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jan same yr and one incr(annual incr) will be given on 01 Jul next yr#
(b)	02 Jan to 30 Jun	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jan next yr and one incr(annual incr) will be given

			<i>on 01 Jul next yar#</i>
(c)	<i>01 Jul</i>	<i>01 Jan</i>	<i>-do-</i>
(d)	<i>02 Jul to 31 Dec</i>	<i>01 Jan</i>	<i>-do-</i>
<i>#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm</i>			

4. The applicant relying on a catena of orders passed by the Armed Forces Tribunal, submits that even otherwise whether any option was exercised or not , the respondents were duty bound to fix the pay in a manner where the more beneficial option was required to be extended to the affected persons and the respondents despite direction passed by ADG PS(Pay Commission Section) dated 04.08.2020 and the CGDA letter dated 08.11.2021, the respondents have not re-fixed his pay even in the 6th CPC. The applicant further submits that in the facts and circumstances, the action of the respondents of denying him the benefit of fixation of pay in the 7th CPC from the date of Next Increment(DNI) on grant of promotion/financial up-gradation i.e. 01.07.2019(two increment(Promotion Increment and Notional Increment) and instead of granting only promotion increment on 07.02.2019 has resulted in a situation, the applicant is getting less

pay than his junior on the basis of his inability to exercise the option within the prescribed time limit.

5. *Inter alia*, it has been stated on behalf of the applicant that the matter is no more *res integra* in view of the order dated 07.07.2025 of this Tribunal in OA No. 1843 of 2025 in the case of **Col Manu Dhankar Vs Union of India & Ors.** where the relief has been granted to the similarly situated officer whose pay was incorrectly fixed by the respondents from the promotion of instead of from the date of next increment(DNI). Significantly, vide the order dated 21.11.2024 in Nb Sub/M Tech(B Veh) Brijesh Singh Vs Union of India & Ors. in OA 163/2022 vide Para 7, it was observed to the effect:

7. *It is evident from the details in the letter dated 24.09.2018 (Annexure A-1) that the applicant's date of last increment in the 6th CPC was on 01.07.2015. Thus, as per Para 3 (a and b) of Army HQ letter dated 23.03.2021 (Annexure A-6), since the applicant was promoted on 01.05.2016 and that is between 02nd Jan and 30th Jun and as opted for fixing his pay from the next increments, he is entitled for two increments; one for his promotion and one his annual increment, Jul 2016 and his next annual increment would be due on 01.01.2018.”,-*

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 12 of the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect pay-fixation and 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 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."

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."

10. 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 .

11. In the light of the above considerations, the OA 3347/2025 is thus disposed of with directions to respondents to the effect:

- a) Review the pay fixation of the applicant on his promotion to the rank of Lt Col on 07.08.2006 in the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.
- b) On re-fixing his pay in the 7th CPC on 01.07.2019 i.e. from the date of next increment, the applicant

be granted two increments' one for promotion(07.02.2019) and the other for annual increment(01.07.2019).

c) His subsequent pay be recalculated accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(LT GEN C P MOHANTY)
MEMBER (A)

/Chanana/