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

14.

OA No.3700/2025 with MA 5500/2025

794234-K Sgt Nand Kishor Kumar (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr.Brajesh Kumar Advocate
For Respondents : Sgt P K Yadav, OIC Legal

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

ORDER
20.11.2025

MA 5500/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 477 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors*** Vs ***Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh*** Vs ***Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 5500/2025

is allowed and the delay of 477 days in filing the OA 3700/2025 is thus condoned. The MA is disposed of accordingly.

OA 3700/2025

The applicant 794234-K Sgt Nand Kishor Kumar (Retd) 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 to applicant on implementation of 6th CPC/7th CPC and subsequent on 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 fix the basic pay of the applicant for the purpose of Pensionary benefits and issue fresh/corrigendum PPO to the applicant(Re-fix all the pensionary and post retiral benefits accordingly.*

(c) *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.*

(d) *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.*

(e) *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 12.01.2004 was discharged from service on 31.01.2024 on completion of 20 years of service. The applicant submits that his basic pay was fixed incorrectly less on the implementation of the 6th CPC and the 7th CPC only due to non-exercise of option as required in the transition period of 6th/7th CPCs whereas in terms of Para 14(b)(iv) of SAFI I/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate the fixation of pay on promotion by ensuring that the more beneficial is allowed to the PBOR. The applicant further submits that while implementing the directions of the Armed Forces Tribunal in OA 1182/2028- titled ***Sub Mahendra Lal Shrivastava (Retd)*** Vs ***Union of India & Ors.*** the Air Force Headquarters extended the benefit of most

beneficial option *in rem.* The applicant further submits that he represented the respondents through CPGRAM vide Registration No. DOPPW/E/2025/0015834 dated 16.02.2025 and the respondents vide communication dated 21.08.2025 intimated to the effect that:

> *"REPLY TO CPGRAM*
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> *794234-K EX SGT NAND KISHOR KUMAR DOD : 31 JAN 2024*
>
> 1. *Reference is made to your grievance No. DDESW/E/2025/0060975 dated 03 Aug 2025.*
> 2. *It is intimated that your case for Most Beneficial option was processed by this Dte and send for audit verification to Jt CDA(AF) and the same was returned unaudited on22 May 2025. Jt CDA(AF) objected the cases with a view that all such cases were to be processed during service period. At present only court cases of Most Beneficial Option are processed by Jt CDA(AF).*
> 3. *This is for your information."*

The applicant has again reiterated that the action on the part of the respondents is violation of the Para 14(b)(iv) of SAI 1/S/2008 which stipulates that if no option is exercised by the individual, the PAO(OR) will regulate fixation on promotion by ensuring that the most

beneficial is allowed to the PBOR and it has been judicially affirmed by the Armed Forces Tribunal(PB), New Delhi in OA 1182/2028- titled ***Sub Mahendra Lal Shrivastava (Retd)*** Vs ***Union of India & Ors.***

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 vide judgment dated 17.12.1996 in the case of ***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.

5. 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.

6. 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:-*
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> *(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."

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 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."

8. In the light of the above considerations, the OA 3700/2025 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 6th 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) 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.

9. No order as to costs.

(JUSTICE ANU MALHOTRA)
(MEMBER(J)

(REAR ADMIRAL DHIREN VIG)
(MEMBER (A)

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