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

3.

# OA 3936/2025

**IC-53259X Col. Mukesh Kumar ..... Applicant**
**Versus**
**Union of India & Ors. .... Respondents**

**For Applicant** : Mr. Piyush Thakran, Advocate
**For Respondents** : Ms. Sunanda Shukla, Advocate

**CORAM**

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

**ORDER**
**15.12.2025**

The applicant IC-53259X Col Mukesh Kumar vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

(a) *"Call for the records based on which the Respondents have fixed the pay of the Applicant in the 6th CPC in the Rank of Maj wef 01.01.2006 and have also not rectified the fixation of the pay of the applicant in the Rank Lt Col wef 10.12.2007*

*which was more beneficial to him during 6th CPC and thereafter quash all such orders.*

(b) *Issue further direction to the respondents to re-fix the pay of the applicant on his promotion to the rank of Lt Col wef 10.12.2007 in the 6th CPC in a manner that is more beneficial to the applicant with further direction to re-fix the pay of the applicant on further promotion to the Rank of Col on 20.09.2011 as well, as per the 7th CPC in a more beneficial manner.*

(c) *Direct the respondents to pay the difference of pay after all necessary adjustments as arrears on all such fixation with a penal interest @18% in a time bound manner.*

(d) *Pass any other order/orders as 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 10.12.1994 after having been found fit in all respects and was promoted to the rank of Lt Col on 10.12.2007 before the implementation of the recommendations of the 6th CPC. The implementation instructions of the 6th CPC were issued vide SAI/02/S/2008 in the case of officers. 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 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 10.12.2007 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 6th CPC in the rank Lt Col. The applicant was again promoted to the rank of Col on 20.09.2011 and 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. 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. 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 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.***

4. 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 W.P.(C) 5880/2025 Page 17 of 19 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 W.P.(C) 5880/2025 Page 18 of 19 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."

5. 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:-*
> *(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."*

6. 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."*

7. 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 .

8. In the light of the above considerations, the OA 3936/2025 is allowed and we direct the respondents to:

(a) Review the pay fixation of the applicant on his promotion to the rank of Lt Col on 10.12.2007 in the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.

(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)**

/Chanana/