

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

15.

OA 4349/2024

779580L Sgt.Amit Kumar(Retd) .... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant :Mr. DheerajKumar, Advocate  
For Respondents : Sgt Pankaj, OIC Legal Cell.

CORAM

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

ORDER

21.05.2025

The applicant 779580L Sgt.Amit Kumar(Retd) vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"To quash the impugned order annexed as Annexure A-1 of this OA.*
- (b) *To direct the respondents to Review the pay fixed of the applicant under the 6<sup>th</sup> CPC and after due verification re-fix his pay in a manner that is most beneficial to him.*
- (c) *To direct the respondents to re-fix the applicant's pay on transition into 7<sup>th</sup> CPC as on 01 Jan. 2016 in the most beneficial manner while ensuring that the applicant is not drawing less pay than his Junior who is retiring in March 2025.*

*(d) To Pass any other order/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 779580L Sgt.Amit Kumar(Retd) was enrolled in the Indian Air Force on 28.09.2004 and thereafter was promoted to the rank of LAC on 01.02.2006 and to the rank of Cpl on 01.02.2009 and was further promoted to the rank of Sergeant on 04.10.2017. The applicant was released from service on completion of more than 20 years of service on 30.09.2024. The applicant submits that he is getting less basic pay due to wrong and unfair fixation of his pay by the respondents. The applicant further submits that he had put up a query in the AFCAO forum to resolve the issue vide Query ID dated 23.07.2024 but the issue was not resolved by the respondents. The applicant further submits that he is drawing a basic pay of Rs.49,600/- whilst his junior is drawing higher basic pay. The applicant submits that in terms of Para 14(b)(iv) 1/S/2008, if no option is exercised

by the individual, the AFCAO will regulate and ensure that pay of the individual is fixed in a most beneficial manner in the case of PBOR and the same has been affirmed by the Armed Forces Tribunal (PB), New Delhi in OA No.1182/2018 titled as *Sub Mahendra Lal Shrivastava Vs Union of India & Ors.* and a catena of other orders of the Armed Forces Tribunal.

4. The applicant has relied upon the verdict of the Hon'ble Supreme Court in the case of *Union of India & Ors Vs P Jagdish and Ors*(SLP( C) No.020470/1995 wherein similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior and 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 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

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.

5. 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."

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 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

*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."*

7. In the light of the above considerations, the OA 4349/2024 is allowed and the respondents are directed to:

(a) Review the pay fixed of the applicant under the 6<sup>th</sup> 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 coursemate/junior.

(b) Thereafter, re-fix the applicant's pay on transition to 7<sup>th</sup> CPC and subsequent promotion(s) in a most beneficial manner.

(c) To pay the arrears within three months of this order.

8. No order as to costs.

[JUSTICE ANU MALHOTRA]  
MEMBER(J)

[LT GEN C.P. MOHANTY]  
MEMBER (A)

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