

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

71.

OA 51/2025

794914-K Sgt Anil Kumar(Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Dheeraj Kumar, Advocate
For Respondents : Mr. Sameer S Sinha, Advocate
Sgt Pradeep Sharma, DAV Legal Cell

CORAM

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

ORDER

10.11.2025

The applicant 794914-K Sgt Anil 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 6th 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 7th 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 May 2025..*
- (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 794914-K Sgt Anil Kumar(Retd) was enrolled in the Indian Air Force on 28.09.2004 and was promoted from time to time and to the rank of Sergeant(Sgt) on 01.01.2018 and was finally released from service on completion of 20 years of service on 30.09.2024. The grievance of the applicant is that he was drawing a basic salary of Rs.48,200/- per month whereas his junior 794923H Sgt Satveer Singh, RDO Fit of the same group X is drawing more basic pay than him whereas the Article 39(d) of the Constitution of India mandates that there should be equal pay for equal works. The applicant submits that he represented the respondents vide CPENGRAM grievance with all the relevant data but the respondents vide Letter No. Air HQ/99798/DAV/A&A/CPGRAM dated 17.12.2024 refused to provide any relief stating that no anomaly has been found in his fixation of basic pay which is to the effect:

"1. Reference is made to your grievance No.DOPPW/E/2024/0086949 dated 01 Dec 2024.

2. On scrutiny of the case, it is revealed that your referred number i.e. 794245-a EX Sgt Nrusingh Charan Jena Rdo Fit is senior to you and promoted to various ranks i.e. AC/LAC/CPL/MACP/Sgt well before you. Therefore, it is not feasible to compare your basic pay with senior air warrior.

3. Further, it is intimated that as on 01 Jan 2024, you were drawing basic pay of Rs.48,200/- whereas your referred junior 794923-H Sgt Satveer Singh Rdo Fit is drawing Rs.49,600/-. Since during your service period, your junior was promoted

to the rank of CPL on 01 Oct 09. Whereas you were promoted to the rank of CPL on 01 Jan 10. Therefore, the subject case does not fall under the category of Sr/Jr pay anomaly.

3. The applicant further submits as per Para 14(b)(iv) of SAI I/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate and fix the pay of the individual on promotion in more beneficial manner by keeping in view the views expressed by the Hon'ble Armed Forces Tribunal(PB) vide order dated 03.09.2021 in OA 1182/2018 titled *Sub M L Shrivastava and Ors Vs Union of India & Ors.* and a catena of other orders of the Armed Forces Tribunal wherein also similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior.

4. The respondents vide their counter affidavit dated 29.05.2025 submit as under:

"2. Para 4.2 to 4.4.- That the applicant has opted his 6th CPC pay fixation wef 01 Jan 06 and benefited with more arrears, (which was more beneficial to him at that time.

Whereas, the juniors/bath mates that Applicant have mentioned in the OA have opted for the implementation of 6th CPC from the date of promotion/financial up-gradation, hence benefitted

with one increment(with the loss of arrears). Further, there is no provision exists to action the 6th CPC option at this belated stage.

3. *Para 4.6-That the applicant has enjoyed the benefit of more arrears during the implementation of 6th CPC by opting out of Option-II. However, considering the beneficial option as per the present situation, the applicant is claiming for option-II. There is no provision exists to action the 6th CPC option at this belated stage. "*

It is thus apparent that as per the counter affidavit dated 29.05.2025 of the respondents, the contentions raised therein are at variance with the contents of the impugned order date 17.12.2024, and vide their counter affidavit dated 29.05.2025, the only contention of the respondents is that that the beneficial option in the 6th CPC pay fixation at this belated stage cannot be given.

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. 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."

7. 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."

8. 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."

9. Vide orders of this Tribunal in *Sub M.L Shrivastava and others Vs Union of India and others* (O.A No. 1182 of 2018 decided on 03.09.2021) which has been upheld by Hon'ble High Court of Delhi vide judgment dated 05.05.2025 in WP (C) 5880/2025 in *Union of India and others* versus *Sub Mahendra Lal Shrivastava Retd* vide observations in Paras 24 and 25 thereof already reproduced hereinabove in Para 6, it is apparent that the mere non exercise of the beneficial option by the applicant or non exercise thereof within the stipulated period of time cannot be a ground to dis-entitle the applicant of the most beneficial option for implementation of the 7th CPC recommendations and the fixation of the pay and the pension of the applicant, merely because the promotion of the applicant had not taken place in the period of transition from the 6th CPC to the 7th CPC.

10. The Hon'ble Supreme Court in *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.

11. 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 .

12. In the light of the above considerations, the OA 51/2025 is allowed and direct the respondents 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) To pay the arrears within three months of this order.

13. No order as to costs.

Pronounced in the open Court on this 10th day of November, 2025.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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