

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

15.

OA No.71/2025

744433-N JWO Sushant Kumar Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr Y P Singh, Advocate

CORAM

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

ORDER
02.12.2025

The applicant 744433-N JWO Sushant Kumar Singh 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 re-fix the basic pay of the applicant with effect from 01.01.2021 at par with 744774-G, JWO Kapil Targotra.*
- (b) *To direct the respondents to re-fix and step up the basic pay of the applicant on all subsequent increments so that applicant's pay is fixed not less than his Juniors, i.e. 744413-F Sgt Ajay Sharma, 7445809-T JWO Santosh Kumar, 744774-G JWO Kapil Targotra etc.*

- (c) *To direct the respondents to re-fix the basic pay of the applicant on his promotion to the rank of JWO in most beneficial manner so that applicant's pay is fixed not less than his Juniors, i.e. 744413-F Sgt Ajay Sharma, 7445809-T JWO Santosh Kumar, 744774-G JWO Kapil Targotra etc.*
- (d) *To direct the respondents to pay interest @12% per annum on the arrears accrued to the applicant on account of re-fixation of basic pay at enhanced scale.*
- (e) *To pass other appropriate order or grant relief, which Hon'ble Tribunal deems fit and proper under facts and circumstances of the case, any time during the proceedings of this case."*

2. The applicant after having been found fit was enrolled in the Indian Air Force on 16.12.2002 and was promoted from time to time and finally to the rank of Junior Warrant Officer(JWO) on 01.08.2022. The applicant submits that he had exercised option for fixation of his basic pay as per the provisions and the policy in vogue, however, his option was not acted upon due to late submission of option form hence default option was selected by the respondents for fixation of his basic pay and thus his basic pay was fixed at Rs.49,000/-

per month in comparison to his junior, namely, JWO Kapil Targotra whose basic pay was fixed at Rs.50,500/- making a difference of one increment and thus his basic pay is less than several others of his juniors. The applicant submits that he submitted a representation dated 20.06.2024 to the respondents for re-fixing his basic pay wef 01.01.2021 equal to his batchmates and higher/equal to his juniors on numerous occasions through the official channel, however, the respondents have rejected his claim by stating that he has not exercised the option within the stipulated period of time which action on the part of the respondents is violation of the principles of pay fixation wherein, it is trite law that the PAO(OR) has to do the fixation of basic pay in such a manner that is most beneficial to the PBOR. The applicant further submits that he was not explained the methodology of option selection and its effect on the fixation of his basic pay at the time of his promotion during the implementation of the recommendations of

the Pay Commissions and his case is squarely covered by the order dated 05.10.2017 of the Armed Forces Tribunal in OA No.1092/2017 titled *Sub Dhyan Singh Vs Union of India & Ors* and the order dated 03.09.2021 passed in OA 1182/2018 titled *Sub Mahendra Lal Shrivastava Vs Union of India & Ors* and a catena of other orders of the Armed Forces Tribunal. The applicant submits that in terms of Para 14(b)(iv) of SAI 1/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate fixation on promotion ensuring that the more beneficial is allowed to the PBOR.

3. The impugned reply dated 20.06.2024 of the respondents reads as under:

“OIC Cell-APW Reply:

YOUR QUERY HAS BEEN EXAMINED. AS PER RECORDS AVILABLE QUOTED SERVICE NO.744774 HAS EXERCIXED DNI OPTION ON JWO PROMOTION AND SAME WAS NOT EXERCISED BY YOU. DUE TO DIFFERENCE IN SELECTION OF OPTION, DIFFERENCE IN BASIC PAY HAS BEEN OCCURED. FURTHER, RULE 10 OPTION FORM WAS HOSTED FOR YOU WHICH YOU HAVE NOT EXERCISED WITHIN STIPULATED TIME.

Date:- 20 Jun 2024 05:07:56”

4. The Hon'ble Supreme Court passed judgment dated 17.12.1996 in the case of *Union of India & Ors Vs P Jagdish and Ors*(SLP(C) No.020470/1995 wherein it has been 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 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."

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 71/2025 is allowed to the extent that the respondents are directed to:

(a) Review the pay fixed of the applicant under the 7th 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.

9. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(LT GEN C P MOHANTY)
MEMBER (A)

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