

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

OA 724/2019 with MA 376/2024

JC-762320-K Sub Ved Prakash

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. SS Pandey, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE Ms RASIKA CHAUBE, MEMBER (A)

ORDER

MA 376/2024

This is an application filed by the respondents u/s Rule 12(5) of the Armed Forces Tribunal(Procedure) Rules, 2008 seeking condonation of 359 days in filing the counter affidavit. In view of the reasons mentioned therein, the MA 376/2024 is allowed and the delay of 359 days in filing the counter affidavit is condoned.

OA 724/2019

The applicant JC-762320-K Sub Ved Prakash vide the present OA makes the following prayers: -

(a) Direct the respondents to accept the option of the applicant with further direction to fix the pay of the applicant in the 6th CPC from the date of his promotion to the rank of Nb Sub i.e. 01.05.2007 and accordingly re-fix the pay in the Rank of Nb Sub and consequently in the Rank of Sub as granted to all other persons whose option was accepted by following the ratio of the judgment dated 10.12.2014 passed in OA 130 of 2014 in Chittar Singh & Ors.

(b) Direct the Respondents to pay the applicant arrears of the difference of pay in the Rank of Nb Sub and Sub after adjusting the payments already made by revising other allowances as per the revised rate including increment/DA etc earned till date alongwith interest @12%p.a. from the date it was payable till the date payment is made.

(c) 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 JC-762320-K Sub Ved Prakash, was enrolled in the Indian Army on 15.02.1994 and was promoted to the rank of Nb Sub on 08.04.2008, as stated in the counter affidavit of the respondents and so affirmed by the applicant on 28.03.2025. The applicant submits that on acceptance of the recommendations of the 6th CPC, the respondents Special Army Instructions (SAI) dated 11.10.2008 were issued which were applicable w.e.f. 01.01.2006. The said SAI had a provision for fixation of pay from the date of promotion to all those persons who were granted promotion after 01.01.2006 based on the option to continue

in the pre-revised scale till the date of next promotion and get the pay fixed from the date of promotion instead of wef 01.01.2006 and accordingly, the applicant had exercised his option vide Part-II Order dated 26.08.2012 as per the recommendations of the 6th CPC to get his pay fixed from the date of his promotion to Nb Sub. The applicant submits that the respondents had given three months' time for exercise of option which was extended till 30.06.2011. The applicant further submits that he was promoted to the Rank of Subedar on 01.04.2014 but due to wrong fixation of pay, his pay was fixed much lower than his juniors/batchmates even in the rank of Sub and the respondents did not accept his request for fixation of his pay based on option to ensure that more beneficial pay scale is given to the affected persons. The applicant further submits that despite allowing of the OA 113 of 2014 titled Sub *Chittar Singh & Ors Vs UoI & Ors.* by the Armed Forces Tribunal(PB), New Delhi wherein it was held that the respondents ought to have granted the benefits of most beneficial pay fixation in terms of Para 14 of SAI in respect of all those persons who had exercised their option and at the same time it was held that, in case, the option is exercised till 11.12.2013, the same cannot be rejected by the respondents. The applicant further submits that despite visiting the respondents, nothing

has been done so far to mitigate his grievances for fixation of his pay in the most beneficial manner. However, the respondents instead of passing an order granting the most beneficial pay option confined the relief only to those persons who approached this Hon'ble Tribunal.

3. The applicant further submits that the mandate of the law was on the respondents to reach out to such affected persons explaining them what method of fixation will be more beneficial for them instead of putting the onus on the applicant and even despite non receipt of option, a person cannot be placed his junior in the matter of fixation of pay which would be contrary to the established legal principle that a junior cannot be given more pay than his senior and the Hon'ble AFT(PB) New Delhi had already taken this view in OA 113/2014 titled **Sub Chittar Singh Vs UoI & Ors** vide order dated 10.12.2014 and in OA 1092/2017 titled **Sub(TIFC)) Dhyan Singh Vs Union of India & Ors.** vide order dated 05.10.2017.

4. The respondents through their counter affidavit dated 24.01.2024 submit that the applicant was promoted to the rank of Nb Sub on 08.04.2008 and the said provisions of the SAI 1/S/2008 were applicable to him. However, the applicant did not exercise his option within the stipulated period of time nor even upto the extended cut-off

date i.e. 30.06.2011 and as per the provisions of Para 8(c) of SAI 1/S/2008, if the intimation regarding option is not received within the time mentioned in SAI, the Personnel Below Officer Rank(PBOR) shall be deemed to have elected to be governed by the revised pay structure with effect from 01.01.2006 whereas the option was exercised by the applicant vide Part-II Order No.0/0189/001/2012 dated 26.08.2012 which was published after the cut-off date i.e. 30.06.2011, hence the same was not acceptable.

5. Be that as it may, a similar matter of incorrect pay fixation has been exhaustively examined by this Tribunal 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. Relevant paras for the purpose of decision in this matter are quoted below:

"24. Having heard all parties at length, the main issue before us is whether the respective PAO(OR)s who are the Respondent office responsible for all matters of pay and allowances of personnel below officers' rank are justified in arbitrarily fixing the pay as on 01.01.2006, without examining the most beneficial option for each individual while fixing the pay; irrespective of whether the option was exercised or not exercised, or was exercised late.

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30. In all the three cases, the applicants have been promoted to the next rank after 01.01.2006 and

prior to the issue of SAI No 1/S/2008 dated 11.10.2008. Under normal circumstances, the applicants ought to have exercised their option for pay fixation as given in Para 8 and 14 (b) of the SAI. There is no dispute that the time laid down for exercising the option was initially three months from the date of issue of the SAI and that this was further extended to 31.03.2011 vide Corrigendum to SAI dated 21/12/2010. The period was further extended to 30.06.2011 vide MoD letter dated 11.12.2013. The letter dated 11.12.2013 was disseminated to the environment vide AG's Branch Letter dated 12.12.2013.

31. It is also undisputed that if the applicants by default, are to be in the new pay scale as fixed with effect from 01.01.2006, they would be in a disadvantageous position throughout their service tenure and on retirement/ transition to 7th CPC. Moreover, it is absolutely reasonable to assume that no sane person will knowingly put himself in a disadvantageous position in service and will refuse to accept a beneficial pay scale and opt for the new pay scale that is disadvantageous.

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38. In summary, we find that given the complexity of calculating pay and allowances, while the rules and regulations for implementation of 6th CPC had adequate safeguards to ensure that the most beneficial option was worked out and adopted for each individual, this has not been implemented with requisite seriousness and commitment by the Respondents, in particular the PAO(OR) who were the custodians to ensure this. This has resulted in serious financial implications to individuals including loss of pay and allowances whilst in service and on retirement. This has also resulted in financial loss to those who transited to 7th CPC with incorrect fixation of pay in the 6th

CPC. The only ground for denial of the most beneficial pay scale to the applicants and many others who are similarly placed is that either the individuals did not exercise an option for pay fixation, or they exercised it late, beyond the perceived stipulated period. In the given circumstances, the respondents themselves should have taken steps to remove this anomaly, and ease out the issue for the serving soldiers, many of whom may not be knowledgeable about the intricacies of these calculations, in the full knowledge that that no one will ever knowingly opt for a less beneficial option. We emphasise the fact that it's the responsibility of the Respondents and the service authority to look after the interests of its own subordinate personnel.

39. In view of the above, the three OAs under consideration are allowed and we direct the Respondents to:-

(a) Review the pay fixed of the applicants and after due verification re-fix their pay under 6th CPC in a manner that is most beneficial to the applicants.

(b) Thereafter re-fix their pay in all subsequent ranks and on transition to 7th CPC where applicable, and also ensure that they are not drawing less pay than their juniors.

(c) Re-fix all pensionary and post retiral benefits accordingly.

(d) Issue all arrears and fresh PPO where applicable, within three months of this order and submit a compliance report.

40. In view of the fact that there are a large number of pending cases which are similarly placed

and fall into Category A or B, this order will be applicable in rem to all such affected personnel. Respondents are directed to take suo moto action on applications filed by similarly aggrieved personnel and instruct concerned PAO(OR) to verify records and re-fix their pay in 6th CPC accordingly.

6. In the light of the above consideration and the fact that the same considerations are applicable for pay fixation of officers (Lt Col Karan Dusad Vs. Union of India and others [O.A. No.868 of 2020 and connected matters] decided on 05.08.2022) and thus also for men of all the three Services, we find that the applicant is entitled to get his pay revised as per most beneficial manner and therefore, this OA No.724/2019 is allowed and direct the Respondents to-

(a) Review the pay fixed of the applicant on promotion under the 6th CPC and 7th CPC and after due verification re-fix his pay in a manner that is most beneficial to him.

(b) Re-fix the applicant's pay on transition into 7th CPC as on 01.01.2016 in the most beneficial manner

while ensuring that the applicant is not drawing less pay than his juniors.

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

7. No order as to costs.

Pronounced in open Court on this day 25th day of April, 2025.

(Ms. RASIKA CHAUBE)
MEMBER(A)

(JUSTICE ANU MALHOTRA)
MEMBER(J)

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while ensuring that the applicant is not drawing less pay than his juniors.

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

7. No order as to costs.

Pronounced in open Court on this day 25 of April, 2025.

(Ms. RASIKA CHAUBE)
MEMBER(A)

(JUSTICE ANU MALHOTRA)
MEMBER(J)

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