

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

18.

OA 64/2026 with MA 69/2026

IC-68577Y Col Nishant Singh Sambyal

..... Applicant

Versus

Union of India & Ors.

.... Respondents

For Applicant : Mr Sukhbir Singh, Advocate

For Respondents : Mr. Ajay Kumar, Advocate

CORAM

HON'BLE JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

12.01.2026

MA 69/2026

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 499 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the

reasons mentioned, the MA 69/2026 is allowed and the delay of 499 days in filing the OA 64/2026 is thus condoned. The MA is disposed of accordingly.

**OA 64/2026**

The applicant IC-68577Y Col Nishant Singh Sambyal vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Quash and set aside impugned Letter No. LW/13/89/2076536N dated 13.08.2024. And*
- (b) *Review the pay fixed of the applicant on his promotion to the rank of Col on 21.03.2022 in the 7<sup>th</sup> CPC and re-fix the pay in most beneficial manner. And/or*
- (c) *Direct the respondents to make payment of due arrears after re-fixing of pay with effect from the date of promotion with interest @12% per annum.*
- (c) *Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case mentioned above."*

2. The applicant was commissioned in the Indian Army after having been found fit in all respects and was promoted to the rank of Colonel on 21.03.2022. The Part II Order No. 0032/2024 dated 18.04.2024 was published vide 51 Armed Regiment. The applicant submits that his basic pay was fixed in

a wrong manner by the respondents and to get his grievance redressed, he represented to the respondents vide his DO dated 21.07.2024 for the correct fixation of pay which was rejected by the respondents vide impugned Letter No. LW/13/89/2076536N dated 13.08.2024 which is to the effect:

*"Sub: Non-adjustment of Basic Pay as per DNI in r/o IC-68577Y Col Nishant Singh Sambyal(CDA A/C No.13/89/2076636N)*

*Ref: Your DO Letter No.0541061P/1210/2/A dated 21/07/2024 addressed to PCDA(O), Pune*

*Please refer to your DO Letter mentioned under reference. The issue raised has been examined and detailed clarification action taken are as appended below:*

| Issue   | Action taken/Remarks  |
|---|---|
| Non-adjustment of Basic pay as per Option Form(DNI) | <p>1.The officer had been promoted to the rank of Col on 21.03.2022.. Part II Order notifying the casualty code 'SUBPROM' videNo.0225/2022 dated 25.03.2022 had been received and acted upon. However, Option for fixation of Pay from DNI was not received in this office. Therefore, Basic Pay was fixed from Date of Promotion in accordance with 7<sup>th</sup> CPC Orders.</p> <p>2. In this regard, please refer ADGPS(PS-3) Dte letter No.B/25451/Doc Pro Offrs/AG/PS-3/02/2021 dated 21 Jun 2021 vide which it was communicated to PCDA(O)that "exercising of OPTION is mandatory through DO Part II Order with casualty code 'OPTFDNI' or OPTFXDOP' whichever is applicable wef 4<sup>th</sup> September 2021 duly supported with ink-signed copy of Option Certificate as prescribe vide GoI MoD New Delhi letterNo.1(26)(Pay/Services) dated 08.05.2023."</p> <p>3.Since the officer had not published Part II Order notifying the casualty code "OPTFXDNIwithin03 months from the date of promotion, Pay of the officer had been fixed correctly from</p> |

|  |   |
|--|---|
|  | <p>Date of Promotion(DoP) as 7<sup>th</sup> CPC Orders.</p> <p>4.Further, GoI, MoD New Delhi OM dated 18/08/2023 provided another opportunity to the officers who had been promoted or granted financial up-gradation on or after 01.01.2016 and desired to exercise/re-exercise option for pay fixation from DNI within three months from the date of issue of Order i.e.by 17 Nov 2023. In your case, no Part II Order for fixation of pay from DNI was also received till 17/11/2023. You have published Part II Order No.0032/2024 dated 18.04.2024 notifying the casualty code "OPTFXDNI" which is belated publication after 02 years.</p> <p>5. So this office is unable to take any tangible action in the absence of Govt order incase, another window is opened by GoI for accepting Options, then only this office will be able to take suitable action.</p> <p>6.You are advised to take up the matter with MoD through proper channel for necessary orders.</p> |
|--|---|

3. The applicant submits that he again submitted his grievance dated 04.04.2025 to the respondents for correct fixation of pay which was replied by the respondents on 04.04.2025 to the effect:

"Reply

<p>Sir, </P><P> As per record held at our end, it is intimated that no part II order for DNI has been received at our end. Further, it is stated that no form of option will be entertained if not published within stipulated time. Therefore, your pay has automatically been fixed as per Date of Promotion due to non receipt of OPTFXDNI Part II order within stipulated time/</p></p><br>>/p>

<p>Regards</p> \*\*Grievance Approved by SAO -G  
SHALINISRINIVAS\*\*.

Reply date 2025-04-04

Status Completed



4. The applicant further submits that as per Para 21 of 1/SAI/2008, the power has been given to the competent authority for relaxing the rule in case of undue hardship and that his case clearly demonstrates that it was a case of extreme hardship if he is given less salary due to a technical default when compared with another person in the same rank, discharging same duties and holding the same post. The applicant has relied upon a catena of orders passed by the Armed Forces Tribunal wherein the respondents have been directed to review the pay fixed of the applicant on his promotion after due verification in a manner that is most beneficial to the applicant.

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 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.

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 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."*

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 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*

*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 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."*

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 7, 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 6<sup>th</sup> CPC to the 7<sup>th</sup> CPC.

10. 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 .

**It is expected that the respondents authorities adhere to the law and do not compel persons to litigate and add to litigation**

causing unnecessary trauma to the litigants and expense to the litigant and also unnecessary burden on the exchequer of the Union of India and the respondents.

11. In the light of the above considerations, the OA 64/2026 is allowed and we direct the respondents to:

- (a) Review the pay fixation of the applicant on his promotion to the rank of Col on 21.03.2022 and after due verification re-fix his pay in a manner that is most beneficial to the applicant.
- (b) To pay the arrears within three months of this order.

12. No order as to costs.

(JUSTICE ANU MALHOTRA)  
MEMBER(J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

/Chanana/