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COURT NO. 2
ARMED FORCES TRIBUNAL
PR, INCIPAL BENCH, NEW DELHI

OA 100/2024 with MA 158/2024

IC-49300L Col Anup Kumar
Shrivastava(Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Anurag Sahay, Advocates

For Respondents : Mr. V Pattabhiram, Advocate
Maj Abhishek Kumar, OIC Legal

CORAM

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

ORDER
10.02.2026

MA 158/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 357 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 158/2024 is allowed and the delay of 357 days in filing the OA 100/2024 is thus condoned. The MA is disposed of accordingly.

OA 100/2024

The counter affidavit alongwith proof of payment of costs imposed vide order dated 08.07.2025 filed on behalf of the respondents is taken on record.

2. The applicant IC-49300L Col Anup Kumar Shrivastava (Retd) 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 step up his basic pay and pension at par with his course mates.*
- (b) *To direct the respondents to fix the anomaly in the basic pay of the applicant wef 01.01.2006*
- (c) *To direct the respondents to pay arrears with 18% of interest from the date of the pay anomaly occurred.*
- (d) *To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case"*

3. The applicant was commissioned in the Indian Army on 16.12.1989 after having been found fit in all respects was promoted to the rank of Lt Col on 16.12.2004 and thereafter to the rank of Col on 13.12.2006. The applicant submits that the recommendations of the 6th CPC were finally accepted and implemented from retrospective date w.e.f. 01.01.2006 in terms of SAI 02/S/2008 in the case of officers and the SAI contained a specific provision for fixation of pay effective from the date of

promotion to all those persons who were granted promotion subsequent to 01.01.2006 based on the option to continue in the pre-revised scale until the date of next promotion and to get the pay fixed from the date of promotion as opposed to 01.01.2006. The applicant submits that he had opted/exercised the option for fixation of his pay from the date of next increment as per the policy whereas the respondents had taken into consideration the Option-I which was not advantageous to him and thus he is continuously suffering financial loss as compared to his course-mates and in order to get the pay anomaly redressed, he had submitted multiple personal applications from 8th February, 2013 to 26th November, 2022. In response to his representation(s), the Respondents i.e. the Accounts Officer, PCDA(O) dated 28th October, 2002 sent reply vide letter No. F No.01/03/175348L dated 28.10.2022 to the effect:

"Subject: Stepping of Pay in respect IC-49300L Anup Kumar Shrivastava, PCDA(O) A/c No.01/03/175348L

Reference: Your Unit letter No.49300/Step up dated 16/08/2022.

Please refer to your Unit letter cited above.

2. *In this regard, it is stated that your case has been examined thoroughly in light of the extant orders available & applicable on the subject and the following comments are offered for information please.*
3. *As regards stepping up of Pay in 7th CPC regime, a clarificatory order has now been received from MoD/MoD(Finance) vide MoD ID No.1(20)/2017/D(Pay/Services) Part-I dated 01/07/2022 which*

states that stepping up of Pay of the Senior Govt Servants may be allowed with reference to their Junior govt servants where such Junior Govt servants occurred the next increment on the following 1st Jan or 1st July on completion of a period of six months qualifying service and drawing the same pay 6 months before of the senior in such cases stepping up of pay is to be extended and needs to be stepped up at par with their junior Officers.

4. However, on verification of your case, it is found that the main criteria of the above cited order have not been found fit for stepping up of your pay and at par you junior officer as compared in para 3 of your Unit letter dated 16/08/2022 i.e. IC-49293A(Col/TS) Sudhakar Tyagi, CDA A/c No.10/167/175347HX cited above. The Junior Officer with whom comparison is being made is drawing more pay for the period one and half year due to the reasons which are not covered under the MoD order dated 01/07/2022.
5. As per records held in this Office, you both (IC-49300L Col Anup Kumar Shrivastava, PCDA(O) A/c No.01/03/175348L and IC-49293A Col(TS) Sudhakar Tyagi, CDA A/c No. 10/167/175347HX) were promoted to the rank of Lt Col on 16/12/2004. However, Col(TS) Sudhakar Tyagi, opted to fix his pay from the date of next increment i.e. 01/02/2005 and accordingly, he was granted an additional increment under 6th CPC on 01/01/2006 as per the provisions of GoI, OM No.10/02/2011-E.III/A dated 19/03/2012. However, as you had not submitted such option, hence Col Sudhakar Tyagi is getting more pay than you.
6. Further, it is intimated that, while disposing MA NBo.2137 of 2022 in OA No.2857 of 2021 filed by Col Rajan Suredia(Retd) Vs Union of India & others, related to similar matter i.e. Pay Fixation in 5th CPC etc Hon'ble AFT(PB) New Delhi vide their Order dated 24/08/2022 has directed the respondents to review all such cases and re-fix their pay with most beneficial option.
7. The order has been received in this Office and the same has been referred to IHQ of MoD(Army), New Delhi for consideration and obtaining sanction of Government of India for implementation of ibid Order or otherwise. Further, action on all such cases by the Office of the PCDA(O) are subjected to receipt of Government sanction on the AFT(PB) new Delhi Order.
8. Please acknowledge receipt.

Sd/
Accounts Officer

4. The applicant submits that his basic pay as on June, 2017 was Rs.1,74,000/- where the Basic pay of his course-mate as on June, 2017 was Rs.1,79,200/-making a difference of Rs.5,200/- per month after the implementation of the 6th CPC and this act of the respondents for fixation of anomaly in basic pay is unreasonable, unconstitutional and arbitrary and in contravention of the MoD, Department of Military Affairs D(Pay/Services) letter No. MoD IOD 1/(20)/2017/D(Pay/Services) dated 01.07.2002 *for stepping up of pay of seniors in comparison to pay of juniors* and thereby the PCDA(O) was directed to step up the pay of Senior Government Servants with reference to their juniors.

5. The applicant relying on a catena of orders passed by the Armed Forces Tribunal, submits that even otherwise whether any option was exercised or not , the respondents were duty bound to fix the pay in a manner where the more beneficial option was required to be extended to the affected persons.

6. The respondents vide their counter affidavit dated 05.02.2026 submit to the effect that as per the 6th CPC, pay of the officer who opted for switching over to the pay structure of 6th CPC from the date of their promotion was fixed and for which they had forgone the arrears of their pay in the 6th CPC from the date of their promotion. The respondents further submit that the officers who did not want to

forgo 6th CPC arrears from the crucial date of the 6th CPC i.e. 01.01.2006 till their date of promotion or who did not exercise option for switching over to the revised pay structure from the date of their promotion, their pay in the Pay Band was fixed as per the 6th CPC and their pay revision had been carried out from 01.01.2006 and accordingly all arrears of pay and allowances as per the recommendations of the 6th CPC had been paid to them and in the case of the applicant herein, his pay had been fixed as Lt Col wef 01.01.2006 in terms of the provisions contained in Para 6 (O) of 2/S/2008 dated 11.10.2008 which is to the effect:

“if the intimation regarding option is not received within the time prescribed in these instructions, the officer shall be deemed to have elected to the revised pay structure with effect from 1st day of January, 2006.”

and the officer/applicant had not exercised the option for fixation of his pay from the date of promotion to the rank of Col i.e. 13.12.2006 as per the 6th CPC recommendations and in the absence of such option, the pay of the applicant under the 6th CPC was fixed wef 01.01.2006 as the onus was on the part of the officer to exercise the option within the stipulated period i.e. 30.06.2011 in terms of MoD/D(Pay/Services) Letter No Air/HQ/99141/04/AFPC/1697/D(Pay/Services) dated 11.12.2013.

7. 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 12 of the SAI 2/S/2008 dated 11.10.2008. The matter of incorrect pay-fixation and 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.

8. 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 W.P.(C) 5880/2025 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."

9. 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."

10. 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."

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 100/2024 is thus disposed of with directions to respondents to the effect:

- a) Review the pay fixation of the applicant on his promotion to the rank of Col on 13.12.2006 in the 6th CPC and after due verification re-fix his pay in a manner that is most beneficial to the applicant.
- b) Thereafter, re-fix the applicant's pay on transition to the 7th CPC and subsequent promotion(s) in a most beneficial manner.

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

13. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(LT GEN C P MOHANTY)
MEMBER (A)

/Chanana/