

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

10.

OA 131/2025 with MA 3839/2025

**906687-S Sgt Kishan Singh Bisht (Retd) Applicant
Versus
Union of India & Ors. Respondents**

**For Applicant : Mr. Dhiraj Kumar, Advocate
For Respondents : Mr. Vishal Meghwal, Advocate
Sgt Pankaj Sharma, DAV, OIC, Legal**

CORAM

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

**ORDER
27.02.2026**

MA 3839/2025

This is an application filed on behalf of the respondents seeking condonation of 95 days in filing the counter affidavit. In view of the reasons mentioned in the MA, the delay of 95 days in filing the counter affidavit is condoned and the same is taken on record. The MA stands disposed of.

OA 131/2025

The applicant 906687-S Sgt Kishan Singh Bisht (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 annexed as Annexure A-I 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 Mar 2025..*
- (d) *To pass any other order or direction in favour of applicant which may be deemed just and proper under facts and circumstances of this case in the interest of justice."*

2. The applicant was enrolled in the Indian Air Force after having been found fit in all respects on 28.09.2004 and was promoted to the rank of LAC on 01.10.2006, then to the rank of Cpl on 01.01.2011 and further to the rank of Sgt on 03.01.2018 and was discharged from service on the completion of 20 years of service on 30.09.2024. The grievance of the applicant is that his Junior No 906977-A Sgt Kailash Chand, Radar Fit, with similar length of service

is drawing pension @ basic pay of Rs.51,100/- whereas he has been issued a PPO of @ Rs.48,200/-. The applicant further submits that his basic pay has been incorrectly fixed lesser on the implementation of the 6th CPC as well as on the implementation of the recommendations of the 7th CPC and in terms of the Para 14(b)(iv) of SAFI I/S/2008, if no option is exercised by the individual, the PAO(OR) will regulate the fixation of pay on promotion by ensuring that most beneficial option is allowed to the PBOR and the same view has been affirmed by the Armed Forces Tribunal(PB), New Delhi in OA 1182/2018 titled as *Sub Mahendra Lal Shrivastava Vs Union of India & Ors.* and a catena of other orders of the Armed Forces Tribunal. The applicant further submits that he raised the issue of pay anomaly with the respondents on 20.03.2024 vide Query No. ID-104772831 which the respondents vide reply dated 26.04.2024 replied to the effect:

“OIC Cell APW Reply

Your query has been examined. It is intimated that your referred Service No.906616-T,906619H were reclassified to LAC on 01 JUN 2006 and opted for migration to VIth CPC from date of promotion. Accordingly, His pay was fixed to Rs.7490/- as on 01 Jun 2006. Further annual increment granted on 01 Jul 2007 and his pay was increased to Rs.7820/- However, you were also reclassified to LAC on 01 Oct 2006 but you are not in receipt of the same So your pay was fixed on 01 Jul 2007 on 7700/-, Due to said reason he is drawing more basic pay in VIth CPC as well as VIIth CPC also. The same is in order. Further, it is intimated that pay had been correctly fixed at all stages as per the policy in vogue. The option at the time of 6th CPC and 7th CPC was made available to all eligible air warriors. However, the applicant has not exercised the migration option in 6th CPC which has been resulted in his pay being lesser than his quoted service No. Further, exercising of option is a time bound activity and no window is now open to exercise such option.”

3. The applicant has relied upon the orders of the Armed Forces Tribunal (PB) dated 21.10.2022 passed in the case of *Sub Bhyan Singh Vs Union of India & Ors.* in OA 1092/2017 and order dated 03.09.2021 in OA 1182/2018 titled *Sub Mahendra Lal Shrivatava Vs Union of India & Ors.*

wherein the similarly placed applicants have been granted re-fixation of basic pay as per the most beneficial option available on the implementation of the 6th CPC.

4. The respondents vide their counter affidavit dated 25.08.2025 submit that the applicant had opted for pay fixation under the 6th CPC with effect from 01 January, 2006 which granted him higher arrears at that time, as it was the more beneficial option available. In contra, the juniors and batch-mates referred in the OA opted for the implementation of the 6th CPC from the date of their promotion or financial up-gradation, thereby securing one additional increment at the cost of reduced arrears. The respondents further submits that it is a settled principle that rights once exercised with due knowledge of their consequences cannot be re-opened at a later stage merely for pecuniary advantage and seek to invoke the maxim *volenti non fit injuria* to submit that one who voluntarily accepts a risk cannot claim compensation for it and moreover, there is no provision permitting the revision of the 6th CPC option at this belated stage.

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 W.P.(C) 5880/2025 Page 17 of 19 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 W.P.(C) 5880/2025 Page 18 of 19 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. 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 .

10. In the light of the above considerations, the OA 131/2025 is allowed to the extent that the respondents are directed to:

- (a) Review the pay fixed of the applicant under the 6th CPC and then in the 7th CPC after due verification 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)

(Ms. RASIKA CHAUBE)
MEMBER (A)

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