

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

8.

OA 199/2026 with MA 253/2026

786852-R Sgt Mahana Krishnan S(Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant :Mr. Pradeep Shukla & Mr. Vikash Kumar,
Advocates

For Respondents : Sgt Pankaj Sharma, OIC Legal Cell.

CORAM

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

ORDER
21.01.2026

MA 253/2026

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1216 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 253/2026 is allowed and the delay of 1216 days in filing the OA 199/2026 is thus condoned. The MA is disposed of accordingly.

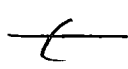
OA No. 199/2026

The applicant 786852-R Sgt Mahana Krishnan S(Retd)vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *“Direct the respondents to fix the pay of the applicant on his promotion to the rank of Sgt on 24 Dec 2015 under VIth Pay Commission by extending the benefit of most beneficial option i.e. DNI Option as per Para 14(b)(i) of the Special Air Force Instructions(SAFI) 1/2008 and then fix/transition the pay of the applicant under VIIth Pay Commission in accordance with Ist Proviso to Rule 5 of the Air Force Pay Rules, 2017 and thereafter grant 01 increment to the applicant on 01 Jan 2017 upon completion of six months of service in the new pay level in accordance with Letter No. F N. 4-21/2017/IC/E-III/A dated 31 Jul 2018(as elucidated in the table furnished at Parra 4.11 of the subject OA)*
- (b) *Direct the respondents to release all arrears including difference in payment, DA etc alongwith interest@12% p.a.*

- from the date on which the said payments were payable to the applicant till the date the same are made to the applicant.*
- (c) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents."*

2. The applicant 786852-R Sgt Mahana Krishnan S(Retd) after having been found fit was enrolled in the Indian Air Force on 16.12.2002 and was reclassified/promoted from Aircraftsmen to Leading Aircraftsmen on 01.03.2005. The applicant submits that he was again promoted to the rank of Corporal on 01.01.2009 and was given the benefit of increment from the date of promotion itself. The applicant submits that on further promotion to the rank of Sergeant on 24.12.2015, his pay was fixed on 24.12.2015 as per the Date of Promotion(DOP) option wherein he was given one increment on 24.12.2015, however the said DOP option was not the most beneficial option in his case instead the next date of option(DNI) was the most beneficial option under which the applicant would have been financially

upgraded on 01.07.2016 with two increments and by virtue of which he would have received one more increment on 01.01.2017 in accordance with letter No.4-21/2017/IC/E-III/A dated 31.07.2018 whereas his junior(787125-B Sgt I Ansari) who was promoted to the rank of Sergeant between 01.01.2016 to 30.06.2016 was given two increment on 01.07.2016 on the basis of the most beneficial option i.e. financial up-gradation from the date of next increment(DNI). The applicant further submits that as per the above said letter vide which on completion of six months in the new /promoted pay level after promotion/financial up-gradation one more increment was to be given to the individual as a result of which his junior surpassed his basic pay on 01.01.2017. In furtherance to his contention, the applicant submits that as per his last draw^s emolument, his basic pay was  Rs.42,800/- which he attained wef 01.07.2021 consequent to his annual increment whereas his junior (787125-B Sgt I Ansari) of the same Trade reached the same basic pay

on 01.01.2021 i.e. six months before him. Thus, the applicant submits that the respondents granted him the less beneficial option only due to non-receipt of the option from the applicant whereas the respondents failed to appreciate the obligation imposed upon them by various judgments/orders of the Armed Forces Tribunal wherein it has been held that it is the duty of the respondents to grant the most beneficial option where it could not be exercised by the individual.

3. The applicant further relied upon the Order of the Armed Forces Tribunal(PB) New Delhi in *Sub M L Shrivastava & Ors Vs Union of India* in OA 1182 of 2018 and a catena of other orders of the Armed Forces Tribunal.

4. The Hon'ble Supreme Court in the case of *Union of India & Ors Vs P Jagdish and Ors*(SLP(C) No.020470/1995 wherein similarly circumstanced applicant (s) have been granted the stepping of pay at par to his junior and has 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 149/2026 is allowed and direct the respondents to:

(a) Review the pay fixed of the applicant on promotion to the rank of Sergeant on 24.12.2015 in terms of 6th 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-mates/juniors.

b) Thereafter, re-fix the applicant's pay on transition to the 7th CPC and subsequent promotion(s) in a most beneficial manner.

(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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