

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

17.

OA 2904/2022

JC-858117L Nb Sub/Clk(SD) Praveesh S Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Rahul Choudhary, Advocate

CORAM

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

ORDER

The applicant JC-858117L Nb Sub/Clk(SD)Praveesh S vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Direct the respondents to grant fixation of pay upon grant of financial up-gradation of MACP Naib Sub on 01.06.2016 from the date of next increment as Havildar as due on 01.07.2016 instead of fixation from the date of such up-gradation on 01.06.2016 by quashing the order of such*

fixation and revise his pay accordingly by granting two increment(Promotion increment+Annual increment) on 01.07.2017 and annual increment on 01.01.2017 to the applicant after grant of MACP Nb Sub as per Addl Dte Gen Personnel Services letter dated 23.03.2021 as granted to his batch mates and the juniors.

- (b) Direct the respondents to pay the applicant arrears of the difference of pay in the MACP Nb Sub and Naib 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% from the date it was payable till the date payment is made.*
- (c) Pass any other order/orders deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case."*

2. The applicant was enrolled in the Indian Army on 29.01.2001 after having been found fit in all respects was promoted to the rank of Hav on 01.06.2008. The applicant submits that the respondents accepted the recommendations of the 7th CPC for which Army Pay Rule -2017 was promulgated on 03.05.2017 to be effective w.e.f. 01.01.2016. The Rule 5 & 6 of the

Army Pay Rules, 2017 stipulates that the "option under the provisions to Rule 5 shall be exercised in writing in the prescribed form and shall be submitted within the prescribed time limit to the respondents within 180 days of the date of notification of these rules. The applicant submits that he was granted MACP as Nb Sub on 01.06.2016 but he was not aware that he would have got more beneficial fixation of one additional increment, if he would have opted for fixation of pay upon the grant of MACP as Nb Sub from the date of next increment on 01.07.2016 in the rank of Hav and thereafter fixation of pay in the rank of Nb Sub on the grant of MACP and thus his pay was fixed from due date upon the grant of financial up-gradation i.e. MACP to the rank of Nb Sub. The applicant submits that he had re-exercised his option on 12.08.2020 and the occurrence of the same was published vide Part II Order No.0/0006/2020 dated 12.08.2020 whereas the Advisory No.11/2021 dated 23.03.2021 was issued by the Addl Dte Gen Personnel Services notifying all Commands that as per the 7th CPC there are two dates for increment on 1st Jan and 1st

July of every year depending on the date of appointment or promotion or financial up-gradation. The implications of the said letter(Annexure A-2) are detailed in the Advisory as under:

"3. The implication of DMA letter above are explained as under:

(a) When Date of Increment due on 01 Jul Every Year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jul	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jul same yr and one incr(annual incr) will be given on 01 Jan next yr#
(b)	02 Jan to 30 Jun	01 Jul	-do-
(c)	01 Jul	01 Jul	-do-
(d)	02 Jul to 31 Dec	01 Jul	If DNI option ex than two incre(annual+promotion) in Jul next yr and one annual incr on 01 Jan next to next yr#
#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm			

(b) When the date of Increment due on 01 Jan Every year**

Ser No.	Personnel promoted or Financially Upgraded	Date of Incre as per previous rank/Post	Remarks
(a)	01 Jan	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be

			given in Jan <u>same yr</u> and one incr(annual incr) will be given on 01 Jul next yr#
(b)	02 Jan to 30 Jun	01 Jan	If opted for DNI(date of next increment) then, two incr(annual+promotion) will be given in Jan <u>next yr</u> and one incr(annual incr) will be given on 01 Jul next year#
(c)	01 Jul	01 Jan	-do-
(d)	02 Jul to 31 Dec	01 Jan	-do-
#The next increment thereafter is to accrue only after completion of one year. **Pl. check previous record/previous pay slips to confirm			

3. The applicant further submits that on promotion to the rank of Nb Sub on 21.12.2021, due to wrong fixation of pay earlier when he was granted MACP as Nb Sub, his pay was fixed from the date of promotion instead of from the date of next increment as Havildar thereby his pay was fixed much lesser than his juniors/batch-mates even in the rank of Nb Sub and despite approaching the concerned authorities of the respondents to get his pay fixed in a more beneficial but the respondents replied to the effect:

*"Sub:- Non adjustment of one service increment in r/o of Army No.15775192H Hav/Clk(SD) Praveesh S
Ref: Your letter dated 18.11.2021*

With reference to your letter cited above, it is intimated that this office has already replied regarding your basic pay vide letter No.3101/LG-23/Gen Corr/2021, dated 25.01.2021. No.302/LG-

52/15775192H/Gen Coirr, 01/06/2021 & letter of even no., dated 21.06.2021(copies enclosed). However, it is once again stated that OPTCPC may be published either on the date of MACPs or promotion. Also, individual may exercise either OPTCPC or OPYFIX but not both simultaneously. In your case, MACPS has been granted wef 01.06.2016 and also OPTCPC was exercised from the same date vide Do2 No.0/0582/001/2017, dated 06/10/2017 which was already adjusted. In the case of Army No.15775266M(Now JC857460) Jeetendra Singh Shekhawat, MACPS has been granted in NBSUB Grade wef 01.07.2016 which was date of next increment and also OPTCPC has been exercised from the same date and MACPS was adjusted after increment on 01.07.2016. Hence No..15775266(Now JC857460) Jeetendra Singh Shekhawat is getting more basic pay than yours.

DCDA i/c has seen"

6. A bare perusal of the impugned letter dated 13.12.2021 already adverted hereinabove indicates that the respondents have not refuted the contention of the applicant that he was entitled to the grant of next increment from 01.07.2016 after extending MACP as Nb Sub on 01.06.2016. As observed vide order dated 21.11.2023 in *Nb Sub/M.Tech(B Veh) Brijesh Singh vs Union of India & Ors.* in OA 163/2022 vide Paras 5, 6 and 7 thereof which reads as under:

"5. MoD vide its Office Memorandum dated 22.03.2018 (Annexure A-7) had intimated that anyone promoted may opt to have his/her pay fixed from the date

of his/her next increment. The relevant extracts are reproduced below:

3. After due consideration in this matter, the following is decided as follows:

(i) Defence Personnel, who is promoted or upgraded from one rank to another, subject to fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him/her. Such, Defence Personnel may opt to have his/her pay fixed from the Date of his/her Next Increment (either 1st July or 1st January, as the case may be) accruing in the Level of the post from which he/she is promoted, except in cases of appointment on deputation basis to an ex-cadre post or on direct recruitment basis or appointment/promotion on ad-hoc basis, as applicable in the Defence Services.

(ii) In case, consequent upon his/her promotion, the Defence Personnel opts to have his/her pay fixed from the date his/her next increment (either 1st July or 1st January, as the case may be) in the Level of the post from which Defence Personnel is promoted, then, from the date of promotion till his/her DNI, the Defence Personnel shall be placed at the next higher cell in the level to the post to which he/she promoted.

Illustration:

1.	Level in the revised pay structure: Level 4	Pay Band	5200 - 20200		
2.	Basic Pay in the revised pay structure: 29600	Grade Pay	2000	2400	2800
3.	Granted promotion in Level 5.	Levels	3	4	5
		1	21700	25500	29200
		2	22400	26300	30100
4.	Pay in the upgraded Level i.e., Level 5:30100 (next higher to 29600 in Level 5)	3	23100	27100	31000
		4	23800	27900	31900
		5	24500	28700	32900
5.	Pay from the date of promotion till DNI: 30100	6	25200	29600	33900
		7	26000	30500	34900
		8	26800	31400	35900
		9	27600	32300	37000
		10	28400	33300	38100

(iii) Subsequently, on DNI in the level of the post to which Defence Personnel is promoted, his/her Pay will be re-fixed and two increments (one accrued on account of annual increment and the second accrued on account of promotion) may be granted in the Level from which the Defence Personnel is promoted and he/she shall be placed, at a Cell equal to the figure so arrived, in the Level of the post to which he/she is promoted; and if no such Cell is available in the Level to which he/she is promoted, he/she shall be placed at the next higher Cell in that Level.

Illustration:

1.	Level in the revised	Pay Band	5200 - 20200
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	pay structure: Level 4				
2.	Basic Pay in the revised pay structure: 29600	Grade Pay	2000	2400	2800
3.	Granted promotion in Level 5.	Levels	3	4	5
		1	21700	25500	29200
		2	22400	26300	30100
		3	23100	27100	31000
		4	23800	27900	31900
		5	24500	28700	32900
		6	25200	29600	33900
		7	26000	30500	34900
		8	26800	31400	35900
		9	27600	32300	37000
		10	28400	33300	38100
4.	Pay in the upgraded Level i.e, Level 5: 30100 (next higher to 29600 in Level 5)				
5.	Re-fixation on DNI: Pay after giving two increment in Level 4: 31400				
6.	Pay in the upgraded Level i.e. Level 5 : 31900 (either equal to or next higher to 31400 in Level 5)				

6. The above details were further clarified and promulgated to the subordinate formations vide Army HQ letter dated 23.03.2021 – “Ex of DNI Option on Promotion” (Annexure A-6). Relevant options are extracted below:

2. As per 7th CPC, there are two dates for increment on 01 Jan and 01 Jul of every year, depending on the date of his appointment or promotion or financial up gradation.

3. The implication of DMA letter above are explained as under:-

(a) When Date of Increment due on 01 Jul Every Year**.

Ser No	Personnel Promoted or Financially Upgraded	Date of Incr as per previous rank/Post	Remarks
(a)	01 Jan	01 Jul	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jul same yr and one Incr. (annual incr) will be given on 01 Jan next yr #
(b)	02 Jan to 30 Jun	01 Jul	-do-
(c)	01 Jul	01 Jul	-do-
(d)	02 Jul to 31 Dec	01 Jul	If DNI option ex than two incr (annual + promotion) in Jul next yr and one annual incr on 01 Jan next to next yr #

The next increment thereafter is to accrue only after completion of one year.
 ** Pl check previous record/ previous pay slips to confirm.

(b) When Date of Increment due on 01 Jan Every Year.**

Ser No	Personnel Promoted or Financially Upgraded	Date of Incr as per previous rank/Post	Remarks
(a)	01 Jan	01 Jan	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jul <u>same yr</u> and one Incr (annual incr) will be given on 01 Jan next yr #
(b)	02 Jan to 30 Jun	01 Jan	If opted for DNI (date of next increment) then, two incr (annual + promotion) will be given in Jan <u>next yr</u> and one incr (annual incr) will be given on 01 Jul <u>next year</u> #
(c)	01 Jul	01 Jan	-do-
(d)	02 Jul to 31 Dec	01 Jan	-do-

The next increment thereafter is to accrue only after completion of one year.
** Pl check previous record/ previous pay slips to confirm.

7. It is evident from the details in the letter dated 24.09.2018 (Annexure A-1) that the applicant's date of last increment in the 6th CPC was on 01.07.2015. Thus, as per Para 3 (a and b) of Army HQ letter dated 23.03.2021 (Annexure A-6), since the applicant was promoted on 01.05.2016 and that is between 02nd Jan and 30th Jun and as opted for fixing his pay from the next increments, he is entitled for two increments; one for his promotion and one his annual increment, Jul 2016 and his next annual increment would be due on 01.01.2018."

as the applicant was promoted on 06.06.2019 and opted for fixation of his pay from the next of increment, then he is entitled for two increments i.e. the annual increment and the second accrued on grant of promotion on 01.07.2019 with his next annual increment being due on 01.01.2020.

7. The applicant further submits that the actions of the respondents of denial of the revised pay scale to the applicant creating a situation wherein the applicant is being granted basic pay lesser than his batch mates as well as his juniors on a specious plea of putting the onus on the applicant for not submitting the option on promotion in time, despite the obligation on their part to fix the pay of the applicant in a manner which is more beneficial to him, are highly illegal, arbitrary and discriminatory as well as against the mandate of equality and equal pay for equal work.

8. The applicant further submits that the actions of the respondents of denying him, the benefit of fixation of pay in the 7th CPC from the date of next increment (DNI) on grant of promotion/financial up-gradation i.e. on 01.07.2016 and instead of placing him under the revised pay scale wef 01.06.2016 resulting in a situation of applicant getting less pay than his junior only on the sole basis of the inability of the applicant to exercise the option within the prescribed time limit and thereafter ignoring the

obligation enjoined upon to fix the pay in a manner as to ensure that the applicant is not put to any disadvantage and not granting the benefit of re-fixation of pay and allowances in the rank of Nb Sub upon grant of MACO is legally unsustainable.


9. 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.

10. In the light of the above considerations, the OA 2904/2022 is thus disposed of with directions to respondents to the effect:

- a) To fix the pay of the applicant from the date of his next increment from 01.07.2016 consequent to the grant of MACP on 01.06.2016 in the 7th CPC.
- b) On re-fixing his pay in the 7th CPC on 01.07.2016 i.e. from the date of next increment, the applicant be granted two increments' one for promotion(01.07.2016) and the other for annual increment(01.01.2017).
- c) His subsequent pay be recalculated accordingly.

11. No order as to costs.

Pronounced in the open Court on this 17th day of February, 2026.


(LT GEN C P MOHANTY)
MEMBER(A)


(JUSTICE ANU MALHOTRA)
MEMBER(J)

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