

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

5.

OA 75/2026 with MA 80/2026

914945-L Sgt Raj Kumar Rajak .. Applicant
Versus
Union of India & Ors. Respondents

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

For Respondents : Mr Vishal Meghwal, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

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

ORDER

15.01.2026

MA 80/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 237 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 80/2026 is allowed and the delay of 237 days in filing the OA 75/2026 is thus condoned. The MA is disposed of accordingly.

OA No. 75/2026

The applicant 914945-L Sgt Raj Kumar Rajak vide the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 makes the following prayers:

- (a) *"Direct the respondents to review the pay fixed of the applicant at the time of grant of MACP-II on 01 Feb 2020 and after due verification re-fix applicant's pay in a manner that is most beneficial to the applicant while ensuring that the applicant is not drawing less pay than similarly placed course mates & juniors.*
- (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 914945-L Sgt Raj Kumar Rajak after having been found fit was enrolled in the Indian Air Force on 28.03.2007 and was reclassified/promoted from Aircraftsmen to Leading Aircraftsmen on 01.02.2009. The applicant submits that he was again promoted to the rank of Corporal on 01.02.2012 and his basic pay was re-fixed wef 01.07.2012 in accordance with the most

beneficial option i.e. financial up-gradation on the date of next increment (DNI). The applicant further submits that on the grant of MACP-II with the grade pay of Rs.2800/- upon completion of 08years of service in the grade pay of Rs.2400/-, his basic pay was fixed on 01.02.2020 i.e. financial up-gradation on the date of promotion (DOP) and this option was not beneficial option as compared to DNI option under which the applicant should have been upgraded on 01.07.2020 instead of 01.02.2020 whereas his juniors of the same trade(Prop Fit) as well as course mates are getting higher pay than him and to get his grievances redressed he made multiple representations-cum- queries on the website of the Air Force Central Accounts Officer(AFCAO) on 17.02.2024, 08.06.2024 and 17.10.2024 and the reply of the respondents dated 02.12.2024 is that the difference in pay is because the applicant failed to apply for the most beneficial option i.e. re-fixation of pay from the date of next increment(DNI) at the time of

the grant of MACP-II and the option hosting and selection is a time bound process. The said reply of the respondents is as under:

OIC Cell-APW Reply:

Your query has been examined. It is intimated that your referred service numbers 914882-H, 914943-T are drawing more pay than you due to their pay fixation has been carried out on the basis of DNI POR vide 2021/NA66/011/0016 and 2021/NA28/P/002/00005 respectively and pay fixation is found in order. Further, pay fixation has been carried out on the basis of MACP-II(DOP) POR vide 2020/RB25/PO/028/00026 and pay fixation is found in order. An opportunity was given by AFCAO to individual select DNI option by hosting rule 10 option individual log in ID. Whereas you have not selected the same in stipulated time frame. Further, option hosting and selection is time bound activity and no provision exist for hosting/selecting the option.

Date: 02-Dec- 2024 09:28:58"

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

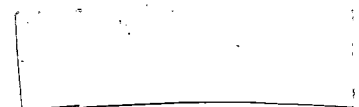
respondents to grant the most beneficial option where it could not be exercised by the individual.

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.

5. 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."*

6. 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."

7. In the light of the above considerations, the OA 75/2026 is allowed and direct the respondents to:

(a) Review the pay fixed of the applicant on the grant of financial up-gradation MACP-II 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) To pay the arrears within three months of this order.

8. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER(J)

(REAR ADMIRAL DILREN VIG)
MEMBER (A)

/chanana/