

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 185 of 2020****Monday, this the 31st day of January, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-330943M Ex Sub Maj (Hony Lt) Mahinder Singh
S/o Late Jai Singh
R/o H.No. 30, Ashok Nagar, Milap Nagar, Roorkee,
Dist – Haridwar, Uttarakhand, Pin – 247667.

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha &**
Shri Shiv Kumar Saroj, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), South Block, New Delhi-110011
3. O/o CDA (Army) Meerut, Balvedere Complex, Ayudhpath Meerut Cantt – 250001 (UP).
4. PAO (OR) BEG & Centre, Roorkee, Pin – 908779.
5. PCDA (P), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Adesh Kumar Gupta,**
Central Govt Counsel.**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “A. To issue/pass an order or directions set aside/quash the letters, which is annexed as Annexure No. A-1 to this Original Application.

- B. To issue/pass an order or directions to the respondents to consider the applicant for fixation of Basic Pay on or after 01.01.2006, alongwith the arrears of pay and pension as per existing rules/policy in vogue with all consequential benefits.
- C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs."

2. The brief facts of the case are that applicant was enrolled in the Army on 03.05.1986 and discharged from Service on 28.02.2017. The applicant was promoted to the rank of Naik on 01.10.2000 and was re-mustered to Group 'X' on 25.11.2000, promoted Havildar on 01.01.2003, Nb Sub on 10.06.2006, Subedar on 24.06.2008 and Sub Maj on 11.02.2013. The applicant has filed the Original Application to fix his pay w.e.f. 01.01.2006 as per 6th CPC and pay the arrears from the date of promotion of Naib Subedar, Subedar and Subedar Major. As per provisions of para 7(b) and 8(a) of SAI 1/S/2008, where a PBOR is placed in a higher pay scale between 01.01.2006 and 11.10.2008, on account of promotion, may elect to switch over the revised pay structure from the date of promotion. The option was to be exercised within three months from the date of publication of SAI 1/S/2008. As per provision of para 8(c) of SAI 1/S/2008, "if the intimation regarding option is not received within the time mentioned in this SAI, the PBOR shall be deemed to have elected to be governed by the revised pay structure with effect from 01.01.2006". The applicant submitted option certificate alongwith Part II Order on 01.10.2013 but the same was rejected by PAO (OR) BEG Roorkee

stating it was time barred being published after the cut-off date 31.07.2013 and hence, applicant's case was not accepted in audit. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 03.05.1986 and was discharged from service in the rank of Sub Maj on 28.02.2017 after rendering 30 years and 10 months of service. The applicant was re-mustered in the trade of OBR in Group 'X' w.e.f. 25.11.2000. The applicant submitted a comparative statement to CDA (Army) Meerut giving details of his junior JC-330690H Sub Maj Chanderbhan Ram who is junior from the date of enrolment, date of attestation, date of promotion and date of remustering and belongs to same trade and group. The applicant's Band Pay in the Pay slip of 08/2016 is shown as Rs. 15850/- whereas his junior is shown as 18230/- which is much in excess. The applicant requested for re-examination of stepping up in his pay as on 01.01.2006 onwards. PAO (OR) BEG & Centre, Roorkee vide letter dated 18.02.2019 replied that information incorporated in the stepping up comparative statement was incorrect. It was also mentioned in the letter that applicant belongs to Group 'C' and Sub Maj Chandrabhan Ram belongs to Group 'B'. The option certificate for fixation of basic Pay either by old pay scale or revised pay scale was required to be submitted to BEG Records by 31.07.2013 as per 6th CPC. The applicant was unable to submit the option certificate in time being unaware of it. The applicant submitted option certificate alongwith Part II Order on 01.10.2013 but the same was rejected by PAO (OR)

BEG Roorkee stating it was time barred. The applicant suffered immensely due to non fixation of his basic pay as per 6th CPC on or after 01.01.2006 causing financial loss to him.

4. Learned counsel for the applicant further submitted that respondents have ignored the settled law as held by AFT (PB), New Delhi in O.A. No. 113 of 2014, **Sub Chittar Singh v. Union of India & Ors**, decided on 10.12.2014 wherein Para 3 states that *in the scheme itself, it has been provided that it will be the duty of the PAO (OR) to ensure that out of the two options the more beneficial option be given and, therefore, even if one has not submitted the option, even then it was the duty of the PAO (OR) to at least offer the beneficial provision's option and that fixing of the time limit itself cannot deny the beneficial provision benefit to the petitioners.* He also submitted that the Hon'ble AFT (PB) in O.A. No. 1092 of 2017, **Sub Dhyan Singh v. Union of India & Ors**, decided on 05.10.2017 has given relief to a similarly placed JCO by fixing his pay from the date of promotion that was a more beneficial option for the applicant, thereby, fixing his pay from the date of promotion to the rank of Nb Sub. The Court held that if no option is exercised by the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the PBOR.

5. Learned counsel for the applicant pleaded to consider the case of the applicant for fixation of basic pay on or after 01.01.2006 as per 6th CPC in comparison to his junior sub Maj Chandrabhan Ram.

6. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 03.05.1986 and discharged from Service on 28.02.2017. The applicant was promoted to the rank of Naik on 01.10.2000 and was re-mustered to Group 'X' on 25.11.2000, promoted Havildar on 01.01.2003, Nb Sub on 10.06.2006, Subedar on 24.06.2008 and Sub Maj on 11.02.2013.

7. Learned counsel for the respondents further submitted that case regarding stepping up of pay on or after 01.01.2006 in respect of the applicant was submitted to PAO (OR) BEG vide BEG Records letter dated 14.02.2017. The applicant submitted another application dated 20.06.2018 for stepping up in pay on or after 01.01.2006 and the same was forwarded to PAO (OR) BEG and Centre vide letter dated 11.08.2018 and a suitable reply was given by PAO vide letter dated 09.10.2018 denying stepping up of the applicant. Thereafter, applicant submitted another application dated 18.12.2018 which was also suitably replied by PAO rejecting stepping up of the applicant. The option for fixation of basic pay on promotion was to be exercised within three months from the date of publication of SAI 1/S/2008. The applicant had exercised his 6th CPC option for revised pay which was published after the cut-off date 31.07.2013 and hence, applicant's case was not accepted in audit. The pay of the applicant has been fixed correctly by PAO (OR) BEG Centre, Roorkee. The anomaly in pay is due to non-exercising the option as per SAI 1/S/2008 within the extended cut off date. Since the applicant failed to exercise option on time, his case does not meet the merit for consideration. Hence, he is

not eligible for any relief at this stage and he pleaded for dismissal of O.A.

8. Heard learned counsel for the parties and perused the relevant documents available on record.

9. It is cardinal principle of law, as held by the Hon'ble Supreme Court in number of cases, that no junior in the same post can be granted more salary than his seniors.

10. In Civil Appeal Nos. 65-67(Arising out of S.L.P.(C) Nos 12522-12514 of 2007 decided on 09.01.2009 titled as **Er. Gurcharan Singh Grewal and Anr. V. Punjab State Electricity Board and Ors.** 2009 (2) SLJ 271 (SC), The Apex court in para 13 has observed:-

“13 Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No. 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No. 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No. 1 was also stepped to that of Shri Shori, as appears to have been done in the case of the appellant No. 2.”

11. In another decision dated 25th October, 2010 rendered in W.P.(C) No. 2884/2010 titled as **UOI and Anr. v. Chandra Veer Jeriya**, the Delhi High Court while dealing with the same issue has observed in para 8 as follows :

“8. We agree with the findings arrived at by the Tribunal in view of the law laid down by the Supreme court in the decision reported as 1997 (3) SCC 176 UOI and Ors vs. P. Jagdish and Ors. It may be highlighted that the respondents did not claim any pay parity with officers junior to them but in the combatized cadre till as long the officers

remained in their respective streams. They claimed parity when the two streams merged in the same reservoir i.e. when they reached the post of Administrative Officer/Section Officer and that too from the date persons junior to them, but from the combatized cadre, became Administrative Officer/Section Officer. The anomaly which then arose was that persons junior in the combined seniority list of Administrative Officer/Section Officer started receiving a higher wage. With reference to FR-22, in P. Jagdish's case (supra) the Supreme Court held that Article 39(d) of the Constitution was the guiding factor in interpreting FR-22, The principle of stepping up contained in the fundamental rules comes into play when a junior person in the same posts starts receiving salary more than his senior on the same post.....”

12. In P. Jagdish case (supra), the Apex Court 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 junior in the same post cannot be allowed to draw salary higher than the seniors 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 juniors drawing higher salary in the same rank than their seniors. The only way to remove this anomaly is the stepping up of salary of seniors. The rules and provisions which allow the said anomaly to exist and prohibit the stepping up are violative of the principles of natural justice and equity; are contrary to Article 39(d) of the Constitution which envisages “equal pay for equal work” and contrary to the principles of law laid down by the Apex court in its pronouncements.

13. AFT (PB), New Delhi in **Sub Chittar Singh** (supra) and **Sub Dhyan Singh** (supra) has also held that if no option is exercised by

the individual, PAO (OR) will regulate fixation on promotion ensuring that the more beneficial of the two options is allowed to the PBOR.

14. A comparison sheet of Sub Maj Mahinder Singh (Applicant) and Sub Maj Chandrabhan Ram extracted from Pay Slips of 08/2016 and PAO (OR) BEG Centre letter dated 23/25.04.2018 is given below :-

Events	Mahinder Singh	Chandrabhan Ram
Date of enrolment	03.05.1986 (C Group)	03.11.1990 (B Group)
Date of mustering to 'X' Group	25.11.2000	03.05.2003
Naik	01.10.2000	02.01.1995
Havildar	01.01.2003	20.10.1998
Naib Subedar	10.06.2006	02.06.2005
Subedar	24.06.2008	04.10.2008
Subedar Major	11.02.2013	Not Known
Band Pay in 08/2016	Rs. 15850/-	Rs. 18230/-

15. It is observed from the Pay Slips of 08/2016 filed alongwith O.A. that applicant (Sub Maj Mahinder Singh) was enrolled in the Army on 03.05.1986 in Group 'C' and re-mustered in Group 'X' on 25.11.2000 and Sub Maj Chandrabhan Ram was enrolled on 03.11.1990 in Group 'B', approx 4½ years later and re-mustered in Group 'X' on 03.05.2003. Thereafter, Sub Maj Chandrabhan Ram was promoted to the rank of Nk on 02.01.1995 and Havildar on 20.10.1998 whereas applicant was promoted to the rank of Naik on 01.10.2000 and Havildar on 01.01.2003. It means applicant became junior about five years in both promotions of Naik as well as Havildar in comparison to Sub Maj Chandrabhan Ram and therefore, his (i.e. Chandrabhan Ram's) basic pay was fixed higher than the applicant due to early promotion in the rank of Naik and Havildar and thus, Sub Maj Chandrabhan Ram drew more basic pay and became senior. Sub Maj Chandrabhan Ram was promoted to the rank of Naib Subedar on 02.06.2005, i.e. one year earlier to the applicant. Though the

applicant became senior about three months in promotion to the rank of Subedar but this will not have much effect in fixing his basic pay/increment. Therefore, applicant's claim that he is senior to Sub Maj Chandrabhan Ram generally because he was enrolled before Chandrabhan Ram is an irrelevant and illogical comparison and therefore, stepping up benefit prayed for cannot be extended to the applicant.

16. However, in view of aforesaid judgments of AFT (PB), New Delhi in **Sub Chittar Singh** (*supra*) and **Sub Dhyan Singh** (*supra*) with regard to exercise of option for fixation of basic pay as per 6th CPC, we feel it appropriate that applicant should not be put in financial loss for fixation of his basic pay as on 01.01.2006 due to delay in exercising option by the individual. Hence, the delay in exercising of option by the applicant is condoned. The PAO (OR) will regulate fixation of basic pay of the applicant on promotion ensuring that the more beneficial of the two options is allowed to the applicant for fixation of his basic pay w.e.f. 01.01.2006 and accordingly, his basic pay for all subsequent promotions to the rank of Nb Sub, Subedar and Sub Maj should be fixed such that he gets the higher of the two options of his basic pay w.e.f. 01.01.2006.

17. In view of above, Original Application is partly allowed. The respondents are directed to re-fix basic pay of the applicant w.e.f. 01.01.2006 giving benefit of fixation of basic pay on promotion as per 6th CPC ensuring that the more beneficial option is allowed to the applicant and to re-fix his basic pay on all subsequent promotions to the rank of Nb Sub, Sub and Sub Maj and pay the arrears

accordingly. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: January, 2022

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