

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 141 of 2018****Wednesday, this the 8th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-671097-X Nb Sub Niraj Kumar Roy of 59 RR Bn (ASSAM),
 C/o 56 APO
 S/o Shri Arun Dev Roy
 R/o Qtr No. 594 Kha, Adarsh Nagar, Neelmatha,
 District – Lucknow (UP) 226002

..... Applicant

Ld. Counsel for the Applicant: **Shri KKS Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block-III, New Delhi – 110011
3. Officer-in-Charge Records, ASC Records (South), PIN- 900453, C/o 56 APO.
4. Pay Account Office (ORs), ASC (South), No. 107, Lower Agram Road, Bangalore – 560007.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh**,
Central Govt Counsel.**ORDER**

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) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by PAO (ORs), the respondent No. 4 vide its order dated

02.01.2014 (Annexure No. A-1(i) rejecting the claim of the applicant.

- (b) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by PAO (ORs), the respondent No. 4 vide its order dated 04.06.2014 (Annexure No. A-1 (ii) rejecting the claim of the applicant.
- (c) Issue/pass an order or direction of appropriate nature to the respondents to correct the anomaly from the date the mistake was crept in service particulars and to grant him enhanced pay and allowances applicable to him.
- (d) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of remaining arrears along with interest accrued to the applicant due to revision of his pay and allowances.
- (e) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (f) Allow this application with costs."

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 28.06.1992. The applicant was promoted to the rank of Naik on 14.07.2003 and to Havildar on 01.01.2010. He was granted MACP Naib Subedar on 28.06.2016 and subsequently was promoted to Nb Sub on 01.10.2016. The applicant was drawing less pay and allowances to his juniors when he was Sepoy and therefore a comparative statement for stepping up was forwarded by the unit and to PAO (OR) ASC (South) for correct fixation of basic pay and stepping up but his request for correct fixation of his basic pay in the rank of Sepoy and Naik was rejected by the respondents vide their

letter dated 02.01.2014 and 04.06.2014. 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 28.06.1992. He was promoted to the rank of Naik on 14.07.2003, Havildar on 19.03.2009 and Nb Sub on 01.10.2016. The applicant was drawing less pay and allowances to his juniors when he was Sepoy and therefore a comparative statement for stepping up was forwarded by the unit to PAO (OR) ASC (South) and ASC Records for correct fixation of basic pay and stepping up vide letter dated 02.10.2012. When the discrepancy in basic pay was not rectified then applicant approached to PAO (OR) vide letter dated 13.06.2013 and thereafter a Comparative Statement for Stepping Up was again forwarded to Record Office and PAO (OR) vide letter dated 02.08.2013 but his request for correct fixation of his basic pay from Sep to Naik was rejected by the respondents vide their letter dated 02.01.2014 stating that ***“Fixation under ACP scheme is personal and hence no financial upgradation is envisaged to set right the anomalies etc for senior personnel on the ground that junior personnel in the rank got higher pay scale under the ACP Scheme. Hence the question of stepping up of pay does not arise. The Sheet Rolls of both PBORs are returned herewith without contemplating any action”***. Thereafter, vide letter dated 04.06.2014, respondent No. 4 replied that ***“since his junior is drawing higher pay by virtue of ACP, the pay of Senior cannot be stepped up that of junior”***. Learned counsel for the applicant pleaded that fixation of basic pay of the applicant in the rank of

Sepoy, Naik and Havildar is not logical and rational and needs re-fixation/stepping up.

4. Learned Counsel for the respondents submitted that case of stepping up of the applicant (senior) was received in PAO (ORs) ASC (South), Bangalore vide ASC Records letter dated 16.12.2013 wherein his pay was compared with Naik Shivraj Jat (junior). The case was examined by PAO (OR) and Record Office was intimated vide letter dated 02.01.2014 that "No. 14809841F Shivraj Jat (junior) drawing higher pay than No. 14803767A Hav Niraj Kumar Roy as on 07.08.2003 as the former was granted ACP rank on that date thereby fixing his pay @ 3765/- in Naik scale (minimum Rs. 100/- increase in basic pay on the date of ACP) and later @ 3680/- (on account of Naik promotion). Since the junior drawing higher pay by virtue of ACP, the pay of senior cannot be stepped up that of junior. After verifying Sheet Rolls in respect of applicant and his junior Shivraj Jat, it is observed that the applicant (senior) was promoted to Naik on 14.07.2003, accordingly his pay has been fixed giving one notional increment in lower scale and fixed in the next stage at Rs. 3680/- and junior Shivraj Jat has been granted ACP rank of Naik on 07.08.2003, hence, his pay has been fixed notionally giving one increment of Rs. 70/- in the lower scale and fixed in the next stage at Rs. 3765/- in Naik pay scale with minimum benefit of Rs. 100/- as per ACP scheme. When the applicant was Havildar, he was drawing pay of Rs. 9900/- and not Rs. 9530/- as mentioned in O.A. and his junior Shivraj Jat got MACP Havildar on 28.04.2009 and drawing pay of Rs. 10200/-. While verifying Sheet Roll of junior Shivraj Jat, it is noticed that he has

drawn more pay than his entitled pay since April 1998 to December 2015 and the same is under examination for rectification. Even after rectification of his pay, junior has drawn more pay than senior due to grant of ACP/MACP as per orders. However, comparison cannot be made as per para 6 of GOI, MOD letter dated 07.08.2003 which is reproduced as under :-

“6. The financial up-gradation under the ACP scheme shall be purely personal to the Service personnel and shall have no relevance to his seniority, position or rank. As such, there shall be no additional financial up-gradation for the senior personnel on the ground that the junior personnel in the rank has got higher pay scale under the ACP Scheme.”

5. Learned Counsel for the respondents further clarified that applicant's pay was fixed at Rs. 41100/- as on 28.06.2016 (i.e. date of MACP of Nb Sub) and as on 01.07.2017 at Rs. 42300/- whereas his junior Shivraj Jat has drawn pay as on 28.04.2017 at Rs. 37000/- and as on 01.07.2017 at Rs. 39900/- who was granted MACP Nb Sub w.e.f. 28.04.2017. As such, there is no anomaly and senior is getting more pay than the junior w.e.f 28.06.2016 which is evident from Monthly Pay Slips of 11/2017 of Nb Sub Niraj Kumar Roy (Applicant/Senior) and Hav (MACP Nb Sub) Shivraj Jat (Junior) enclosed with counter affidavit. Therefore, request for stepping up of basic pay of the applicant cannot be accepted in view of para 6 of GOI, MOD letter dated 07.08.2003. He submitted that Original Application may be dismissed as there is no involvement of stepping up in the case.

6. Heard learned counsel for the parties at length and perused the relevant documents available on record.

7. It is emerged from the above that the applicant is getting correct pay in comparison to his junior Shivraj Jat who has been given benefit of ACP which resulted beneficial fixation of his basic pay and drawn more pay than the applicant. However, on examination of Sheet Rolls and other related documents, it was found that Shivraj Jat drawn more pay than the applicant due to grant of ACP/MACP and the same is under examination and rectification. It is also evident from Monthly Pay Slips of 11/2017 that there is no anomaly in fixation of basic pay as Nb Sub Niraj Kumar Roy (Applicant/Senior) is getting more pay w.e.f 28.06.2016 than Hav (MACP Nb Sub w.e.f. 28.04.2017) Shivraj Jat (Junior).

8. It is also observed from the Monthly Pay Slips of 11/2017 that applicant has been given benefit of MACP Nb Sub on 28.06.2016 fixing his basic pay as Rs. 41100/- whereas Shivraj Jat (junior) has been given benefit of MACP Nb Sub w.e.f. 28.04.2017 fixing his basic pay as Rs. 37000/-, the difference in service period is about 10 months in granting MACP. As per existing policy, one increment is given to Govt. servants on yearly basis, however, comparing to basic pay of applicant and his junior, there is much more difference than one increment in fixation of basic pay of both the MACP Nb Subs. Hence, it is quite clear from Monthly Pay Slips of 11/2017 that applicant is drawing more pay than his junior.

9. In view of above guiding factors, rules and policy letters, we hold that the claim of applicant for correct fixation of basic pay and stepping up in comparison to his junior has no force and has rightly

been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

10. No order as to costs.

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

Dated: Sept., 2021
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