

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 459 of 2018****Wednesday, this the 1st day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Madho Prasad (JC 761655P)
S/o Late Sh.Bhundar Prasad
LRW 17 HORSE,
PIN-912617, C/o 56 APO

..... Applicant

Ld. Counsel for the Applicant: **Wg Cdr Ajit Kakkar (Retd)**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Army Headquarters, South Block, DHQ PO, New Delhi-110011
3. Pay & Account Office (Other Ranks), EME Trimulgherry, Secunderabad-500020.
4. The EME Records, Trimalagiri, Secunderabad (AP) – 500015.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narain 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) To direct the respondents to fix the pay of the applicant in the VIth Pay Commission from the date of promotion to the rank of Nb Subedar i.e. 17.07.2007.
- (b) To quash the letter dated 13.08.2018 denying correct pay fixation to the applicant.

- (c) To direct the respondents to compute all the arrears and pay arrears from the date of promotion of Nb Subedar i.e. 17.07.2007 and for the date of promotion for Subedar on 01.11.2013.
- (d) To direct the respondents to pay 12% interest on the arrears of pension and other benefits.
- (e) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 30.04.1991 and presently serving with 17 HORSE. The applicant was re-mustered into Master Tech and promoted to the rank of Havildar (HMT) w.e.f. 17.06.2004 with ante date seniority w.e.f. 06.06.2004. He was further promoted to the rank of Naib Subedar w.e.f. 17.07.2007 with ante date seniority w.e.f. 01.07.2007 and Subedar w.e.f. 01.11.2013. The applicant has filed the Original Application to fix his pay as per 6th CPC from the date of promotion to the rank of Naib Subedar i.e. 17.07.2007 and pay the arrears from the date of promotion of Naib Subedar and Subedar. PAO (OR) EME has submitted that revision of pay scales of the applicant w.e.f. 01.01.2006 has been done in accordance with SAI 1/S/2008 vide letter dated 31.12.2008. As per PAO (OR) EME, 6th CPC orders were issued on 11.10.2008 to implement revision of pay w.e.f. 01.01.2006. 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 had exercised his 6th CPC option for revised pay from the date of promotion to Naib Subedar vide Part II Order dated 19.02.2015 which was 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 30.04.1991. The applicant got promoted to the rank of Havildar (HMT) on 17.06.2004 and to the rank of Naib Subedar on 17.07.2007. In the intervening period, the Government of India enacted 6th CPC from 01.01.2006 onwards which was made applicable to all the government employees. In the year 2008, a Special Army Instruction (SAI) 1/S/2008 was enacted by the respondents in which as per clause 14(b)(iv), if the individual fails to choose an option then PAO (OR) will regulate the fixation of pay of an individual which is more beneficial to the PBOR. In the instant case of the applicant, the pay fixed for the applicant was less than that of his juniors and, hence, the applicant is suffering financially at the hands of the respondents. The applicant submitted his 6th CPC option form to Record office on 10.01.2012 which was not accepted by the respondents. On 06.12.2012 the applicant sent a comparative statement for stepping up of pay of seniors drawing less pay than the juniors and thereafter, on 31.01.2013, the applicant submitted a

Statement of Case to waive off the limit for grant of entitled pay and allowances as per 6th CPC but no action was taken by the respondents. On 01.11.2013, the applicant was promoted to the rank of Subedar and suffered immensely from an incorrect fixation of pay thereby 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 promotions 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 that applicant's pay fixed in the rank of Naib Subedar is not logical and rational and needs

re-fixation from the date of promotion w.e.f. 17.07.2007 and for Subedar w.e.f. 01.11.2013.

6. Learned counsel for the respondents submitted that 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. The applicant had exercised his 6th CPC option for revised pay from the date of promotion to Naib Subedar vide Part II Order dated 19.02.2015 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) EME. 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.

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

8. 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.

9. 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.”

10. In another case titled as ***Commissioner and Secretary to Government of Haryana and Ors. v. Ram Sarup Ganda and Ors.***

2006 (12) SCALE 440, The Apex Court has observed in its para No.

15:

“15 In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/posts, then their salary shall be stepped up accordingly.....”

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 to draw 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 Dhyan Singh** (supra) case 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. It is observed from the Pay Slips of 07/2018 filed alongwith O.A. that applicant (Sub Madho Prasad) was enrolled in the Army on

30.04.1991 and Sub Ishwar Singh was enrolled on 24.12.1991, approx 8 months later. Both the JCOs were promoted to the rank of Subedar on 01.11.2013. The Basic Pay (Band Pay) of the applicant is fixed as Rs. 52,000/- in the Pay Slip of July 2018 whereas Basic pay of Sub Ishwar Singh is fixed as Rs. 58,600/- in the Pay Slip of July 2018, thus, there is great difference in Basic Pay of both the JCOs whereas both are promoted on the same date in Subedar rank. Hence, there appears an anomaly in fixation of basic pay of applicant which needs correction.

15. In view of above, Original Application is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are hereby directed to upgrade the basic pay (band pay) of the applicant from the date of promotion to the rank of Naib Subedar i.e. w.e.f. 17.07.2007 and from Subedar rank w.e.f. 01.11.2013 in comparison to Sub Ishwar Singh who is getting more basic pay in the same rank of Subedar 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.

16. No order as to costs.

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

Dated: 1st Sept., 2021
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