

**Reserved**  
**(Ser No 7)**  
**Court No.2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 618 of 2022**

Wednesday, this the 05<sup>th</sup> day of April, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)"**

**"Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Ex Sgt Ashish Kumar (778367-A) S/O Shri Tejbir Singh,  
R/O Vill-Tigri, Post-Datiyana, Distt- Hapur (UP)-245207.

..... Applicant

Ld. Counsel for the Applicant : Shri Manoj Kumar Awasthi, Advocate  
holding brief for Wg Cdr Ajit Kakkar  
(Retd), Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Air Staff Air HQ (VB), Rafi Marg, New Delhi-110106.
3. DAV (Directorate of Air Veterans) Subroto Park, New Delhi, New Delhi-110010.
4. JCDA (Air Force), Subroto Park New Delhi- 110010.

...Respondents

Ld. Counsel for the Respondents. :Mrs. Amrita Chakraborty,  
Central Govt Counsel.

**ORDER**

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

*(a) To direct the respondents to set up the basic pay of the Applicant as per option beneficial to the Applicant and fix the Pension and retiral benefits accordingly w.e.f. 16.03.2022.*

*(b) To direct the respondents to fix the anomaly in basic pay of applicant at par with his course mates w.e.f. 01.01.2006, 23.12.2007, 23.12.2015 & 01.01.2016.*

*(c) To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper any time during the proceedings of this case.*

*(d) To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Air Force on 16.12.2002. During the course of his service he was promoted to the rank of Corporal (Cpl) on 23.12.2007 and Sergeant (Sgt) on 23.12.2015. The applicant had exercised his option for date of next increment as per the policy,

however, his option was not acted upon at the time of implementation of 6<sup>th</sup> and 7<sup>th</sup> Pay Commission w.e.f. 01.06.2006 and 01.01.2016 respectively and it was making loss to the applicant in fixation of his basic pay. The respondents had exercised and taken into consideration the option which was not chosen by the applicant thereby causing financial loss to the applicant. The pay disparity between the applicant and his other course mates continued and applicant is incurring heavy financial loss to the tune of Rs. 2800/- every month. The basic pay of the applicant in February, 2022 is Rs. 45,400/- whereas the last basic pay of his other course mate, Sgt Ajeet Kumar Tiwari (779360S) in February, 2022 was Rs. 48,200/- making a difference of Rs. 2800/-. Being aggrieved with incorrect fixation of his basic pay w.e.f 01.01.2006, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 16.12.2002. He was promoted to the rank of Cpl on 23.12.2007 and Sgt on 23.12.2015. The respondents have arbitrarily and unreasonably not acted upon the correct option selected by the applicant in 'Form of Option' at the

time of implementation of 6<sup>th</sup> and 7<sup>th</sup> Pay Commission w.e.f. 01.06.2006 and 01.01.2016 respectively. The applicant had exercised his option to opt for date of next increment as per the policy, however, his option was not acted upon and it was disadvantageous to the applicant. The respondents had exercised and taken into consideration the option which was not chosen by the applicant therefore, this has caused and is continuously causing financial loss to the applicant. The pay disparity between the applicant and his other course mates continued and applicant is incurring heavy financial loss to the tune of Rs. 2800/- every month. The basic pay of the applicant in February, 2022 is Rs. 45,400/- whereas the last pay drawn by his other course mates in February, 2022 was Rs. 48,200/- making a difference of Rs. 2800/-. It is distressing to note that applicant is drawing less pay since 2006 in comparison to his other course mates and juniors. Copy of Salary Slip of the applicant and his course mate Sgt Ajeet Kumar Tiwari for Feb 2022 are attached as annexure No 2.

4. Learned counsel for the applicant further submitted that applicant's case is covered by the decision of **Babhoot Singh vs. Union of India & Ors**, O.A. No. 1053 of 2012,

decided on 12.12.2014 by AFT (RB) Lucknow. His other submission is that the 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 in Para 3 it has been stated 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, 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 individual 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. He pleaded to consider the case of the

applicant for fixation of basic pay w.e.f. 01.01.2006 as per 6<sup>th</sup> CPC and w.e.f. 01.01.2016 as per 7<sup>th</sup> CPC in comparison to his junior Sgt Ajeet Kumar Tiwari.

5. On the other hand, learned counsel for the respondents submitted that on checking from IRLA set and Oracle history, it has come to light that applicant's pay has been correctly fixed in 6<sup>th</sup> CPC w.e.f. 01.01.2006 and 7<sup>th</sup> CPC w.e.f. 01.01.2016. He, however, submitted that the matter for stepping up of such cases has already been taken up with concerned agencies on receipt of MoD letter dated 01.07.2022.

6. Learned counsel for the respondents further submitted that it is apparent from the pay slips in respect of the applicant and Sgt Ajeet Kumar Tiwari that applicant had drawn less pay than his course-mate because of default fixation carried out in applicant's case in absence of option certificate as compared to course-mate who had opted to migrate to 6<sup>th</sup> CPC. It is also evident that applicant was granted MACP as per the option available to him in terms of Rule 6 of AF Pay Rules 2017 as the applicant had exercised the provision of the option under Rule 5 to migrate to the revised pay structure as notified by the Air Force Pay Rules

2017 on the date of promotion/MACP instead of 01.01.2016 (default fixation). Accordingly, his pay was fixed on promotion. Therefore, his course-mate, Sgt Ajeet Kumar Tiwari has been provided with DNI Option w.e.f 01.07.2016 in 7<sup>th</sup> CPC and has been fixed with more basic pay than the applicant as he had selected to get his pay fixed in 7<sup>th</sup> (default fixation) instead of DOP. Hence, the applicant is not entitled for any of the reliefs being claimed in O.A. and the same is liable to be dismissed.

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 Hon'ble 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 decision dated 25<sup>th</sup> October, 2010 rendered in W.P. (C) No. 2884/2010 titled as **UOI and Anr. v. Chandra Veer Jeriya**, the Hon'ble 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....."*

11. In **P. Jagdish case** (supra), the Hon'ble 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 senior because that would be against the ethos of Article 39 (d) of the Constitution of India 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 of India which envisages "equal pay for equal work" and contrary to the principles of law laid down by the Hon'ble Apex court in its pronouncements.

12. 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.

13. It is observed from the above that applicant and Sgt Ajeet Kumar Tiwari were enrolled on 16.12.2002 and 16.06.2003 and were promoted to the rank of Sgt on 23.12.2015 and 19.01.2017 respectively. However, the applicant had drawn less pay than Sgt Ajeet Kumar Tiwari because of default fixation carried out in applicant's case in absence of option certificate as compared to Sgt Ajeet Kumar Tiwari who had opted to migrate to 6<sup>th</sup> CPC after reclassification.

14. 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 6<sup>th</sup> CPC and further increments, 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 Pay Account Office 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 Cpl. on

23.12.2007 and Sgt on 23.12.2015 should be fixed in such a way that he gets the higher of the two options of his basic pay w.e.f. 01.01.2006 and 01.01.2016 respectively.

15. In view of above, Original Application is **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 6<sup>th</sup> CPC ensuring that the more beneficial option is allowed to the applicant and re-fix his basic pay on all subsequent promotions to the rank of Cpl and Sgt so that applicant's pay is fixed not less than his junior, Sgt Ajeet Kumar Tiwari 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 a certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

16. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated :05.04.2023  
*rathore*