

RESERVED
(COURT-2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 460 of 2020

Wednesday, this the 20th day of December, 2023

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

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

No. 780535-L Ex Sgt Rahul Prakash
S/o Late Ganesh Dutt Sharma,
R/o House No. B-18, South City, Raibareilly Road,
District – Lucknow (U.P.), Pincode-226025.

.....Applicant

Ld. Counsel for the : **Shri Shailendra Kumar Singh**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Vayu Sena Bhawan, Air Headquarters, New Delhi-110011.
3. Officer-in-Charge, AMC Records, Subroto Park New Delhi.
4. Joint CDA (AF), New Delhi.
5. Directorate of Personal Services, Air Headquarters (Vayu Bhawan) Rafi Marg, New Delhi-11106.

...Respondents

Ld. Counsel for the : **Shri RC Shukla**,
Respondents. Central Govt. Standing 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, whereby the applicant has sought following reliefs:-

(a) To issue/pass an order or direction of appropriate nature to set-aside/quash the the impugned PPO annexed as **Annexure No. A-1.**

(b) to issue/pass an order or direction to respondents to issue correct PPO with pay in band of Rs. 40,400/-.

(c) to issue/pass an order or direction to pay arrears of pension incurring due to difference in pay band of Rs. 39,200/- and Rs. 40,400/-.

(d) to issue/pass an order or direction to the respondents to pay back the deducted amount w.e.f. August 2017 to March 2018 and pay difference of arrears of salary w.e.f. July 2006 to July 2017 due to anomaly in pay structure.

(e) to issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with exemplary cost.

2. The factual matrix on record is that the applicant was enrolled in the Indian Air Force on 09.03.1998. During the course of his service, he was promoted to the rank of Corporal on 01.02.2003 and Sergeant on 13.09.2011 and was discharged from service on 31.03.2018 (AN). Prior to discharge from service, basic pay of the applicant was Rs. 40,400/- but he has been issued PPO No 349201811828 by respondent No. 4 showing basic pay of Rs. 39,200/- instead of his last basic pay of Rs. 40,400/-. On account of getting less salary during the course of his service, he preferred RTI application dated 25.07.2017 and

25.10.2018 taking ground that his juniors were getting more pay, but the same has been rejected vide order dated 18.09.2018, hence this O.A. has been filed.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force on 09.03.1998. The applicant was promoted to the rank of Corporal on 01.02.2003 and Sergeant on 13.09.2011 and was discharged from service on 31.03.2018 after rendering more than 20 years of service. The basic pay of the applicant was fixed at Rs. 40,400/- at the time of discharge from service which is evident from the last e-Pay Slip of March 2018. The applicant has been issued PPO No 349201811828 showing basic pay of Rs. 39,200/- instead of his last basic pay of Rs. 40,400/- which is incorrect. The applicant submitted applications to the Grievance Cell before respondent No. 4 on 25.07.2017 and 25.10.2018, but his grievance is still pending.

4. Learned counsel for the applicant further submitted that his junior, No. 781314-L Sgt Ved Rattan whose date of enrolment is 09.09.1999 is drawing more salary w.e.f. 01.07.2006. This fact is also evident from batch-mates of the applicant, i.e. Sgt Kamalakshan, Sgt Navlesh Kumar Shahi, Sgt DK Singh, Sgt SN Sharma and Sgt A Bhanduria to whom PPOs have been issued granting band pay of Rs. 40,400/- and hence, reduction in basic pay from Rs. 40,400/- to Rs. 39,200/- at the time of retirement is illegal and arbitrary on the part of respondents which should be corrected and applicant be issued fresh PPO granting basic pay of Rs. 40,400/- accordingly.

5. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service on 31.03.2018 and his basic pay was reduced from Rs. 40,400/- to 39,200/- due to wrong fixation of pay on grant of MACP as on 01.01.2006 as objected by JCDA (AF). The audit authority has insisted to grant MACP on 01.01.2006 only after migration to 6th CPC as MACP is the part of 6th CPC.

6. Learned counsel for the respondents further submitted that in the present case, basic pay of the applicant has been reverted from Rs. 40,400/- to 39,200/- on the advice of Jt CDA, however, no recovery has been initiated from applicant's PPO. He pleaded for dismissal of Original Application.

7. We have heard learned counsel for the parties and perused the 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. It is emerged from the above that the applicant was promoted to the rank of Sgt. On 13.09.2011 whereas his junior, Sgt Vedratan was promoted to the rank of Sgt. On 13.09.2012 and thereafter retired in the same rank, therefore, his position will remain of a senior and applicant will be treated as senior to Sgt. Vedratan.

14. In view of above, Original Application is allowed. Though, in the pay slip for the month of March 2018, basic of applicant is shown Rs. 40,400/-, the same has been reduced while issuing PPO, which is incorrect. The respondents are hereby directed to upgrade the basic pay (band pay) of the applicant @ Rs. 40,400/- instead of Rs. 39,200/- in comparison to his junior (Sgt Vedratan) and issue fresh PPO showing basic pay of Rs. 40,400/- on the date of discharge from

service. 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.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 20th December, 2023
rspal

(Justice Anil Kumar)
Member (J)

RESERVED
(Court No 2)

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 460 of 2020

Ex Sgt Rahul Prakash

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>20.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p style="text-align: center;">Judgment pronounced. O. A. No. 460 of 2020 is allowed. For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;">(Maj Gen Sanjay Singh) Member (A)</p> <p style="text-align: right;">(Justice Anil Kumar) Member (J)</p> <p><i>rspal</i></p>