

**RESERVED**  
**Court No. 2**

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

**Original Application No 398 of 2022**

**Thursday, this the 29<sup>th</sup> day of February, 2024**

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Ashwani Kumar Mishra (JC 669831F Ex Sub/Clk SKT)  
S/o Kedar Nath Mishra  
R/o Jagdish Nagar, Harungala Road,  
Bareilly (UP) - 243006

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer-in-Charge Records, Army Service Corps (South), PIN-900493, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.
4. Officer-in-charge, Pay and Accounts Office (Other Ranks), ASC (South), Bangalore-07.
5. Chief Manager, State Bank of India (CPPC), 4 Kutchery Road, Prayagraj.
6. Branch Manager, State Bank of India, Kutchery, Civil Lines, Bareilly.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**  
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 for the following reliefs:-

- “(a) Issue/pass an order directing the respondents to consider and re-fix salary of the applicant in the Band Pay of Rs. 52,000.00 and pay arrears of difference in salary within a stipulated time.
- (b) Issue/pass an order directing the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary in the Band Pay of Rs. 52,000.00, and pay arrears of difference in pension from 01.04.2021 to the date of re-fixation along with interest within a stipulated time.
- (c) Issue/pass an order directing the respondents to refund the recovered amount of Rs. 1,52,553.00 along with interest within a stipulated time.
- (d) 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 cost.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 02.03.1991 and discharged from service on 31.03.2021 in the rank of Subedar on completion of terms of engagement of service. The applicant, before discharge from service, was in receipt of Rs. 52,000/- as Basic Pay as per his entitlement which is evident from the monthly Statement of Accounts for the month of January & February, 2021. However, in the month of March 2021, when applicant was retiring from service on completion of terms of engagement, his Basic Pay was reduced from Rs. 52,000/- to Rs. 50,500/- and Rs. 1,52,553/- were deducted in Final Settlement of Account (FSA) for the month of March 2021 without any reasons. The

applicant submitted many representations/complaints but no suitable action was taken by the respondents. However, in response to the grievance raised by the applicant, Record Office forwarded the matter to Pay and Account Office but nothing materialised and applicant is getting lesser pension than his juniors. 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 02.03.1991 and discharged from service on 31.03.2021 in the rank of Subedar on completion of terms of engagement of service. The applicant, before discharge from service, was in receipt of Rs. 52,000/- as basic pay as per his entitlement which is evident from the Monthly Statement of Accounts for the month of January & February, 2021. However, in the month of March 2021, when applicant was retiring from service on completion of terms of engagement, his Basic Pay was reduced from Rs. 52,000/- to Rs. 50,500/- and Rs. 1,52,553/- were deducted in Final Settlement of Account (FSA) for the month of March 2021 for which no intimation/reason or opportunity was given to the applicant. Feeling aggrieved, the applicant submitted representation/complaint dated 01.06.2021 to the respondents raising his grievance but no action was taken by the respondents. Thereafter, applicant again represented his matter regarding reducing of Basic Pay and recovery of Rs. 1,52,553/- and also sent several reminders vide applications dated 04.07.2021, 26.07.2021, 12.09.2021 and 25.10.2021. In response to the grievance raised by the applicant, though, Record

Office forwarded the matter to Pay and Account Office (ORs), ASC South, Bangalore for taking necessary action but the matter is still pending with PAO for unknown reasons.

4. Learned counsel for the applicant further submitted that Basic Pay of the applicant has been reduced from Rs. 52,000/- to Rs. 50,500/- but there were several juniors, i.e. Sub David P Ithappiri, Sub Man Bahadur Rasaili and Sub Kamlesh Pandey who were enrolled after applicant in the month of April & May 1991 but their Basic Pay was not reduced and their pension was fixed accordingly and they are getting more pension than the applicant. He further submitted that it is cardinal principle of law, as held by the Hon'ble Supreme Court in a number of cases that no junior in the same post can be granted more salary than his seniors. He placed reliance on the judgments of the Hon'ble Apex Court in Civil Appeal Nos. 65-67 (Arising out of SLP(C) Nos. 12512-12514 of 2007, decided on 09.01.2009, titled as **Er. Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board and Others**, 2009 (2) SLJ 271 (SC), **Union of India and Others vs. P. Jagdish and others** reported in 1997 (3) SCC 176, Civil appeal No. 7115 of 2010, **Thomas Daniel vs. State of Kerala & Ors**, decided on 02.05.2022, Delhi High Court decision dated 25.10.2010 in W.P. (C) No. 2884/2010, titled as **Union of India and Another vs. Chandra Veer Jeriya**, AFT (PB) New Delhi judgment in OA 1013/2021, **CPO LOG (MAT) Narender Kumar vs. Union of India & Ors**, decided on 18.04.2023 and this Tribunal judgment in OA No. 618 of 2022, **Ex Sgt. Ashish Kumar vs. Union of India & Ors**,

decided on 05.04.2023 and pleaded that in view of the aforesaid judgments and Article 39 (d) of the Constitution of India, applicant's Basic Pay to be refixed/upgraded from Rs. 50,500/- to Rs. 52,000/- as it was being granted to the applicant in the month of February, 2021 before FSA and Rs. 1,52,553/- recovered from the FSA of the applicant be refunded back to the applicant in view of the judgment of the Hon'ble Apex Court in **Thomas Daniel** (supra) and fresh PPO to be issued to the applicant granting arrears accordingly.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 02.03.1991 and discharged from service on 31.03.2021 on completion of terms of engagement/service. He was granted service pension w.e.f. 01.04.2021 vide PPO dated 24.03.2021. The applicant approached ASC Records (South) for revision of his basic pension on Basic Pay of Rs. 52,000/- which was reduced to Rs. 50,500/- in FSA. Accordingly, his case was referred to PAO (OR) ASC South vide letter dated 05.08.2021 alongwith comparative statement of the applicant and Ex Sub David P. Ithappiri alongwith their Sheet Rolls, Pay Slips, FSA and PPO and PAO (OR) ASC (South) vide letter dated 01.04.2022 has approved the proposal for stepping up of applicant's basic pay to Rs. 4200/- w.e.f. 01.12.2004 with date of next increment on 01.12.2005 at par with his junior Ex Sub David P. Ithappiri and returned the case for submission of LPC-Cum-Data Sheet for their audit and onward submission to PCDA (P) Prayagraj for notification of corrigendum PPO. Accordingly, LPC-Cum-Data Sheet of the applicant for issue of Corrigendum PPO

has been forwarded to PAO (OR) ASC (South) digitally through SPARSH software on 03.06.2022 for pre audit and onward submission to PCDA (P) Prayagraj for notification of Corrigendum PPO which is under process.

6. Learned counsel for the respondents, through supplementary counter affidavit, pleaded that during FSA, pay drawn from the date of enrolment to the date of discharge has been revised and excess drawn pay and allowances on account of increment from 1999 to 2004 have been recovered amounting to Rs. 1,52,553/- and basic pay fixed from the date of enrolment to the date of discharge and last basic pay drawn by the applicant comes to Rs. 50,500/- which is correct. Since the applicant was drawing one increment more than his entitlement which has been regulated and his basic pay was reviewed and last basic pay has been fixed to Rs. 50,500/- in FSA.

Though, during the course of final hearing, learned counsel for the respondents admitted this fact that applicant's last pay drawn has been reduced to Rs. 50,500/- in comparison to his junior Ex Sub Davit P. Ithappiri, whose last pay drawn is Rs. 52,000/- in FSA.

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 12512-12514 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. The Hon'ble Court in **Rafiq Masih** (supra) case has also held in its concluding para 12 that :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have

mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. The Hon'ble Supreme Court in the case of **Thomas Daniel** (supra) has held that any excess payment made on account of wrong calculations by the employer, by applying a wrong principle or based on a particular interpretation of a rule/order, which is subsequently found to be erroneous, is not recoverable.

15. It is emerged from the above that the applicant is senior in enrolment (date of enrolment - 02.03.1991) in comparison to Sub David P Ithappiri (date of enrolment – 14.04.1991) and both were discharged from service in the rank of Subedar on 31.03.2021 and 30.04.2021 respectively and last pay drawn of the applicant and Sub David P. Ithappiri in supplementary counter affidavit filed by the respondents is shown Rs. 50,500/- and Rs. 52,000/- respectively. Though, last pay drawn of the applicant was also Rs. 52,000/- in the Pay Slip of Jan. & Feb. 2021 which was reduced to Rs. 50,500/- in

FSA by the PAO (OR) ASC (South). Therefore, position of the applicant will remain of a senior and applicant will be treated as senior to Subedar David P. Ithappiri which is evident from the service documents, hence, applicant's last pay drawn in comparison to his junior Sub David P. Ithappiri cannot be lesser and thus, there appears an anomaly in reducing basic pay of applicant which needs correction and refixation to Rs. 52,000/- as it was reflected in Pay Slip of the previous month, i.e. Feb. 2021.

16. In the present case, we find that the applicant's basic pay has been reduced from Rs. 52,000/- to Rs. 50,500/- in FSA in March 2021, which resulted recovery of Rs. 1,52,553/- from FSA of the applicant but there seems no fault on the part of the applicant with regard to receipt of excess amount due to difference in fixation of basic pay/increment, hence, in view of aforesaid judgments of the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) and **Thomas Daniel** (supra), an amount of Rs. 1,52,553/- recovered from the applicant in FSA on account of difference in fixation of basic pay/increment is liable to be refunded to the applicant with interest.

17. In view of above, Original Application is **allowed**. The respondents are hereby directed to refund Rs. 1,52,553/- to the applicant which was recovered from Pay Slip of March 2021/FSA with a simple interest @ 6% per annum. The Respondents are further directed to issue fresh PPO to the applicant showing his last basic pay @ Rs. 52,000/- as on 31.03.2021 and pay 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. Misc. Application(s), pending if any, shall stand disposed off.

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

Dated: February, 2024  
SB

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