

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 19 of 2018

Tuesday, this the 13th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC-765923-L Subedar Rajbir Singh (Retd)
S/o Shri Singh
R/o Gautam Nagar Colony,
Near left side of SG Inter College,
Post – Kasganj, Dist : Kasganj (UP) – 207123

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi – 110011
3. OIC Records, EME Records, PIN : 900453, C/o 56 APO.
4. PAO (OR) EME (NE Cell/T Section), Secunderabad (AP) – 5000021.
5. PCDA (Pension) (Army), Draupadi Ghat, Allahabad (UP) – 212014.

..... Respondents

Ld. Counsel for the Respondents : Shri Sunil Sharma,
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 issue suitable orders and directions to the Respondents to verify the five queries of the applicant

and step up the pay of the applicant at par with Sub Ajay Kumar wherein claim of the applicant has not been settled till date as per Final Settlement of Account i.e. 01 Jul 2016.

- B. Because, due to said incorrect fixation of band pay applicant has suffered as loss of about Rs. 90552/- under various heads. [Deductions in pay (Rs. 60212/-), Gratuity & Commutation (Rs. 20000/-), Leave Encashment (Rs. 6080/-), Transfer Grant [Rs. 660/-; Rs 220/- on 14.05.2010 & Rs 240/- on 08.07.2012], and Leave Travel Concession for the year 2016 (Rs 3600/-).
- C. To issue suitable orders or directions to the Respondents to release arrears of pay and allowances along with pension due to him with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.
- D. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 23.06.1986 and was discharged from service on 30.06.2016 (AN) in the rank of Subedar after completion of 30 years of service. On Final Settlement of Account (Last Pay Drawn Certificate for the month of 06/2016) applicant came to know that his Basic Pay (Band Pay) has been fixed Rs. 14120/- in the Pay Slip of June 2016 whereas his junior Sub Ajay Kumar's Basic Pay has been fixed Rs. 14390/-. At the time of discharge, applicant raised this anomaly but nothing materialised. Thereafter, applicant submitted a letter dated 16.09.2016 to respondent No. 4 regarding stepping up and re-fixation of his Basic Pay @ Rs. 14390/- per month and to refund recovered amount of Rs. 60212/-, followed by a reminder letter dated

01.12.2016 but his grievance was not resolved. 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 23.06.1986 and was discharged from service on 30.06.2016 (AN) in the rank of Subedar after completion of 30 years of service. On receipt of Final Settlement of Account (Last Pay Drawn Certificate for the month of 06/2016), applicant found that his Basic pay (Band Pay) has been fixed Rs. 14120/- in the Pay Slip of June 2016 whereas his junior Sub Ajay Kumar's basic pay has been fixed Rs. 14390/- and therefore, applicant raised five queries with respect to his stepping up of his basic pay and requested the respondents to fix his basic pay @ Rs. 14390/- per month and to release arrears of pay and allowances alongwith pension due to him with suitable interest. Learned Counsel for the applicant also submitted that as per Last Pay Drawn Certificates for the month of 06/2016 (filed along with O.A.), applicant was granted substantive rank/Paid Acting rank of Subedar w.e.f. 01/10/2013 whereas Sub Ajay Kumar was granted substantive rank/Paid Acting rank of Subedar w.e.f. 01/11/2013; it means, applicant was promoted/granted substantive rank of Subedar one month prior to Sub Ajay Kumar resulting applicant is one month senior to sub Ajay Kumar. So, fixation of Basic Pay (Band Pay) @ Rs. 14390/- of a junior (Sub Ajay Kumar) from the applicant in the rank of Subedar whose Basic Pay (Band Pay) is fixed @ Rs. 14120/- is not logical and rational and needs re-fixation.

4. Learned Counsel for the respondents submitted that final settlement of account of each soldier is done at the time of discharge, and at this time, all pay and allowances drawn during entire service are checked and adjusted correctly. When provisional final settlement of account of the applicant was done and Last Pay Drawn Certificate was prepared in the month of June 2016, it was noticed that the applicant has drawn Rs 60,212/- more than his entitlement. He further submitted that applicant was drawing basic pay of Rs. 1130/- when 5th CPC was declared, his basic pay was fixed @ Rs. 3685/- accordingly, and at the time of RTPGP fixation on 10.10.1997, applicant was drawing Rs. 3855/- and was required to be fixed at Rs. 3900/- whereas it was fixed at Rs. 4000/- i.e. excess of one increment due to system generated errors. At the time of finalisation of his accounts during Final Settlement of Accounts (FSA) the pay of the applicant was corrected as per his eligibility and basic pay was also re-fixed at Rs. 14,120/- and entire excess payment of Rs. 60,212/- made to him earlier have been recovered. He pleaded that original application be dismissed as there is no involvement of stepping up in this case.

5. Learned counsel for the respondents further submitted that the fixation of pay was done based on the recommendations of 5th, 6th and 7th Central Pay Commissions and no bias has been done to the applicant as alleged with Sub Ajay Kumar. Therefore, he submitted that the application may be dismissed as there is no involvement of stepping up in this case.

6. Heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri Sunil Sharma learned counsel for the respondents at length and perused the relevant documents available on record.

7. 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.

8. 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.”

9. 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.....”

10. 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.....”

11. 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.

12. It is emerged from the above that the applicant was promoted prior to Sub Ajay Kumar in the rank of Subedar on 01.10.2013 and thereafter retired in the same rank, therefore, his position will remain of a senior and applicant will be treated as senior to Subedar Ajay Kumar.

13. In view of above, the respondents are hereby directed to upgrade the basic pay (band pay) of the applicant @ Rs. 14,390/- instead of Rs. 14,120/- from the date his junior (Sub Ajay Kumar) was given the higher basic pay (Rs. 14390/-) in the same rank of Subedar with all retiral dues. Rs 60,212/- recovered from pay and allowances of applicant at the time of retirement from service be reimbursed to the applicant with an interest @ 8% per annum. 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.

14. No order as to costs.

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

Dated: July, 2021
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