

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 576 of 2021****Tuesday, this the 12<sup>th</sup> day of July, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ram Krishna Pandey, JC-758217F  
 S/o Late Prabhu Dayal Pandey  
 R/o Gomti Nagar, LRP Road, Behind Mahalaxmi Rice Mill,  
 Lakhimpur, Kheri (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Srivastava,**  
 Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Indian Army, South Block, New Delhi.
3. The Standing Army Pay Commission Section, Addl Dte Gen Personnel Services, Adjutant General's Branch, Integrated Headquarter of Ministry of Defence (Army), Room No. 10, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi – 110001.
4. The PAO (OR) EME (G-Tech Sec), Secunderabad-21, Telangana.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterji,**  
 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:-

- “(1) The Hon'ble Tribunal may kindly be pleased to passed the order and direct the opp parties to stepping up of pay and pension of applicant from the juniors with interest.

- (2) The Hon'ble Tribunal may kindly be pleased to pass any other order or direction which it deems, just and proper in the circumstances of the matter along with the cost of Application."

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 12.09.1986 and was discharged from service on 31.10.2019 (AN). During the service applicant was promoted to the rank of Hav (HMT) on 27.10.1998, Nb Sub w.e.f. 01.09.2003, Sub w.e.f. 01.10.2008 and Sub Maj w.e.f. 01.03.2016. The applicant was also granted honorary commission in active service to the rank of Hony Lt. w.e.f. 26.01.2019 and Hony Capt w.e.f. 15.08.2019. Since the applicant was promoted to the rank of Subedar Major w.e.f. 01.03.2016, the provisions to exercise option for fixation of his pay on promotion was applicable to him whereas applicant has not availed the option to revise his pay from the date of promotion which resulted he is getting less pay in comparison to his junior. The applicant submitted many representations to the respondents for stepping up his pay on 16.05.2018 and 15.03.2021 alongwith comparative monthly statement of March 2018 but nothing has been done so far. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that his juniors are getting higher pay from the applicant whereas there is no fault on the part of the applicant in any manner. The applicant submitted many representations to the respondents for stepping up his pay with his junior Sub Maj Rakesh Singh on 16.05.2018 and 15.03.2021 by

submitting comparative monthly statement of March 2018 but nothing has been done so far.

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 placed reliance with the judgment of AFT Chandigarh in O.A. No. 575 of 2016, **Sharad Vashista & Others vs. Union of India & Others**, decided on 08.04.2018. He further submitted that 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. He pleaded that applicant's pay fixed in the rank of Sub Maj is not logical and rational and needs re-fixation from the date of promotion.

5. Learned counsel for the respondents submitted that during the service, applicant was promoted to the rank of Hav (HMT) on 27.10.1998, Nb Sub w.e.f. 01.09.2003, Sub w.e.f. 01.10.2008 and Sub Maj w.e.f. 01.03.2016. The applicant was also granted honorary commission in active service to the rank of Hony Lt. w.e.f. 26.01.2019 and Hony Capt w.e.f. 15.08.2019 and finally discharged from service on 31.10.2019 (AN). As per MOD notification dated 03.05.2017, option was made available for switching over from 6<sup>th</sup> CPC to 7<sup>th</sup> CPC to the personnel who were promoted on or after 01.01.2016 to date of notification of 7<sup>th</sup> CPC, i.e. on 03.05.2017. Since the applicant was promoted to the rank of Subedar Major w.e.f. 01.03.2016, the said provision was applicable to him whereas applicant has not availed the option to revise his pay from the date of promotion. As per GOI, MOD letter dated 22.03.2018, defence personnel may opt to his/her pay fixed from the date of his/her next increment, either on 1<sup>st</sup> July or 1<sup>st</sup> January as the case may be. GOI, MOD letter dated 26.02.2019 and Standing Army Pay Commission Section letter dated 08.03.2019 has clarified that *“all personnel who have been promoted during the period from 01.01.2016 to 26.02.2019, should exercise the option within six months. The period of six months starts from 26.02.2019. Further, option for pay fixation on promotion once exercised is final”*.

6. Learned counsel for the respondents further submitted that since the case of applicant was related to fixation of pay and allowances, the comments of PAO (OR) EME has been asked and it was submitted by PAO (OR) EME vide letter dated 07.12.2021 that applicant has been promoted to Subedar Major w.e.f. 01.03.2016 but

the applicant has not availed the option to revise his pay from the date of promotion and no Part II Order has been published by the unit of the applicant. Therefore, applicant has failed to exercise the option for fixation of pay in above two conditions (which is more beneficial) inspite of ample time given to him for exercising option, hence, pay of the applicant was fixed correctly as per existing rules.

7. Learned counsel for the respondents further submitted that there is no infirmity of law, in action of the respondents and pay and allowances of the applicant on promotion to the rank of Sub Maj has been fixed correctly by PAO (OR) EME in the manner which was more beneficial to him irrespective of giving option or not. Hence, relief sought by the applicant is contrary to the existing policy and the applicant is not eligible for any relief at this stage and he pleaded for dismissal of O.A.

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

9. 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.

10. 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.”

11. 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.....”

12. 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.....”

13. 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.

14. 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.

15. It is observed from the Comparative Statement and Monthly Pay Slips of March 2018 that Sub Maj Rakesh Singh was enrolled on 11.11.1986, mustered on 01.08.2000 and promoted to the rank of Subedar Major on 01.07.2016 whereas, applicant was enrolled on 12.09.1986, mustered on 27.10.1998 and promoted to the rank of Subedar Major on 01.03.2016, thus, the details show that overall applicant is senior both in enrolment and remustering, however, both

JCOs were promoted to the rank of Subedar Major on 01.03.2016 but applicant's basic pay in the rank of Subedar Major in Monthly Pay Slip of March 2018 has been shown Rs. 64,100/- whereas his junior Subedar Major Rakesh Singh is shown Rs. 66,000/- in Monthly Pay Slip of March 2018 which shows that there is a difference in basic pay and junior is getting more pay than his senior (applicant). Hence, there appears an anomaly in fixation of basic pay of applicant which needs correction.

16. In view of above, Original Application is **allowed**. The impugned order, if any, passed by the respondents is 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 Subedar Major i.e. w.e.f. 01.03.2016 onwards in comparison to Subedar Major Rakesh Singh who is getting more basic pay in the same rank of Subedar Major 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 from the date of this order till actual payment.

17. No order as to costs.

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

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

Dated: July, 2022

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