

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 569 of 2021****Wednesday, this the 23rd day of March, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-695795-Y Ex Subedar (Nur Tech) Murali N
of 2TT Wing, AMC Centre & College, Lucknow-02
S/o N. Neelakantama Naidu
C/o Shri Abdhesh Giri,
R/o House No. 592-K/267, D Block
Defence Colony, Telibagh,
District – Lucknow (UP), Pin – 226002

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K.S. Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011
3. Additional Directorate General Personnel Services, Adjutant General's Branch, Integrated Headquarter of Ministry of Defence (Army), New Delhi – 110011.
4. Officer-in-Charge Records and Commandant, AMC Centre and College, Lucknow-226002.
5. The Joint Controller I/C, Pay Accounts Office (Other Rank), AMC, Sardar Patel Marg, Lucknow – 226002.
6. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Manu Kumar Srivastava**,
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) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside rejection order dated 04 Dec 2020 (Annexure No. A-1(ii) passed by respondent No. 5 by which re-fixation of pay and allowances of the applicant along with his colleagues has been denied in the most arbitrary, capricious and illegal manner.
- (b) Issue/pass an order or direction of appropriate nature to the respondents to fix the basic pay of the applicant with effect from the date of promotion i.e. 08.12.2006 as provided vide letter No. A/27153/VI-CPC/3/AG/PS-3(a) dated 15.10.2008 (Annexure No. A-1(i) issued by the respondent No. 3 and accordingly he deserves the revised fixation of his basic pay w.e.f. 08.12.2006 and as such he is entitled to arrears of enhanced pay and allowances w.e.f. 08.12.2006 to 31.01.2017 and thereafter arrears of enhanced pension w.e.f. 01.02.2017 date of retirement till date of actual enhancement of pensionary benefits.
- (c) Issue/pass an order or direction of appropriate nature to the respondents to pay arrears to the applicant after fixing his basic pay with effect from the date of promotion i.e. 08.12.2006 till date of actual payment.
- (d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with exemplary costs.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 27.06.1995. The applicant was promoted to the rank of Naib Subedar on 08.12.2006 and Subedar on 13.10.2012. As per

IHQ of MOD (Army) letter dated 15.10.2008 and SAI 1/S/2008, option for fixation of pay either from 01.01.2006 or from the date of promotion whichever was beneficial to the individual was to be exercised as per recommendations of 6th CPC but applicant being not aware about this option could not submit his option. He came to know later on in January 2020 about the exercise of option when he learnt that he is getting less pay in comparison to his juniors. The applicant personally approached the authorities in the month of Feb. 2020 but of no avail. The applicant represented his case vide letter dated 26.11.2020 against non adjustment of correct pay and allowances with a prayer for re-fixation of pay and pension as per 6th CPC giving the most beneficial option. The representation of the applicant was disposed of by the respondent No. 5 mentioning therein that benefit of O.A. No. 575 of 2016, **Sharad Vashista & Others vs. Union of India & Ors**, decided on 08.04.2018 judgment is specifically concerned with petitioner of the case only. 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 27.06.1995. The applicant was promoted to the rank of Naib Subedar on 08.12.2006 and Subedar on 13.10.2012. As per IHQ of MOD (Army) letter dated 15.10.2008 and SAI 1/S/2008, option for fixation of pay either from 01.01.2006 or from the date of promotion whichever was beneficial to the individual was to be exercised as per recommendations of 6th CPC but applicant being not aware about this option could not submit his option. He came to know later on in January 2020 about the exercise of option

when he learnt that he is getting less pay in comparison to his juniors namely JC-695519W Sub (NT) Sharad Vashisth and JC-695509M Sub (NT) Pravin Singh. The applicant personally approached the authorities in the month of Feb. 2020 but of no avail. The applicant when he came to know about AFT Chandigarh judgment in O.A. No. 575 of 2016, **Sharad Vashistha & Others vs. Union of India & Ors**, decided on 08.04.2018, represented his case vide letter dated 26.11.2020 against non adjustment of correct pay and allowances with a prayer for re-fixation of pay and pension as per 6th CPC giving the most beneficial option. The representation of the applicant was disposed of by the respondent No. 5 mentioning therein that benefit of Sharad Vashistha judgment is specifically concerned with petitioner of the case only.

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 Vashistha & Others vs. Union of India & Others**, decided on 08.04.2018 and submitted that similiary situated persons

who approached for re-fixation of basic pay in this Original Application are getting higher pay scale/pension than applicant. Hence, there cannot be two pay scales for the individuals working in the same rank, same cadre and discharging same duties. He also submitted that AFT (PB) in O.A. No. 1092 of 2017, **Sub Dhyani 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 promotion that was a more beneficial option for the applicant, thereby, fixing his pay from the date of promotion to the rank of Naib 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.

5. Learned counsel for the applicant pleaded that applicant's pay fixed in the rank of Naib Subedar is not logical and rational and needs re-fixation from the date of promotion w.e.f. 08.12.2006. The applicant's basic pay on promotion to the rank of Naib Subedar was fixed at Rs. 9300/- as on 08.12.2006 which needs to be revised to Rs. 10,460/- as per factor of 1.86 (Rs. 5620/- x 1.86 = 10,460/-).

6. Learned counsel for the respondents submitted that applicant was promoted to the rank of Naib Subedar w.e.f. 08.12.2006 with seniority w.e.f. 04.09.2006. He was further promoted to the rank of Subedar on 13.10.2012 with seniority of 01.10.2012. The applicant submitted a representation dated 26.11.2020 requesting that "my pay and pension may be re-fixed accordingly to the most beneficial option in the 6th CPC and give all consequential benefits" which was suitably

replied by Pay Account Office, AMC, Lucknow vide letter dated 04.12.2020.

7. Learned counsel for the respondents further submitted that as per recommendations of 6th CPC and SAI 1/S/2008, applicant was to exercise his option to choose for fixation of his pay and allowances either from 01.01.2006 or from the date of promotion as the same was applicable to every JCO and ORs. The applicant had failed to submit his option to PAO (ORs), AMC for fixation of his pay as per 6th CPC for revised pay from the date of promotion to Naib Subedar, i.e. 08.12.2006 and therefore, as per his pre revised structure of 6th CPC for the rank of Sepoy (ACP Naik) was fixed Rs. 9300/- and Group Pay, Rs. 4200/- as per entry level of Naib Subedar as on 01.01.2006 as per Rule 8(c) of SAI 1/S/2008.

8. Learned counsel for the respondents also 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 Naib Subedar has been fixed correctly by PAO (OR) AMC 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.

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

10. 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.

11. 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.”

12. 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.....”

13. 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.....”

14. 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.

15. 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.

16. We observe that applicant has been put in disadvantageous pay scale because of the reason that he has not exercised the option in time and admittedly because of the default, he said to have been placed in lower pay scale than the pay scale given to his colleagues in the same rank and cadre. Hence, there appears an anomaly in fixation of basic pay of applicant which needs correction.

17. In view of above, Original Application is disposed off with a direction to the respondents to re-fix pay of the applicant from the date of promotion to the rank of Naib Subedar i.e. w.e.f. 08.12.2006 in the light of the order dated 10.12.2014 passed in the case of **Sub Chittar Singh** (*supra*) and pay the arrears accordingly. The impugned order passed by the respondents is set aside. 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. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: March, 2022

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