

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 1353 of 2023****Friday, this the 21<sup>st</sup> day of March, 2025****Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Lt Gen Anil Puri, Member (A)**

779970H Sgt Ravinder Kumar

R/o Block No. 11, SNCO's Mess, Air Force Chakeri,

Kanpur, U.P.-208008

Present Unit – 4 BRD, Air Force Kanpur, U.P. Pin-208008

..... Applicant

Ld. Counsel for the Applicant: **Shri Raj Kumar Mishra**, Advocate**Ms. Upasna Mishra**, Advocate**Shri Pradeep Kumar Mishra**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Air Officer Commanding, Central Accounts Office, Subroto Park, New Delhi-110001.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Sadar Bazar, Prayagraj, Uttar Pradesh-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,  
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 direct the respondents to re-fixing Basic Pay of applicant at par with his junior Airmen of same group/trade (i.e. 779984-H Sgt Kamal Jeet), i.e. Rs. 48,200/- as per the most beneficial option to the applicant.

- (b) To direct the respondents to step up the basic pay at par with his said Junior Airmen after rectification of pay fixation anomaly on implementation of 6<sup>th</sup> and subsequent CPCs and make payment of arrears due to the applicant, in accordance with most beneficial option, on the principles affirmed by Hon'ble Tribunal in O.A. No. 1092/2017, titled as Sub Dhyan Singh vs. Union of India & Ors and O.A. No. 1182/2018, Sub Mahendra Lal Shrivastava vs. UOI.
- (c) To direct the respondents to pay interest @ 18% per annum on the arrears accrue to the applicant on the arrears of pay which are payable to him on re-fixation of basic pay at enhanced scale.
- (d) To pass other appropriate order or grant relief, which this Hon'ble Tribunal deems fit and proper under facts and circumstances of the case, anytime during the proceedings of this case."

2. The brief facts of the case are that applicant was enrolled in the Indian Air Force on 28.12.2004. The applicant was promoted to the rank of Corporal (Cpl) on 01.06.2009. The applicant was granted MACP-II w.e.f. 01.06.2017 and promoted to the rank of Sergeant (Sgt) w.e.f. 03.01.2018. The applicant did not exercise any option at the time of migration from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC, therefore, his pay was fixed at Rs. 7050/- as per default fixation w.e.f. 01.01.2006 under the provisions of SAFI 1/S/2008. However, applicant's junior/entry-mate 779984-H Sgt Kamal Jeet exercised his option on migration from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC w.e.f. 01.01.2006 and his pay was accordingly fixed at Rs. 7490/-, Thus, Sgt Kamal Jeet is drawing more basic pay than the applicant. In this regard, applicant raised query dated 24.03.2023 which was replied by AFCAO stating that applicant has not exercised

option while migrating to 6<sup>th</sup> CPC, hence, he is getting lesser basic pay than his junior/entry-mate. The applicant, as per Pay Slip of Aug 2023, is getting lesser basic pay of Rs. 1400/- than his junior/entry-mate. Being aggrieved with incorrect fixation of his basic pay w.e.f 01.01.2006, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 28.12.2004. He was promoted to the rank of LAC, Cpl and Sgt as per service seniority. The applicant had exercised option for fixation of his Basic Pay as per SAFI guidelines and the policy in vogue, however, his option was not acted upon at the time of implementation of 6<sup>th</sup> CPC w.e.f. 01.01.2006 and 7<sup>th</sup> CPC w.e.f. 01.01.2016, due to late submission of option form and hence, default option was selected by the respondents for fixation of his basic pay. There is difference of Rs. 1400/- in basic pay of the applicant and his course mate, i.e. 779984-H Sgt Kamal Jeet whose basic pay is shown Rs. 48,200/- in Pay Slip of August 2023 whereas applicant's basic pay is shown Rs. 46,800/-, thus, there is difference of Rs. 1400/- per month. The date of enrolment of the applicant (28.12.2004), dates of promotion to the rank of LAC (01.06.2006), Cpl (28.12.2009) and Sgt (03.01.2008) are same to his course-mate, i.e. Sgt Kamal Jeet, therefore, action of the respondents is causing huge financial loss due to incorrect fixation of basic pay which is also violation of Para 14(b) (iv) of SAI 1/S/2008, which stipulates that '*if no option is exercised by the individual, the PAO (OR) will regulate fixation on promotion ensuring that the more beneficial is allowed to the PBOR*'.

4. Learned counsel for the applicant further submitted that applicant's case is covered by the decision of the 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 also submitted that the Hon'ble 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 promotion 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 also placed reliance on the judgment of this Tribunal in O.A. No. 443 of 2021, **Amit Tripathi vs. Union of India & Others**, decided on 11.02.2022 and pleaded to consider the case of the applicant for fixation of basic pay w.e.f. 01.01.2006 as per 6<sup>th</sup> CPC and w.e.f. 01.01.2016 as per 7<sup>th</sup> CPC in comparison to his junior/course-mate Sgt. Kamal Jeet.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Air Force on 28.12.2004. He was promoted to the rank of Cpl on 01.06.2009, granted MACP-II w.e.f.

01.06.2017 and promoted to the rank of Sgt w.e.f. 03.01.2018. The applicant did not exercise any option at the time of migration from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC, therefore, his pay was fixed at Rs. 7050/- as per default fixation w.e.f. 01.01.2006 under the provisions of SAFI 1/S/2008. However, applicant's junior/entry-mate 779984-H Sgt Kamal Jeet exercised his option on migration from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC w.e.f. 01.01.2006 and his pay was accordingly fixed at Rs. 7490/-. Therefore, Sgt Kamal Jeet is drawing more basic pay than the applicant. In this regard, applicant raised query dated 24.03.2023 stating that his junior/entry-mate Sgt Kamal Jeet is drawing more basic pay as on 01.08.2023, i.e. Rs. 48,200/- whereas applicant's basic pay as on 01.08.2023 is Rs. 46, 800/-. The query raised by the applicant was replied by AFCAO that applicant has not exercised option while migrating to 6<sup>th</sup> CPC whereas his junior/entry-mate has taken the Option-II in the 6<sup>th</sup> CPC w.e.f. 01.01.2006, hence, applicant is getting lesser basic pay than his junior/entry-mate.

6. Learned counsel for the respondents further submitted that applicant's pay has been fixed correctly at all stages in accordance with the policy in vogue on the subject. Since the applicant had not exercised any option on reclassification to LAC while migrating from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC his pay was fixed accordingly. The option at the time of 6<sup>th</sup> CPC and 7<sup>th</sup> CPC was made available to all eligible air warriors, however, non-opting the option in 6<sup>th</sup> CPC has resulted fixation of lesser basic pay than his quoted junior/entry-mate. Hence, the applicant is not entitled to reliefs claimed in this Original Application and the same is liable to be dismissed.

7. 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 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 drawing 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. AFT (PB), New Delhi in **Sub Chittar Singh** (supra) and **Sub Dhyan Singh** (supra) 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.

13. It is observed from the above that applicant and Sgt. Kamal Jeet both were enrolled on 28.12.2004, promoted to LAC on 01.06.2006, Cpl on 28.12.2009 and Sgt on 03.01.2018 but the applicant had

drawn lesser basic pay than his course/entry-mate because of default fixation carried out in applicant's case in absence of option certificate as compared to entry-mate who had opted to migrate to 6<sup>th</sup> CPC after LAC reclassification. The basic pay of the applicant was fixed at Rs. 7050/- as per default fixation w.e.f. 01.01.2006 whereas his course/entry-mate, i.e. Sgt Kamal Jeet was fixed at Rs. 7490/-. Accordingly, Sgt Kamal Jeet is drawing basic pay of Rs. 48,200/- as on 01.08.2023, whereas applicant's basic pay as on 01.08.2023 is Rs. 46,800/-, hence, there is difference of Rs. 1400/- per month in basic pay of the applicant.

14. In view of aforesaid judgments of AFT (PB), New Delhi in ***Sub Chittar Singh*** (*supra*) and ***Sub Dhyan Singh*** (*supra*) with regard to exercise of option for fixation of basic pay as per 6<sup>th</sup> CPC and further increments, we felt it appropriate that applicant should not be put in financial loss for fixation of his basic pay as on 01.01.2006 due to delay in exercising option by the individual. Hence, the delay in exercising of option by the applicant is condoned. The Pay Account Office will regulate fixation of basic pay of the applicant on migration/promotion ensuring that the more beneficial of the two options is allowed to the applicant for fixation of his basic pay w.e.f. 01.01.2006 and accordingly, his basic pay for all subsequent promotions to the rank of Cpl. and Sgt. should be fixed such that he gets the higher of the two options of his basic pay w.e.f. 01.01.2006 and 01.01.2016 respectively.

15. In view of above, Original Application is **allowed**. The respondents are directed to re-fix basic pay of the applicant w.e.f.



01.01.2006 giving benefit of fixation of basic pay on promotion as per 6<sup>th</sup> CPC ensuring that the more beneficial option is allowed to the applicant and to re-fix his basic pay on all subsequent promotions to the rank of Cpl. and Sgt. so that **applicant's pay is fixed not less than his course/entry-mate, Sgt. Kamal Jeet** 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 till actual payment.

16. No order as to costs.

17. Misc. Application(s), pending if any, shall stand disposed of.

**(Lt Gen Anil Puri)**  
**Member (A)**

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

Dated: 21<sup>st</sup> March, 2025  
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