

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 33 of 2021****Thursday, this the 21st day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Sub Maj Bibhu Prasad Samal (JC-695526-M)
S/o Shri Bishnu Charan Samal
Base Hospital, Lucknow

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011
3. Additional Directorate General Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
4. Officer-in-Charge Records and Commandant, AMC Centre and College, Lucknow – 226002.
5. Principal Controller of Defence Accounts (CC), Cariappa Road, Lucknow.
6. Pay Accounts Officer (ORs), Army Medical Crops, Lucknow Cantt, Lucknow – 226002.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
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:-

- “(i) Issue/pass an order or direction appropriate nature to the respondents to fix the basic pay of the applicant with effect from the date of promotion to the rank of Naib Subedar i.e. 08.04.2006 as provided vide letter No. A/27153/VI-CPC/3/AG/PS-3(a) dated 15.10.2008 as contained in Annexure No. A-1 (i), issued by the respondent No. 3 to all headquarters and accordingly, he deserves the revised fixation of his basic pay of his present rank i.e. Subedar Major with effect from 01.05.2011 with all subsequential monetary benefits.
- (ii) 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 to the rank of Naib Subedar i.e. from 08.04.2006 alongwith interest @ 18% per annum.
- (iii) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the facts and circumstances of the case.
- (iv) Allow this application with exemplary costs.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 28.08.1995. The applicant undergone diploma in General Nursing Course and remustered as Nursing Technician and promoted to the rank of Naib Subedar w.e.f. 08.04.2006 with notional seniority w.e.f. 01.03.2006. The applicant was further promoted to the rank of Subedar w.e.f. 01.05.2011 and Sub Maj w.e.f 01.03.2020 and presently posted with Base Hospital, Lucknow. The applicant has filed the Original Application to fix his pay as per 6th CPC from the date of promotion to the rank of Naib Subedar i.e. 08.04.2006 and pay the arrears from the date of promotion of Naib Subedar, Subedar and Subedar Major. As per provisions of para 7(b) and 8(a) of SAI

1/S/2008, where a PBOR is placed in a higher pay scale between 01.01.2006 and 11.10.2008, on account of promotion, may elect to switch over the revised pay structure from the date of promotion. The option was to be exercised within three months from the date of publication of SAI 1/S/2008. As per provision of para 8(c) of SAI 1/S/2008, *“if the intimation regarding option is not received within the time mentioned in this SAI, the PBOR shall be deemed to have elected to be governed by the revised pay structure with effect from 01.01.2006”*. The applicant had exercised his 6th CPC option for revised pay from the date of promotion to Naib Subedar, Subedar and Subedar Major on 18.07.2013 vide Part II Order dated 22.07.2013 hence, applicant’s case was not accepted in audit. 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 28.08.1995. The applicant was promoted to the rank of Naib Subedar w.e.f. 08.04.2006 with notional seniority w.e.f. 01.03.2006, Subedar w.e.f. 01.05.2011 and Sub Maj w.e.f 01.03.2020. As per provisions of para 7(b) and 8(a) of SAI 1/S/2008, where a PBOR is placed in a higher pay scale between 01.01.2006 and 11.10.2008, on account of promotion, may elect to switch over the revised pay structure from the date of promotion. The option was to be exercised within three months from the date of publication of SAI 1/S/2008. As per provision of para 8(c) of SAI 1/S/2008, *“if the intimation regarding option is not received within the time mentioned in this SAI, the PBOR shall be deemed to have elected to be governed by the revised pay structure with effect from*

01.01.2006". The applicant had exercised his 6th CPC option for revised pay from the date of promotion to Naib Subedar, Subedar and Subedar Major on 18.07.2013 vide Part II Order dated 22.07.2013 but applicant's case was not accepted by the respondents. The applicant has filed the Original Application to fix his pay as per 6th CPC from the date of promotion to the rank of Naib Subedar i.e. 08.04.2006 and pay the arrears from the date of promotion of Naib Subedar, Subedar and Subedar Major. The denial is against the provision of Para 14 (b) (i) and 14 (iv) (aa) and Appendix 'F' Nb/Sub Group 'Y' of SAI 1/S/2008 as required vide letter dated 15.10.2008 in which it is specifically mentioned 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 mentioned above is allowed to the PBOR*".

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 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 and

AFT (RB) Lucknow in OA No. 17 of 2016, **Subedar Rajender Singh Bisht vs. Union of India & Ors**, decided on 28.02.2019 has given relief to similarly placed JCOs 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.

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. 08.04.2006 and for Subedar w.e.f. 01.05.2011 and Subedar Major w.e.f. 01.03.2020.

6. Learned counsel for the respondents submitted that pay of the applicant has been fixed correctly as per Rule 9 (a) (i) & (ii) of Special Army Instruction No. 1/S/2008 dated 11.10.2008. The applicant has not followed the rule 8 under which it is clearly mentioned that the option under the provision in para 7 shall be exercised in writing in form given at Appendix 'D' to SAI, to reach Pay Accounts Office within three months from the date of publication of this instruction read with corrigendum ID No. 1/30 dated 21.12.2010. The revised option was to be exercised upto 31.03.2011, if the option was more beneficial to him but the applicant did not give the option within the time frame i.e. upto 31.03.2011. The applicant submitted his option on 18.07.2013 alongwith DO Part II Order dated 22.07.2013 which is not accepted as per rules and his pay was fixed in accordance with provisions under Rule 8(c) of SAI 1/S/2008. Para 14 (iv) of SAI 1/S/2008

stipulates that if no option is exercised by the individual, PAO (OR) will regulate the fixation on promotion ensuring that the option more beneficial of the two options may be allowed to the PBOR.

7. Learned counsel for the respondents further submitted that in the instant case, PAO (OR) AMC Lucknow has fixed the pay of the applicant on the minimum of the pay scale Rs. 9300 applicable to the post of Naib Subedar w.e.f. 08.04.2006 on being promoted to the rank of Naib Subedar, as the same was more beneficial than that which would have been fixed on 01.07.2006 i.e. the pay would have been fixed at 9300 in July. He further submitted that re-exercising of option is not applicable to other employees covered under the CCS (RP) Rule 2008. Subsequently GOI MOD vide letter dated 25.04.2013 and 12.06.2013 extended time to re-exercise the option upto 31.07.2013. The same is applicable only to those PBORs who were covered under OM dated 19.03.2012 and this option was not applicable to the applicant being different for exercising the option as represented by the applicant in O.A. Hence, as per rule, this re-exercise of option is not applicable to the applicant and he 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. In our view, the applicant whose case is similarly situated, could not have been denied the benefit of his option, merely for the reason that he had not submitted his option certificate in time. At this juncture

we would also like to reiterate that in accordance with sub para 14 (b) (iv) of the SAI 1/S/2008, even if no option is exercised by an individual, PAO (OR) will regulate fixation ensuring that the more beneficial of the two options promulgated in the SAI would be allowed to the individual.

16. In view of the foregoing, the Original Application is disposed of directing the respondents to re-examine fixation of pay of the applicant in the light of the order dated 10.12.2014 passed in the case of **Sub Chittar Singh** (supra) and in accordance with the provisions of SAI No.1/S/2008 dated 11.10.2008 and subsequent amendments/modifications issued thereon as though the applicant had exercised his option in time. The respondents are further directed that the fixation is to be done in the manner which would be more beneficial to the applicant in accordance with the provisions of the aforesaid SAI. The respondents shall complete the whole exercise as expeditiously as possible, say, within four months from the date of presentation of a certified copy of this order. If the needful is not done within the stipulated time, the arrears accruing to the applicant by virtue of this order shall carry interest @ 8 % per annum from the due date till date of actual payment.

17. No order as to costs.

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

Dated: 21st October, 2021
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