

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 444 of 2019****Monday, this the 11<sup>th</sup> day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex. No. 674131-B, MWO Hari Narayan Shukla  
R/o House No. 717 Geeta Niketan, Damodar Nagar, Barra,  
Kanpur – 208027

..... Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, IHQ of MoD (Air) Rafi Ahmed Kidwai Marg, New Delhi – 110011.
3. The Officer in charge Air Force Record Officer Subrato Park, New Delhi.
4. Air Officer Commanding, 7 Air Force Hospital, Nathu Singh Road, Kanpur Cantt.
5. Principal Controller of Defence Accounts Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,  
Central Govt Counsel.**ORDER (Oral)**

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 set aside order dated 03.06.2019 communicated vide letter dated 20.08.2019 (Annexure No. A-1).

- (b) Issue/pass any other order or direction to the respondent to re-fix the pay and allowances of the applicant after revision of his pay at par with his juniors and
- (c) Issue/pass an order or direction of appropriate nature to the respondents to award interest @ 24% per annum over the arrears accrued as a result of revision of pay and allowances of the applicant.
- (d) Issue/pass any other order or direction to the respondent as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (e) To allow the original application with cost in favour of applicant against the respondents.”

2. The brief facts of the case are that applicant was enrolled in the Indian Air Force on 03.02.1982. The applicant was promoted as Corporal (Cpl) on 01.03.1987, Sergeant (Sgt) on 01.06.1994, Junior Warrant Officer (JWO) on 01.11.2005, Warrant Officer (WO) on 01.02.2013 and Master Warrant Officer (MWO) on 01.03.2018 and was discharged from service on 30.06.2016 (AN) in the rank of MWO. Applicant came to know that his junior, No. 692600 MWO Brijmohan Dixit is getting more salary than the applicant who is more than 2 years junior to the applicant and both are of the same class and category. The applicant represented his grievances for re-fixation of his pay at par with his junior vide his representation dated 12.04.2019 but his representation was rejected by the respondents vide order dated 20.08.2019. Being aggrieved, 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 03.02.1982. The applicant was

promoted as Corporal (Cpl) on 01.03.1987, Sergeant (Sgt) on 01.06.1994, Junior Warrant Officer (JWO) on 01.11.2005, Warrant Officer (WO) on 01.02.2013 and Master Warrant Officer (MWO) on 01.03.2018 and was discharged from service on 30.06.2016 (AN) in the rank of MWO. Applicant came to know that his junior No. 692600 MWO Brijmohan Dixit is getting more salary than the applicant who is more than 2 years junior to the applicant and both are of the same class and category. The comparative chart of applicant and his junior is given as under :-

<b>Details</b>	<b>Senior (MWO HN Shukla (Applicant))</b>	<b>Junior (MWO Brijmohan Dixit)</b>
<b>Date of enrolment</b>	03.02.1982	04.04.1984
Cpl promotion	01.03.1987	04.04.1989
Sgt promotion	01.06.1994	26.06.1998
Basic as on 26.06.1998	Rs. 4405/-	Rs. 4320/-
<b>JWO promotion</b>	01.11.2005	01.04.2004
Basic as on 01.04.2004	Rs. 4915/-	Rs. 5620/-
Basic as on 01.11.2005	Rs. 5620/-	Rs. 5760/-
<b>WO promotion</b>	01.02.2013	01.02.2013
Basic as on 01.02.2013	Rs. 14960/-	Rs. 15650/-
<b>MWO promotion</b>	01.03.2018	01.11.2018
Basic as on 01.03.2018	Rs. 58600/-	Rs. 60400/-
Basic as on 01.11.2018	Rs. 58600/-	Rs. 64100/-
Basic as on 01.01.2019	Rs. 60400/-	Rs. 64100/-
Last increment	01.01.2019	01.07.2018
Date of discharge	30.06.2019	Still in service

4. Learned counsel for the applicant further submitted that applicant represented his grievances for re-fixation of his pay at par with his junior vide his representation dated 12.04.2019 but his representation was rejected by the respondents vide order dated 20.08.2019. He further submitted that applicant and his junior, both were promoted to the rank of Warrant Officer together on 01.02.2013 and in MWO promotion, applicant is 8 months senior in the promotion

to his junior. It is violative of principle of equal pay for equal work under the provisions of Air Force Pay Rules 2017.

5. Learned counsel for the applicant further submitted that the Hon'ble Punjab and Haryana High Court in the case of **Baljit Singh and others vs. State of Punjab and others**, CWP No. 1887/2016, decided on 01.11.2018 had held that seniors would not draw salary less than their juniors being violation of principles of 'equal pay for equal work". Applying the same principle of law, the Hon'ble Apex Court held that a junior on the same post cannot be allowed to draw salary higher than seniors because that would be against the ethos of Article 39 (d) of the Constitution of India which envisages the principle of equal pay for equal work. He also placed reliance on the judgment of the Hon'ble Apex Court in **Union of India and others vs. P Jagdish and others**, AIR 1997 SC 1783, decided on 17.12.1996 and pleaded that applicant being senior, his basic pay fixation is not logical and rational and needs re-fixation.

6. Learned Counsel for the respondents submitted that applicant was enrolled in the Indian Air Force on 03.02.1982 and was discharged from service on 30.06.2016 (AN) in the rank of MWO. The applicant had applied on 12.04.2019 for stepping up/re-fixation of pay at par with his junior MWO Brijmohan Dixit which was rejected by Air Force Central Accounts Office vide letter dated 03.06.2019 stating that *"the stepping up of pay of Senior with Junior is not feasible because the Senior at the time of promotion should be drawing equal pay or more pay than junior whereas senior is drawing less pay than junior as the applicant is junior to Brijmohan Dixit in lower post"*.

7. He further submitted that applicant was senior in service and in the rank upto the rank of Sgt but his junior superseded him in the promotion of JWO. The applicant was promoted to JWO on 01.11.2005 whereas his junior was promoted to JWO on 01.04.2004. As a result, the junior's pay was fixed more than the applicant w.e.f. 01.04.2004, the hitherto Junior become Senior. Stepping up of pay at par with junior, MWO Brijmohan Dixit is not feasible to be implemented since the applicant does not fulfil the conditions as stated in para 8(c) of Air Force Pay Rules 2017/para 8 (iii) of SAFI No. 01/S/08. He pleaded that original application be dismissed as there is no involvement of stepping up in this case.

8. Heard learned counsel for the parties at length 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 Hon'ble 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 Hon'ble 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 Hon'ble 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. It is emerged from the above that the applicant was more than 2 years senior in enrolment to his junior Brijmohan Dixit, however, applicant became junior in promotion of JWO rank. In WO rank both were promoted on the same date i.e. 01.02.2013 and thereafter, in MWO promotion, applicant was promoted on 01.03.2018 i.e. 8 months prior to promotion of his junior but his basic pay was fixed Rs. 58,600/- as on 01.03.2018 whereas his junior was getting Rs. 60,400/-. At the time of discharge from service i.e. on 30.06.2019, applicant's basic pay was Rs. 60,400/- whereas his junior's basic pay was 64,100/- in the rank of MWO. The applicant was promoted MWO prior to Brijmohan Dixit in the rank of MWO on 01.03.2018 and thereafter retired in the same rank, therefore, his position will remain of a senior and applicant will be treated as senior to MWO Brijmohan Dixit.

15. In view of above, Original Application is allowed. The respondents are hereby directed to upgrade the basic pay of the applicant @ Rs. 60,400/- instead of Rs. 58,600/- as on 01.03.2018 from the date of promotion to the rank of MWO and thereafter, re-fix basic pay giving increments to the applicant as due to him as per rules and grant all retiral/pensionary dues as per revised basic pay alongwith arrears. 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.

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

Dated: October, 2021

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