

**RESERVED**  
**Court No. 2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No 446 of 2023**

**Wednesday, this the 27<sup>th</sup> day of September, 2023**

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

No. JC-388962H, Nb Sub Chandra Shekhar Prasad  
S/o Dhenukh Prasad  
R/o Uttam Hmestay, Near Ice Cream Factory, Patel Nagar, Nilmatha,  
PO – Dilkusha, Lucknow (UP) – 226002

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110001
3. The Officer in Charge, Records, Records Corps of Signals, PIN-908770, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj) (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam 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 issue/pass an order or directions to the respondents to step up his basic pay at par with his course mates No.

15394889X Ex Hav/ACP Nb Sub Hari Kushor (Basic Pension fixed as Rs. 47600/-) alongwith @ 12% interest on arrear in light of M.A. No. 2234/2022 in O.A. No. 742/2021 Gp Capt. Ashok Kumar Versus Union of India & Others and OA No. 1923/2017 Wg Cdr Bharat Malik vs. Union of India & Others passed by Hon'ble Armed Forces "Tribunal, Principal Bench, New Delhi.

- (b) To issue pass an order or directions to the respondents to fix the anomaly in the basic pay of the applicant w.e.f. date of discharge and accordingly grant consequential benefits pursuant to his pension.
- (c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted alongwith cost of the O.A."

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 28.12.1995 and discharged from service on 31.12.2021 (AN) after rendering 26 years and 04 days of service for which he is in receipt of service pension vide PPO No. 205202104967. In PPO, basic pay in pay matrix of the applicant is mentioned as Rs. 46,200/- and MSP as Rs. 5200/- and pension is fixed accordingly whereas another ex-serviceman, No. 15394889X Ex Hav/ACP Nb Sub Hari Kushor who was junior to the applicant is getting more basic pay in pay matrix as Rs. 47,600/- and MSP Rs. 5200/- and getting more pension than the applicant, which is evident from Last Pay Drawn certificate of Ex Hav/ACP Nb Sub Hari Kushor for the month of 02/2022. Thus, junior is getting more pension than the applicant which is discriminatory in nature. In this regard, applicant submitted representations dated 10.01.2023 and

16.01.2023 for redressal of his grievance but nothing has been done by the respondents. Being aggrieved, the applicant has filed the present Original Application for stepping up of his basic pay in comparison to his batch mates/juniors.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 28.12.1995 and discharged from service on 31.12.2021 (AN) in the rank of Naib Subedar after serving 26 years and 04 days of service. The applicant is in receipt of service pension vide PPO No. 205202104967. In PPO, basic pay in pay matrix of the applicant is mentioned as Rs. 46,200/- and MSP as Rs. 5200/- and fixed the pension accordingly whereas another ex-serviceman, No. 15394889X Ex Hav/ACP Nb Sub Hari Kushor who is junior to the applicant is getting more basic pay in pay matrix as Rs. 47,600/- and MSP Rs. 5200/-, which is evident from Last Pay Drawn certificate of Ex Hav/ACP Nb Sub Hari Kushor for the month of 02/2022. Thus, junior is getting more pension than the applicant which is discriminatory in nature. In this regard, applicant submitted representations dated 10.01.2023 and 16.01.2023 for redressal of his grievance of stepping up of pay but nothing has been done by the respondents.

4. Learned counsel for the applicant placed reliance on the judgments of the AFT (PB), New Delhi in MA No. 2234/2022 in OA No. 742/2021, **Gp Capt. Ashok Kumar Vs. Union of India & Others**, decided on 05.08.2022 and in OA No. 1923/2017, **Wg Cdr Bharat Malik vs. Union of India & Ors**, decided on 08.07.2022 in

which re-fixation of pay, as per recommendations of 6<sup>th</sup> CPC & 7<sup>th</sup> CPC, was directed in favour of the applicant which was more beneficial with regard to stepping up of pay. He further submitted that AFT (PB) New Delhi 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.

5. Learned counsel for the applicant further submitted that gross discrimination had been carried out against the applicant by not stepping up his band pay (Pay in Pay Matrix) at par with his junior due to which applicant is suffering from severe financial loss/hardship. The applicant's grievance has been unjustly and arbitrarily denied by the respondents by not stepping up his band pay at par with his junior Ex Hav/ACP Nb Sub Hari Kushor resulting in continuous financial loss to the applicant. He pleaded for stepping up his basic pay from Rs. 46,200 to Rs. 47,600/- in comparison to his junior Ex Hav/ACP Nb Sub Hari Kushor on the date of discharge from service and accordingly, his service pension may also be revised. .

6. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 28.12.1995 and discharged from service on 31.12.2021 (AN) on completion of terms of engagement

after rendering 26 years and 04 days of service for which he is in receipt of service pension. The applicant was promoted to the rank of Naik on 01.06.2008, Havildar on 01.01.2012, Naib Subedar on 01.01.2020. The applicant was also granted 1<sup>st</sup> MACP (Naik grade) w.e.f. 01.01.2006, 2<sup>nd</sup> MACP (Havildar grade) w.e.f. 28.12.2011 and 3<sup>rd</sup> MACP (Naib Subedar grade) w.e.f. 28.12.2019. The applicant has now filed the present Original Application to step up his basic pay at par with his course mate Ex Hav (ACP Nb Sub) Hari Kushor in light of judgments of the AFT (PB) New Delhi in **Gp Capt Ashok Kumar** (supra), **Wg Cdr Bharat Malik** (supra) and **Sub Dhyan Singh** (supra).

7. Learned counsel for the respondents further submitted that anomaly in pay of the applicant with respect of his junior Ex Hav (ACP Nb Sub) Hari Kushor had arisen as the applicant was granted MACP-III (Nb Sub) on 28.12.2019 and got retired on 31.12.2021 after availing his regular increment due on 01.07.2021, resulting applicant's last basic pay was fixed @ 46,200/- during the retirement. On the other hand, his junior, Ex Hav (ACP Nb Sub) Hari Kushor was granted MACP-III (Nb Sub) on 28.02.2020 and got retired on 28.02.2022 but due to OPTFIX option w.e.f. 28.02.2020 (MACP-III) opted by him and basic pay to be fixed on the date of next increment i.e. on 01.07.2020, his regular increment month was changed to 1<sup>st</sup> January w.e.f. year 2021 which enable his junior to earn an additional increment on 01.01.2022 resulting his last basic pay being fixed @ 47,600/- during the retirement.

8. Learned counsel for the respondents further submitted that applicant was granted benefit of 3<sup>rd</sup> MACP (Nb Sub grade) w.e.f. 28.12.2019 with next date of increment on 01.07.2020. The last basic pay was fixed as on 01.07.2021 @ Rs. 46,200/- and applicant was discharged from service on 31.12.2021. However, his junior Ex Hav (ACP Nb Sub) Hari Kushor was benefitted of 3<sup>rd</sup> MACP (Nb Sub grade) w.e.f. 28.02.2020 and due to option fixation by him, date of his regular increment was changed to 1<sup>st</sup> January w.e.f. year 2021. Moreover, his date of discharge was on 28.02.2022 which enable him to draw an additional increment as on 01.01.2022 and his last basic pay was fixed @ 47,600/-, thus, there is difference of one increment and hence, applicant is not eligible for any relief in this regard. He pleaded for dismissal of Original Application being devoid of merit.

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 Civil Appeal No. 16736 of 1996, decided on 17.12.1996, titled as ***Union of India & Others vs. P Jagdish & Others***, the Apex court in its operative portion has observed:-

“So far as the second question is concerned, it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On re-fixation of the pay of the senior officer would be drawn on completion of the requisite qualifying service with effect from the date of the re-fixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to

the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with [Article 39\(d\)](#) of the Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale stepping up of scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not be order as to costs.

14. 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 as 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.....”

15. 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.

16. 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.

17. It is observed from the Last Pay Drawn certificates of Nb Sub Chandra Shekhar Prasad (applicant) and Hav (ACP Nb Sub) Hari Kushor, annexed with O.A. as Annexure No. A-3 & A-4 respectively and other material available on record that applicant was enrolled in the Army on 28.12.1995 and Hav (ACP Nb Sub) Hari Kushor was

enrolled on 28.02.1996. The applicant and Hav (ACP Nb Sub) Hari Kushor were promoted to the rank of ACP Naik on the same date, i.e. on 01.01.2006 but ACP Havildar on 28.12.2011 & 28.02.2012, ACP Naib Subedar on 28.12.2019 & 28.02.2020 respectively. The applicant was promoted to the rank of regular Naib Subedar on 01.01.2020. The applicant retired from service on 31.12.2021 in the rank of Naib Subedar whereas his junior, Hav Hari Kushor retired from service on 28.02.2022 in the rank of Hav (ACP Nb Sub). It means, applicant is senior in enrolment and in promotion to ACP Havildar & ACP Naib Subedar also. Besides this, applicant was discharged from service in the rank of regular Naib Subedar whereas his junior Hav (ACP Nb Sub) Hari Kushor was discharged from service in the rank of ACP (Naib Subedar). It shows that applicant is senior in all respect and therefore, his pay as last drawn cannot be lesser than his junior. Thus, it is not understood when applicant is senior to Hav (ACP Nb Sub) Hari Kushor then how variation of pay fixation in basic pay of both the JCOs took place at the time of discharge from service in last pay drawn having rendered 26 years of equal service. The Basic Pay (Band Pay) of the applicant on the date of retirement, i.e. on 31.12.2021 is fixed as Rs. 46,200/- whereas Basic Pay of his junior, Hav (ACP Nb Sub) Hari Kushor on the date of retirement is fixed as Rs. 47,600/- as on 28.02.2022, thus, there is difference of one increment in the Basic Pay of both the JCOs, though, applicant is senior and retired as regular Naib Subedar in comparison to his junior retired as ACP Naib Subedar. Hence, there appears an anomaly in fixation of basic pay of applicant which needs

correction and thus, applicant's (senior) basic pay needs stepping up to Rs. 47,600/- as fixed to Hav (ACP Nb Sub) Hari Kushor (junior), as observed by the Hon'ble Apex Court and AFT (PB), New Delhi in aforesaid judgments.

18. In view of above, Original Application is **allowed**. Impugned order, if any, passed by the respondents is set aside. The respondents are hereby directed to step up basic pay (band pay) of the applicant from Rs. 46,200/- to Rs. 47,600/- as on 31.12.2021 in comparison to his junior, ACP Nb Sub Hari Kushor whose basic pay on the date of retirement is fixed to Rs. 47,600/-. The respondents are further directed to issue corrigendum PPO to the applicant showing basic pay last drawn as Rs. 47,600/- as on 31.12.2021 (SOS w.e.f. 01.01.2022) and pay the arrears of pension 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.

19. No order as to costs.

20. Misc. Application(s), pending if any, shall stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: September, 2023  
SB

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