

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

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

**Original Application No 566 of 2022**

**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-380497M Ex Hony Sub Major Asharaf M  
S/o S Mohmd Ismail  
R/o P-25/01, Camp Area Line, Clement Town,  
Dist – Dehradun, Pin – 248001 (UK)

..... Applicant

Ld. Counsel for the Applicant: **Shri KP Datta**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001
3. Officer in Charge, The Records Signals, Pin-908770, C/o 56 APO.
4. Office of PAO (OR) Signals, Jabalpur, Pin-482001 (MP).
5. O/o PCDA (Pension), Draupadi Ghat, Allahabad-211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,  
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 refix/revise the Band Pay and Pay Matrix from Rs.

50,500/- to Rs. 52,000/- similar to his batch-mates and juniors and in light of order passed in similar cases by the Hon'ble Armed Forces Tribunal.

- B. To issue/pass an order or directions to the respondents to grant him enhance rate of service pension and other retiral dues based on correct fixation of Band Pay for Rs. 52,000/- p.m. alongwith arrears and interest @ 18% on arrears accrued to the applicant due to revision of his Band Pay and Pay matrix wef 01.11.2018.
- C. To issue/pass an order or directions to the respondents to adjust and credit his post discharge claims including air fare claims, luggage claims, leave encashment and HRA mentioned in the O.A. alongwith interest @ 18% p.a.
- D. To issue/pass any other order or directions as may deem just, fit and proper under the circumstances of the case in his favour.
- E. To allow this application with cost.”

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 05.10.1988 and discharged from service on 31.10.2018 (AN) on completion of service limit after rendering 30 years and 27 days of service for which he is in receipt of service pension. The applicant was promoted to the rank of Naik on 01.05.1997, Havildar on 05.02.2002, MACP (Naib Subedar) on 05.02.2010 and regular Naib Subedar on 04.01.2011 and Subedar on 01.06.2013. The applicant has filed this Original Application for correct fixation of his band pay as per 6<sup>th</sup> CPC in comparison to his batch-mates/juniors whose basic pay is fixed more than the applicant and thus, they are getting more pension than the applicant. In addition

to this, applicant has prayed for passing of his post discharge claims of air fare, luggage, leave encashment and HRA.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 05.10.1988 and discharged from service on 31.10.2018 (AN) in the rank of Subedar after serving 30 years and 27 days of service. The applicant got promoted to the rank of Subedar on 01.06.2013. The applicant was granted honorary rank of Subedar Major after discharge from service. The PPO has been issued to the applicant endorsing pay in Pay Matrix @ Rs. 50,500/- p.m. instead of @ Rs. 52,000/-. It is relevant to mention that his batch mates and juniors are getting Band Pay @ Rs. 52,000/- on implementation of 7<sup>th</sup> CPC and MACP benefit as per Govt. of India, Ministry of Defence letter dated 26.02.2019 whereas applicant is getting Band Pay @ Rs. 50,500/- with difference of Band Pay of Rs. 1500/- p.m. which is against the principles of natural justice. In this regard, the applicant placed comparison with similarly placed service No. JC-380496K Ex Subedar JK Pandey who was enrolled in the Army on 04.10.1988 and discharged on 31.10.2018 having rendered 30 years and 27 days of service and is getting pensionary benefit @ Rs. 28,600/- p.m. under 7<sup>th</sup> CPC award and applicant's basic pension has been fixed to Rs. 27,850/- p.m. which is unjust and arbitrary. The applicant submitted a comparative statement on 22.10.2018 duly authenticated by Signals Records to revise his Band Pay to Rs. 52,000/- instead of 50,500/- as per 6<sup>th</sup> and 7<sup>th</sup> CPC awards but the same was denied by the respondents due to which applicant is

suffering huge financial loss, mental pain and stress. Hence, the action of the respondents for incorrect fixation of Band Pay and pensionary benefits is wholly illegal and not sustainable in the eyes of law and also it is violation to the provisions of Articles 14, 16 and 21 of the Constitution of India.

4. Learned counsel for the applicant further submitted that Govt. had introduced Assured Career Progression (ACP) scheme on recommendation of 5<sup>th</sup> CPC and revised the same with three financial upgradation on completion of 8, 16 and 24 years of service in 6<sup>th</sup> CPC effective from 01.09.2008 but the benefits of this scheme was not granted to the applicant. Further, all JCOs/OR who were in service on or after 31.12.2015 and before 03.05.2017 and granted any promotion/increment/MACP during the period, were required to submit Form of Option in writing regarding fixation of the revised pay as per 7<sup>th</sup> CPC as per IHQ of MoD (Army) letter dated 08.08.2017. The Option Certificate was required to be submitted to concerned Record Office by the JCOs/OR who got promotion/increment/MACP between the period from 01.01.2016 to 03.05.2017. The applicant was required to exercise the option for fixation of his basic pay as per time frame provided but due to non exercising of Option Certificate in time, the benefit was not extended to the applicant and thus, his basic pension was fixed @ Rs. 27,850/- instead of Rs. 28,600/- p.m. The applicant also submitted observations to respondent No. 3 on Final Settlement of Account – 10/2018 for different post discharge claims including basic pay, leave encashment for 300 days instead of 267

days wrongly shown in FSA but no relief has been provided by the respondents.

5. 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 & Ors 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. 156 of 2016, **Hav Jog Dhyan Sharma v. Union of India & Ors**, decided on 04.01.2018 and OA No. 194 of 2018, **Anil Kumar Singh vs. Union of India and Others**, decided on 19.02.2021 has given relief to the similarly placed JCOs by fixing their 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.

6. Learned counsel for the applicant further submitted that claims for reimbursement of air fare for Rs. 4439/- and Rs. 8778/- and reimbursement of luggage claims for Rs. 1,42,775/- and Rs.

1,16,903/- have not been admitted by the respondents and no amount has been passed/credited in applicant's account till date. Hence, the action of the respondents for incorrect fixation of Band Pay and pensionary benefits and non grant of amount of his dues/claims of air fare and luggage reimbursement is wholly illegal and not sustainable in the eyes of law and also the same is violation to the provisions of Articles 14, 16 and 21 of the Constitution of India. He pleaded for grant of all dues to the applicant alongwith interest.

7. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 05.10.1988 and discharged from service on 31.10.2018 (AN) on completion of service limit after rendering 30 years and 27 days of service for which he is in receipt of service pension. The applicant was promoted to the rank of Naik on 01.05.1997, Havildar on 05.02.2002, MACP (Naib Subedar) on 05.02.2010, regular Naib Subedar on 04.01.2011 and Subedar on 01.06.2013. SAI 1/S/2008 was circulated with regard to fixation of pay as per recommendations of 6<sup>th</sup> CPC vide IHQ of MoD (Army), ADG PS letter dated 15.10.2008 by which all officers and PBORs were required to exercise their options for fixation of pay in revised structure which was to be reached to CDA (O)/PAO (OR) within three months of publication of Special Army Instructions (1/S/2008 & 2/S/2008), i.e. by 10<sup>th</sup> Jan. 2009. It was also mentioned in the instructions that in case no option is received within the stipulated time which was extended upto 31<sup>st</sup> March 2011 and further extended to 30<sup>th</sup> June 2011, it was to be deemed that individual has elected to

be governed by the revised pay structure w.e.f. 01.01.2016. In the present case, no promotion or MACP was granted to the applicant between the period from 01.01.2016 to 03.05.2017, thus, option for switching over to 7<sup>th</sup> CPC does not arise as such, the fixation was done by PAO (OR) Signals is correct.

8. Learned counsel for the respondents further submitted that as per para 5 of Army Pay Rules, 2017 dated 03.05.2017, JCOs/OR shall draw pay in the level in the revised pay structure applicable to the rank to which is appointed including under MACP scheme provided that he may elect to continue to draw pay in the existing pay structure until the date on which he earns his next increment in the existing pay structure or until he ceases to hold his rank or ceases to draw pay in the existing pay structure. In case a JCO/OR has been placed in a higher grade pay between 01.01.2016 and the date of notification of these rules on account of promotion, he may elect to switch over to the revised pay structure from the date of promotion, but the *ibid* rule is not applicable in the present case, as the applicant was not promoted to any higher rank after 01.01.2016. He further submitted that applicant's post discharge claims regarding non adjustment of leave encashment, basic pay, air claim, luggage claim and house rent allowance received vide his personal application dated 23.12.2018 which was replied by Signals Records asking some supporting documents but the same were not provided by the applicant. The applicant's two airfare claims and two luggage claims

have not been received back from the applicant duly rectified observations raised by PAO (OR) Signals.

9. Learned counsel for the respondents further submitted that :-

(a) As regards pay fixation of basic pay in comparison to juniors and seniors is concerned, pay fixation done by the PAO (OR) Signals is correct as there was no promotion/MACP granted to the applicant between the period from 01.01.2016 to 03.05.2017, hence, question of option for switching over the 7<sup>th</sup> CPC does not arise.

(b) As far as leave encashment is concerned, details of year-wise encashment period is given in para 9 of the counter affidavit. The applicant availed 48 days leave in the year 2008 and hence, only 12 days leave has been taken for leave encashment for the year 2008 and thus, total leave encashment period is 267 days and not 300 days as claimed by the applicant for which payment for 267 days has already been made to the applicant.

(c) With regard to house rent allowance from 01.07.2017 to 30.09.2017, amount has already been adjusted in Dec. 2018 but payment in this regard could not be issued due to closer of IRLA of the applicant being in debit due to recovery of difference of house rent allowances from 29.09.2018 to 31.10.2018 for X & Z class city and recovery of rent and allied charges received from 01.02.2018 to 02.09.2018 amounting to

Rs. 9286/-. However, after adjustment of miscellaneous credits, debit balance of Rs. 2923/- is still outstanding against the applicant vide PAO (OR) Signals letter dated 01.08.2022.

Thus, the reliefs with regard to pay fixation, leave encashment and HRA as mentioned above have been resolved and claims of airfare and luggage are pending at applicant's end due to rectification of observation raised by PAO (OR) Signals. He pleaded for dismissal of Original Application.

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

11. 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.

12. 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.”

13. 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.....”

14. The Hon'ble Apex court in ***Union of India & Others vs. P Jagdish & Others***, Civil Appeal No. 16736 of 1996 decided on

17.12.1996, 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 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.

15. 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.....”

16. 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.

17. AFT (PB), New Delhi in ***Sub Dhyan Singh*** (*supra*) case has given relief to a similarly placed JCO by fixing his pay from the date of promotion to the rank of Nb Sub that was a more beneficial option. The Tribunal also held that if no option is exercised by the individual, PAO (OR) will regulate fixation of pay on promotion ensuring that the more beneficial of the two options is allowed to the PBOR.

18. It is observed from the Comparative Statement of Subedar Asharaf M (applicant) and Subedar JK Pandey, annexed with O.A. as Annexure No. A-4 that applicant (Sub Asharaf M) was enrolled in the Army on 05.10.1988 and Sub JK Pandey was enrolled on 04.10.1988. The applicant and Sub JK Pandey were promoted to the rank of Naik on 01.05.1997 & 01.06.1997, Havildar on 05.02.2002 & 01.12.2001, Naib Subedar on 04.01.2011 and 01.01.2011 and Subedar on

01.06.2013 & 01.06.2013 respectively. It means, both the JCOs were promoted from Naik to Subedar in the same month or within a difference of month and both were promoted to the rank of Subedar on same date, i.e. 01.06.2013. Thus, it is not understood when both the JCOs belong to same trade and were promoted mostly in the same month or in a difference of few days then how variation of pay fixation in basic pay of both the JCOs took place. The Basic Pay (Band Pay) of the applicant on the date of retirement, i.e. on 30.10.2018 is fixed as Rs. 50,500/- whereas Basic Pay of similarly situated/entry-mate Sub JK Pandey is fixed as Rs. 52,000/- as on 30.10.2018, thus, there is difference of one increment in the Basic Pay of both the JCOs whereas both are promoted on the same date in Subedar rank also. The applicant had drawn less pay than his entry-mate/similarly situated (Subedar J K Pandey) because of default fixation carried out in applicant's case in absence of option certificate as compared to entry-mate who had opted to switch over to 7<sup>th</sup> CPC for fixation of pay. Hence, there appears an anomaly in fixation of basic pay of applicant which needs correction and thus, applicant's basic pay needs stepping up to Rs. 52,000/- as fixed to Sub JK Pandey, as observed/decided by the Hon'ble Apex Court in **P Jagdish** (supra) and AFT (PB), New Delhi in **Sub Dhyan Singh** (supra).

19. With regard to other outstanding dues of the applicant, i.e. airfare claims and luggage claims, the applicant is directed to resubmit his airfare and luggage claims to Signals Records/PAO (OR)

Signals within one month. The respondents are directed to pass appropriate amount out of claimed amount of airfare and luggage, as per authorisation/entitlement as per rules.

20. In view of above, Original Application is **partly allowed**. The impugned order, if any, passed by the respondents with regard to fixation of basic pay is set aside. The respondents are hereby directed :

(1) To upgrade the basic pay (band pay) of the applicant from Rs. 50,500/- to Rs. 52,000/- as on 30.10.2018 in comparison to Subedar JK Pandey whose basic pay as on 30.10.2018 is fixed to Rs. 52,000/-.

(2) To issue corrigendum PPO showing basic pay last drawn as Rs. 52,000/- as on 30.10.2018 and pay the arrears of pension accordingly.

(3) To pay appropriate amount of airfare and luggage to the applicant as per entitlement.

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.

21. No order as to costs.

22. 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)**