

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 195 of 2018

Kaushalendra Singh Chauhan  
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>19.02.2021</u></p> <p><b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Present : Shri Yashpal Singh, learned counsel for the applicant and Shri D K Pandey, learned counsel for the respondents.</p> <p>Learned counsel for the applicant submitted that applicant was enrolled in the Army on 15.01.1988 and promoted to the rank of Sub on 01.09.2015. Before discharge from service the applicant was getting salary in the Pay Band of Rs 49,000/- alongwith other allowances for which he was entitled. At the time of discharge from service, the Pay Band of the applicant was changed from Rs 49,000/- to 47,600/- and as a consequence thereof salary of the applicant was reduced and a sum of Rs 79,353/- was recovered from his pay and allowances. The applicant submitted a complaint on prescribed format to AMC Records Office at Lucknow for redressal of his grievances but no action was taken by the competent authority. He sent a dispute form through Adm Bn, AMC Centre &amp; College, Lucknow to fix his basic pay correctly in which he stated that persons junior to him are getting Rs 49,000/- whereas his basic pay has been reduced to Rs 47,600/- but nothing was done. At last he retired from the Army on 31.01.2018 (A/N) after serving in the Army for 30 years and 17 days. Learned Counsel for the applicant also submitted that following Junior Commissioned Officers who are junior to him are drawing Rs 49,000/- :-</p> <p>(a) JC-699150N Ex Sub Sukhvir Singh Tyagi (date of promotion to the rank of Sub : 01 Apr 2000.</p> <p>(b) JC-698791N Ex Sub Anil Kumar (date of promotion to the rank of Sub : 06.04.2000.</p> <p>Aggrieved, the present O.A. has been filed with following prayers :-</p> <p>(a) <i>Issuing/passing of an order directing the respondents to consider and re-fix salary of the applicant in the Pay Band of Rs 49,000/- and pay arrears of difference in salary from December 2017 to January 2018 within a stipulated time.</i></p> <p>(b) <i>Issuing/passing of an order directing the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary in the Pay Band of Rs 49,000/- and pay arrears of difference in pension from 01.02.2018 to the date of re-fixation alongwith interest within stipulated time.</i></p> <p>(c) <i>Issuing/passing of an order directing the respondents to refund the recovered amount of Rs 79,353/- alongwith interest within a stipulated time.</i></p>

(d) *Allowing this application with cost.*

Per contra Learned Counsel for the respondents submitted that final settlement of account of each soldier is done at the time of discharge, and at this time, all pay and allowances drawn during entire service are checked and adjusted correctly. When provisional final settlement of account of the applicant was done and the LPC was prepared after receipt of Sheet Roll from AMC Records, it was noticed that the applicant has drawn Rs 79,353/- more than his entitlement. His correct basic pay should have been Rs 7,640/- and grade pay Rs 2400/- whereas he was paid Rs 7800/- and grade pay Rs 2400/-.

Learned Counsel for the respondents further submitted that the applicant has made an allegation that following JCOs junior to him have drawn more basic pay than him :-

S.No	Particulars	Date of promotion in the rank of Naikl	Basic pay as on 01.01.2018
1.	JC-699150N Ex Sub Sukhvir Singh Tyagi	01.04.2000	Rs 49,000
2.	JC-698791N Sub Anil Kumar	06.04.2000	Rs 49,000
3.	JC-698513A Sub Kaushalendra Singh Chauhan (Applicant)	02.09.1999	Rs 47,600

Sub Sukhvir Singh Tyagi and Sub Anil Kumar were promoted in the month of Apr 2000 and as per 5<sup>th</sup> Pay Commission, their annual increment were fixed in the month of Apr of the succeeding year. Whereas the applicant was promoted in the month of Sep 1999 and per 5<sup>th</sup> Pay Commission, his annual increment was fixed in the month of Sep of the succeeding year. This process of granting annual increment continued till implementation of 6<sup>th</sup> Pay Commission i.e. upto 01.01.2006.

After the implementation of 6<sup>th</sup> Pay Commission, as per rule individuals who were promoted between Jan to Jun were allotted one additional increment as on 01.01.2006; hence Sub Sukhvir Singh Tyagi and Sub Anil Kumar were granted one increment as on 01.01.2006 and their Basic Pay was fixed at Rs 7800/- and grade pay Rs 2400/-. The applicant was promoted in the month of Sep hence his annual increment was fixed in the month of Sep; therefore as on 01.01.2006, his basic pay was fixed at Rs 7640/- and grade pay Rs 2400/-. This anomaly continued till implementation of 7<sup>th</sup> Pay Commission. Due to this reason only the difference in anomaly of pay fixation occurred and the applicant was drawing less basic pay than his juniors.

Ld counsel for the respondent further submitted that the fixation of pay was done based on the recommendations of 6<sup>th</sup> and 7<sup>th</sup> Pay Commissions and no bias has been done to the applicant. Therefore, he submitted that the application may be dismissed due to its being devoid of any merit and lacking substance.

Heard Shri Yashpal Singh, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents at length and perused the relevant documents available on record.

Despite the facts that the respondents were fully aware of such an anomaly in fixation of pay by 6<sup>th</sup> and 7<sup>th</sup> Pay Commissions, no efforts were made to remove it knowing well that juniors will get more salary than seniors in the same rank. It does not appeal to the common sense of a reasonable man that pay commissions which have been envisaged/formulated to benefit the employees would prejudice the employees by allowing the juniors to get more basic pay than seniors.

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.

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.”

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.....”

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.....”

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 posts 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 permits

juniors to draw higher salary in the same rank than their seniors. The only way to remove 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.

In view of above, the respondents are hereby directed to upgrade the basic pay of the applicant from the date his juniors were given the higher basic pay in the same rank with all retiral dues. Rs 79,353/- recovered from his pay and allowances at the time of retirement from service be reimbursed to the applicant with an interest at the rate of 8% per annum. The Respondents are directed to comply the order within a period of three months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

Application stands disposed of accordingly.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

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