

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

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

**Original Application No. 40 of 2023**

Monday, this the 06<sup>th</sup> day of May, 2024

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Lt Gen Anil Puri, Member (A)**

Ram Prakash (No JC-669483L Ex Nb Sub) S/o late Ram Babole, R/o House No 5, C-329, Avas Vikas Hanspur, Kanpur Nagar (UP).

.....Applicant

Ld. Counsel for : **Shri Ashok Kumar**, Advocate  
Applicant (through virtual mode)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Officer-in-Charge Records, ASC (South)-MT, PIN-560007, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

...Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents Central Govt Counsel

**ORDER**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(a) The Hon'ble Court may graciously be pleased to direct the respondents to fix the basic pay of the applicant with effect from the date of promotion i.e. 5.6.2005 as Havildar as provided vide letter No A/27153/VI-CPC/3/AG/PS-3(a) dated 15.10.2008 issued by respondents' department and accordingly applicant deserves the revised fixation of his basic pay w.e.f. 5.6.2005 and as such he is entitled to arrears of enhanced pay and allowances w.e.f. 5.6.2005 to 30.11.2016 and thereafter, arrears of enhanced pension w.e.f. 1.12.2016 the next date of retirement till date of actual enhancement of pensionary benefits. Further Hon'ble Court may be pleased to direct the respondents to pay the arrears to the applicant after fixing his basic pay w.e.f. the date of promotion i.e. 5.6.2005 on the post of Havildar, till date of actual payment.*

*(b) The Hon'ble Court may graciously be pleased to direct the respondents to pay the arrears to the applicant after fixing his basic pay w.e.f. the date of promotion i.e. 5.6.2005 on the post of Havildar, till date of actual payment.*

*(c) This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstances of this case.*

*(d) Award costs to the applicant.*

2. The factual matrix on record is that the applicant was enrolled in the Army on 22.11.1988. During the course of his service, the applicant was promoted to the rank of Naik on 01.01.2001 and thereafter, he was promoted to the rank of Havildar on 06.05.2005. He was granted MACP-III (Nb Sub Grade) w.e.f. 22.11.2012 and was promoted to the rank of Naib Subedar w.e.f. 01.02.2014. After completion of terms of engagement he was discharged from service on 30.11.2016 (AN) under the provisions

of Rule 13 (3) I (i) (a) of Army Rules 1954. Grievance of the applicant applicant is that his basic pay was not correctly fixed when he was promoted to the rank of Havildar on 06.05.2005 which also resulted in wrong fixation of his basic pay when he was promoted to the rank of Naib Subedar, with the result he is getting less pension than his colleagues/juniors. As per IHQ of MoD (Army) letter dated 15.10.2008 and Special Army Instruction (SAI) 1/S/2008, option for fixation of pay either from 01.01.2006 or from the date of promotion, whichever was beneficial to the individual, was to be exercised as per recommendations of 6<sup>th</sup> CPC, but applicant being unaware about this option could not submit his option. He came to know later in the year 2021 about less payment of pension and submitted representation on 25.08.2021 followed by letter dated 27.09.2021, which were given no cognizance. Being aggrieved by non grant of correct basic pension, this O.A. has been filed by the applicant.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 22.11.1988. He was promoted to the rank of Havildar on 06.05.2005 and granted MACP-III (Naib Subedar Grade) w.e.f. 22.11.2012 and later promoted to the rank of Naib Subedar w.e.f. 01.02.2014. His further submission is that as per IHQ of MoD (Army) letter dated 15.12.2008 and SAI 1/S/2008, option for fixation of pay either from 01.01.2006 or from the date of promotion, whichever was beneficial to the individual, was to be exercised as per recommendations of 6<sup>th</sup> CPC, but the applicant being not aware about this option could not submit the

same to PAO (OR) ASC (South) which resulted in fixation of less pay/pension in comparison to his juniors.

4. Learned counsel for the applicant further submitted that for correction fixation of his basic pay w.e.f. 06.05.2005, applicant submitted two representations dated 25.08.2021 and 27.09.2021, but the respondents have not taken any action for correct fixation of his basic pay at that time which resulted in incorrect fixation of basic pay in the rank of Havildar, on promotion to the rank of Naib Subedar and thereafter, incorrect fixation of basic pension at the time of retirement.

5. Learned counsel for the applicant has placed reliance on order dated 09.03.2022 passed by this Tribunal in O.A. No. 785 of 2021, **Ex Subedar (Nur Tech) Dhanabalan R vs UOI & Ors** and order dated 29.11.2022 passed by this Tribunal in O.A. No. 255 of 2022, **Jai Prakash vs UOI & Ors**. During the course of hearing, learned counsel for the applicant has orally submitted that respondents have ignored the settled law as held by the AFT (PB), New Delhi in O.A. No. 113 of 2014, **Sub Chittar Singh vs UOI & 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 atleast offer the beneficial provision's option and that fixing of the time limit itself cannot deny the beneficial provision to the petitioners. It was also submitted that 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 a junior in the same post cannot be allowed to draw salary higher than the senior because that would hit by Article 39 (d) of the Constitution of India as per which equal pay is applicable for equal work. He submitted that to remove this anomaly respondents have option to step up of salary of juniors so that equality should be maintained. He pleaded that applicant's pay fixed in the rank of Havildar and thereafter, in the rank of Naib Subedar is not logical and needs re-fixation from the date of promotions w.e.f. 06.05.2005 and 01.02.2014.

7. On the other hand, learned counsel for the respondents submitted that as per recommendations of 6<sup>th</sup> CPC and sAI 1/S/2008, applicant was to exercise his option to choose for fixation of his pay either from 01.01.2006 or from the date of promotion as the same was applicable to every JCOs and ORs. The applicant had failed to submit his option to PAO (OR) ASC (South) for fixation of his pay as per 6<sup>th</sup> CPC for revision pay from the date of promotion to the rank of Havildar i.e. w.e.f. 06.05.2005 which led to fixation of his basic pay w.e.f. 01.01.2006.

8. Learned counsel for the respondents further submitted that contention of the applicant that his representation has not been replied, is wrong as applicant's representation dated 27.09.2021 submitted through Zila Sainik Kalyan Evam Punarvas Karyalaya, Kanpur has been replied vide ASC Records (South) letter dated 08.11.2021 (Exhibit R-2) intimating

the factual position of his case. He pleaded for dismissal of O.A. stating that applicant's basic pension has rightly been fixed.

9. Heard learned counsel for the parties and perused the record.

10. It is not disputed that applicant was enrolled in the Army on 22.11.1988 and was discharged from service on 30.11.2016 (AN) after rendering more than 28 years service. During the course of his service, he was promoted to the rank of Naik on 01.01.2001, Havildar on 06.05.2005 and granted MACP-III (Naib Subedar Grade) w.e.f. 22.11.2012. He was promoted to the rank of Naib Subedar w.e.f. 01.02.2014.

11. It is cardinal principle of law, as held by the Hon'ble Apex Court in number of cases, that no junior in the same post can be granted more salary than his senior.

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 **Er. Gurcharan Singh Grewal and Anr. vs Punjab State Electricity Board and Ors**, 2009 (2) SLJ 271 (SC), the Hon'ble Supreme Court in para 13 has observed as under:-

*“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 the case of **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 para No. 15 as under:-

*“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. In another decision dated 25.10.2010 rendered in W.P.(C) No. 2884/2010 titled **UOI and Anr. vs Chandra Veer**, the Hon'ble 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.....”*

15. 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 senior

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 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 and are contrary to Article 39 (d) of the Constitution of India which envisages “equal pay for equal work” and contrary to the principles of law laid down by the Hon’ble Apex Court in its pronouncements.

16. The AFT (PB), New Delhi vide order dated 05.10.2017 passed in O.A. No. 1092 of 2017, ***Sub Dhyan Singh vs Union of India & Ors*** 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. The applicant has not filed comparative statement of his juniors, but there appears an anomaly in fixation of basic pay of the applicant at the time of his promotion to the rank of Havildar on 06.05.2005 due to non submission of option certificate which also led to wrong fixation of his basic pay at the time when he was promoted to the rank of Naib Subedar on 01.02.2014. We are of the view that his basic pay at the time of promotion to the rank of Havildar needs to be corrected.

18. In view of above, Original Application is **allowed**. The impugned order, if any, passed by the respondents is set aside. The respondents are



hereby directed to upgrade basic pay in respect of the applicant w.e.f. 06.05.2005 i.e. w.e.f. the date he was promoted to the rank of Havildar. It is also directed to fix his correct basic pay when he was promoted to the rank of Naib Subedar w.e.f. 01.02.2014. The Respondents are further directed to comply this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

19. No order as to costs.

20. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated: 06.05.2024

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

RESERVED

(Court No 2)

Form No. 4

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

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 40 of 2023

Ex Nb Sub Ram Prakash

Applicant

By Legal Practitioner for the Applicant : Shri **Ashok Kumar**, Advocate

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents : Shri **Ashish Kumar Singh**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="500 1615 638 1645"><u>03.05.2024</u></p> <p data-bbox="500 1650 1110 1688"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="500 1693 1024 1731"><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p data-bbox="597 1787 873 1822">Judgment pronounced.</p> <p data-bbox="597 1841 967 1876"><b>O.A. No. 40 of 2023</b> is allowed.</p> <p data-bbox="597 1895 1393 1929">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="516 2037 776 2107">(Lt Gen Anil Puri) Member (A)</p> <p data-bbox="500 2107 586 2134"><i>rathore</i></p> <p data-bbox="1154 2037 1451 2107">(Justice Anil Kumar) Member (J)</p>

