

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 2829/2022

JWO Abhilash T Nair  
 Versus  
 Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
 For Respondents : Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
 HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

OA 2829/2022

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, primarily aggrieved by the incorrect fixation of pay and is drawing less pay than his batchmates.

2. Applicant joined the Indian Air Force on 16.03.2003. He was granted promotion to the rank of LAC w.e.f. 01.02.2006 and was subsequently promoted to rank of Sgt on 24.06.2016.

Arguments by the Applicant

3. It is submitted by the Ld. Counsel for the applicants that the pay of the applicant was wrongly fixed in 6th CPC as well as 7th CPC w.e.f. From 01.01.2006 & 01.01.2016, and due to such wrong fixation of increment, the applicant is drawing less pay with respect to other coursemates and

OA 2829/2022  
 JWO Abhilash T Nair Vs Uoi & Ors.

juniors, and has been financially deprived of his legitimate entitlement of pay and allowances due to wrong fixation of pay.

4. Ld. Counsel further submits that as per the pay slip of July 2022, the applicant was drawing Basic Pay of Rs. 45,400/- whereas his junior Sgt Satish Kumar and his course mate JWO Harish Kumar were drawing basic pay of Rs. 46,800/- making the difference of Rs. 1,400/- per month and causing huge loss to the applicant.

5. Learned counsel for the applicant further submitted that the applicant's case is covered by the decision of Babhoot Singh vs. Union of India & Ors, O.A. No. 1053 of 2012 decided on 12.12.2014 by AFT (RB) Lucknow. His other submission is that the respondents have ignored the settled law as held by AFT (PB), New Delhi in O.A. No. 113 of 2014, Sub Chittar Singh v. Union of India & Ors, decided on 10.12.2014 wherein in Para 3 it has been stated 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, 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.

6. Ld. Counsel further submits that Hon'ble AFT (PB) 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 individual by fixing his pay from the

date of promotion that was a more beneficial option for the applicant, thereby, fixing his pay from the date of promotion to the rank of Nb Sub, and that the Tribunal 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.

Arguments by Respondents

7. Per Contra, Ld. Counsel for the Respondents submit that the pay of the applicant has been correctly fixed in accordance with the existing policies, and that the applicant opted to migrate from 5th to 6th CPC on promotion to LAC w.e.f. 01.02.2006, which was the most beneficial option available to him on that time. Consequently, his basic pay was fixed at Rs. 7,050/- w.e.f 01.01.2006.

8. It is the case of the respondents that the IRLA of the applicant was reviewed and it is found that his pay has been fixed correctly at all stages, and in the instant case, the course mate JWO Harish Kumar KG AF Fit was promoted to LAC on 01.02.2006 whereas, on same date as of applicant but opted for migration option on promotion from Vth to VIth CPC, due to which the pay of the applicant is lesser than the compared course mate. In the case of junior 779573-G Sgt Satish Kumar AF Fit was promoted to LAC on 01.02.2006 on same date as of applicant but opted for migration option on promotion from Vth to VIth CPC, due to which the pay of applicant is lesser than the compared junior.

### Consideration

9. We have given our balanced consideration to the submissions of both parties and have gone through various documents/circulars brought to our notice and now, the only pertinent aspect for consideration remain as to whether the Applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Application.

10. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the comparative pay of the applicant with his aforesaid junior Sgt Satish Kumar, which is reproduced as below:

<i>Date</i>	<i>778553-G JWO Abhilash T Nair (applicant)</i>	<i>778440 JWO Harish Kumar (course mate)</i>	<i>778872 Sgt Satish Kumar (Junior)</i>
16 Jun 03	3675	3675	-
28 Sep 04	-	-	3675
01 Jan 06	7050	-	-
01 Feb 06	7050	7490 (Option opted on LAC PRM)	7490 (Option opted on LAC PRM)
01 Jul 06	7370	7490	7490
01 Jul 07	7700	7820	7820
23 Jun 08	7700 (Cpl Prm)	7820 (Cpl Prm)	7820
01 Jul 08	8390	8510	8160
01 Feb 09	8390	8510	8160 (Cpl Prm)
01 Jul 09	8760	8880	8870
01 Jul 10	9140	9260	9250
01 Jul 11	9530	9660	9650
01 Jul 12	9930	10070	10060
01 Jul 13	10350	10490	10480
01 Jul 14	10780	10920	10910

OA 2829/2022  
JWO Abhilash T Nair Vs Uol & Ors.

01 Jul 15	11220	11370	11360
01 Jan 16	11220	36400	36400
23 Jan 2016	38100 (option opted on Sgt Prm)	37000 (Sgt Prm)	36400
01 Jul 16	38100	39200 (DNI opted)	37500
01 Jan 17	39200	40400	37500
01 Feb 17	39200	40400	38100 (Sgt Prm)
01 Jul 17	39200	40400	40400
01 Jan 18	40400	41600	41600
01 Jan 19	41600	42800	42800
01 Jan 20	42800	44100	44100
01 Jan 21	44100	45400	45400
01 Jan 22	45400	46800	46800
01 Jul 22	46200 (JWO Prm)	49000 (JWO Prm)	46800
01 Jan 23		50500	-
01 Jul 23		50500	-

11. It is observed from the above chart that the basic pay of the applicant was fixed at Rs. 7,050/- on 01.02.2006 in the classification of LAC, while the said junior's pay was fixed at Rs. 7,490/- on 01.02.2006, because of the option exercised by the aforesaid junior and the same not exercised by the applicant.

12. It is pertinent to note that it is a cardinal principle of law, as held by the Hon'ble Supreme Court in a number of cases, that no junior in the same post/rank can be granted more salary than his seniors.

13. At this point, it is relevant to refer to the decision dated 25th October, 2010 rendered in W.P.(C) No. 2884/2010 titled as UOI and Anr.

v. Chandra Veer Jeriya, wherein 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 UOI and Ors vs. P. Jagdish and Ors [1997 (3) SCC 176]. 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.....”*

14. In P. Jagdish case (supra), 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 service personnel in the same rank cannot be allowed to draw a salary higher than his batchmate 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 a service personnel drawing a higher salary in the same rank than their batchmate. The only way to remove this anomaly is the stepping up of the salary of aggrieved personnel at par with other service

personnels in the same rank. 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.

15. 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."*

16. In view of the above analysis, we are of the considered opinion that the aforesaid fixation of pay violates the basic principle of equal pay for equal work, enshrined under Article 39(d) of the Constitution of India, and at any point of time, there cannot be pay disparity between two people serving in the same rank, and therefore, with aforesaid observations, this Original Application is allowed. The respondents are directed to re-fix basic pay of the applicant w.e.f. 01.01.2006, and thereafter, re-fix his basic pay



on all subsequent increments so that applicant's pay is fixed not less than his junior, and pay the arrears 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

17. No order as to costs.

18. Pending application, if any, also stands disposed of.

Pronounced in the open Court on 11 day of October, 2023.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

ps