

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.3886/2024

JWO S Murali Tharan
Versus

... Applicant

Union of India & Ors.

... Respondents

For Applicant

- Mr. Brajesh Kumar, Advocate with
Mr. Raj Kumar, Advocate

For Respondents

- Mr. Atulesh Saran Mathur, Advocate
Sgt S.S.Tomar, DAV, Legal Cell

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

The applicants vide the present OA 3886/2024 has made the following prayers:-

- “(a) To direct the Respondents to rectify Basic pay fixation anomaly in salary of the applicant by re-fixing his basic pay as per the most beneficial option to applicant on implementation of 6th CPC and subsequent, on the principles affirmed by Hon'ble Tribunal in O.A No. 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.*
- (b) To direct the respondents to Re-fix and step up the Basic Pay of applicant at par with his batchmate/coursemate/ entrymate/junior of same group/trade 794407-A JWO KRISHNA PRASAD, RADIO FITTER, as per the most beneficial option to the applicant.*
- (c) To direct the respondents to make payment of arrears of salary accrue to him on re-fixation of his basic pay, in accordance with most beneficial option, on the principles affirmed by Hon'ble Tribunal in O.A No. 1182/2018, Sub Mahendra Lal Shrivastava Vs Union of India & Ors.*
- (d) To direct the respondents to pay interest @12% per annum on the arrears accrue to the applicant on arrears of payments on Re-fixation of basic pay.*
- (e) To pass any other order or direction in favour of Applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.”*

2. The applicant, a serving airman of the Indian Air Force, is aggrieved by the action of the respondents in fixing his basic pay at an

amount lower by Rs. 1,600/- as compared to that of his batchmate, on the ground that he had not exercised the option of pay fixation on his promotion to the rank of Leading Aircraftsman (LAC) during the transitional period between the implementation of the 5th and 6th Central Pay Commissions.

SUBMISSIONS ON BEHALF OF THE APPLICANT

3. Learned counsel for the applicant submits that the applicant was promoted to the rank of Leading Aircraftsman (LAC) on 01.02.2006 and, owing to his inability to exercise the option of pay fixation during the transition from the 5th to the 6th Central Pay Commission (CPC), his pay was fixed at a rate lower by Rs. 1,600/- as compared to his batchmate, No. 794407A JWO Krishna Prasad.

4. It is further submitted that the applicant was enrolled in the Indian Air Force as an Airman on 12.01.2004 and was successively promoted to the ranks of LAC on 01.02.2006, Corporal (Cpl) on 19.01.2009, Sergeant (Sgt) on 19.01.2017, and Junior Warrant Officer (JWO) on 01.07.2023. However, due to the fixation of his pay in the transition period of the 6th CPC not being effected in the most beneficial manner, the applicant continues to draw a lower basic pay as compared to his batchmate JWO Krishna Prasad, who had exercised Option-II (i.e., fixation from the date of next increment). The applicant asserts that this incorrect fixation of pay has caused him recurring financial loss on account of the anomaly created in his basic pay.

5. The applicant has placed reliance upon a comparative chart of his basic pay vis-à-vis that of his batchmate JWO Krishna Prasad, who had exercised Option-II at the time of his promotion to LAC during the transitional period of the 6th CPC. It is contended that in terms of Para 14(b)(iv) of Special Air Force Instruction (SAFI) 1/S/2008, even in the absence of an option exercised by the individual, the Pay Accounts Officer (OR) was duty bound to ensure that pay fixation was carried out in the most beneficial manner to the employee. In support of this contention, reliance is placed upon the decisions of the Armed Forces Tribunal, Principal Bench, New Delhi in OA No.1182/2018 Sub Mahendra Lal Shrivastava Vs Union of India & Ors. and OA No.1092/2017 Sub Dhyen Singh Vs Union of India & Ors. The comparative statement as averred in Para 4.5 is reproduced herein below:

Particular of Personnel	794354-L JWO S Murali Tharan Radio Fitter (Applicant) (No Option exercised)	794407A JWO Krishna Prasad, Radio Fitter (Batchmate/Junior Exercise Option-II)
Date of Enrollment	12 Jan 2004	12 Jan 2004
Date of Promotion to the rank of LAC	01 Feb 2006	01 Sep 2005
Promotion-CPL	19 Jan 2009	01 Sep 2008
Promotion -Sgt	19 Jan 2017	19 Jan 2017
Promotion-JWO	01 Jul 2023	01 Jul 2023
Basic Pay (as per Pay Slip)	Rs 53,600/-	Rs 55,200/-

respect of the applicant and No. 794407A JWO Krishna Prasad. The same is reproduced herein below for proper appreciation: –

"PAY COMPARATIVE STATEMENT"

SENIOR				JUNIOR			
CELL NO-513		UNIT-RR23/RR-23		CELL NO-806		UNIT-TG47/TG47	
SERVICE NO. 794354L				SERVICE NO. 794407A			
RANK-JWO NAME – S MURALITHARAN				RANK – JWO NAME - KRISHNA PRASAD			
TRADE – RDO FIT		DOE-12 JAN 04		TRADE-RDO FIT		DOE-12 JAN 04	
MUSTERED AC		WEF 12 JAN 04		MUSTERED AC		WEF 12 JAN 04	
RECLASS LAC		WEF 01 FEB 06		RECLASS LAC		WEF 01 SEP 05	
PROMOTION CPL		WEF 21 JAN 09		PROMOTION CPL		WEF 01 SEP 08	
PROMOTION SGT		WEF 19 JAN 17		PROMOTION SGT		WEF 19 JAN 17	
PROMOTION JWO		WEF 01 JUL 23		PROMOTION JWO		WEF 01 JUL 23	
FROM DATE	BASIC PAY	REASON		FROM DATE	BASIC PAY	REASON	
12 JAN 04	3675	MUSTERING	AC	12 JAN 04	3675	MUSTERING	AC
01 FEB 06	7490	OPTION		01 SEP 05	4025	RE-CLASSIFICATION	LAC
01 JUL 07	7820	INCREMENT		01 JAN 06	7490	FIXATION	
01 JUL 08	8160	INCREMENT		01 JUL 06	7820	INCREMENT	
01 JUL 09	8870	INC + PROMOTION	CPL	01 JUL 07	8160	INCREMENT	
01 JUL 10	9250	INCREMENT		01 JUL 08	8510	INCREMENT	
01 JUL 11	9650	INCREMENT		01 SEP 08	8870	PROMOTION	CPL
01 JUL 12	10060	INCREMENT		01 JUL 09	9250	INCREMENT	
01 JUL 13	10480	INCREMENT		01 JUL 10	9650	INCREMENT	
01 JUL 14	10910	INCREMENT		01 JUL 11	10060	INCREMENT	
01 JUL 15	11360	INCREMENT		01 JUL 12	10480	INCREMENT	
01 JAN 16	36400			01 JUL 13	10910	INCREMENT	
01 JUL 16	11820	INCREMENT		01 JUL 14	11360	INCREMENT	
01 JUL 16	37500	INCREMENT		01 JUL 15	11820	INCREMENT	
19 JAN 17	38100	PROMOTION		01 JAN 16	37500		
01 JUL 17	12780	INC + PROMOTION	SGT	01 JUL 16	12290	INCREMENT	
01 JUL 17	40400	INC + PROMOTION	SGT	01 JUL 16	38600	INCREMENT	
01 JAN 18	41600	INCREMENT		01 SEP 16	39200	PROMOTION	
01 JAN 19	42800	INCREMENT		01 SEP 16	12780	MACP	

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

6. Per contra, learned counsel for the respondents submits that at the time of migration from the 5th CPC to the 6th CPC w.e.f. 01.02.2006, the applicant had exercised the option for migration in the 6th CPC from the date of his reclassification to LAC w.e.f. 01.02.2006. Consequently, his basic pay was fixed at Rs. 7,490/- w.e.f. 01.02.2006, in accordance with the policy of granting the more beneficial option to the employee and therefore the applicant is presently drawing a basic pay of Rs. 53,600/- as on 01.07.2024.

7. It is further contended that the comparison sought to be drawn by the applicant with his alleged entry mate, No. 794407A JWO Krishna Prasad, is misconceived. The said JWO Krishna Prasad was reclassified to the rank of LAC on 01.09.2005 and was promoted to the rank of Corporal on 01.09.2008, i.e., both events having taken place earlier than the applicant. It is submitted on behalf of the Respondents that thus it is evident that JWO Krishna Prasad is senior to the applicant both with respect to the date of reclassification to LAC as well as the date of promotion to Corporal and hence, the claim of the applicant for parity with JWO Krishna Prasad is without merit and the prayer is liable to be rejected.

CONSIDERATION

8. We have heard the learned counsel for both sides and carefully considered the rival submissions. We have also perused the statement of comparative pay calculations placed on record by the respondents in

01 JAN 20	44100	INCREMENT		01 JUL 17	41600	INC + PROMOTION	SGT
				01 JUL 17	13290	INCREMENT	SGT
01 JAN 21	45400	INCREMENT		01 JAN 18	42800	INCREMENT	
01 JAN 22	46800	INCREMENT		01 JAN 19	44100	INCREMENT	
01 JAN 23	48200	INCREMENT		01 JAN 20	45400	INCREMENT	
01 JUL 23	49000	PROMOTION	JWO	01 JAN 21	46800	INCREMENT	
01 JAN 24	52000	INCREMENT		01 JAN 22	48200	INCREMENT	
01 JUL 24	53600	INCREMENT		01 JAN 23	49600	INCREMENT	
				01 JUL 23	50500	PROMOTION	JWO
				01 JAN 24	53600	INCREMENT	
				01 JUL 24	55200	INCREMENT	

9. Upon a detailed comparative analysis of the pay fixation of the applicant vis-à-vis his batchmate at the time of musturation, we observe that both the air warriors were mustered on 12.01.2004, and their pay was fixed identically at Rs. 3,675/-. For the sake of convenience, we shall hereinafter refer to the applicant as “A” and to JWO Krishna Prasad as “B”. It is further noted from the records that while “A” was reclassified to the rank of Leading Aircraftsman (LAC) on 01.02.2006 upon attaining the requisite qualification, “B” had qualified earlier and was reclassified as LAC on 01.09.2005. It is therefore evident that at the time of transition from the 5th CPC to the 6th CPC, “A” continued to hold the rank of Airman, whereas “B” had already been reclassified to LAC prior to the said transition. Consequently, the pay of “B” was fixed w.e.f. 01.01.2006, whereas the pay of “A” was fixed only w.e.f. 01.02.2006. As a natural corollary, “B” became entitled to an increment on 01.07.2006, while the

applicant received his first increment only on 01.07.2007, i.e., one year later than "B".

10. At this juncture, we deem it appropriate to advert to Para 14 of the Special Air Force Instruction No. 1/S/08, which specifically governs the circumstances of pay fixation during the transition period. The said Para is reproduced hereinbelow for ready reference:

"14. Fixation of Pay on Promotion on or After 01st January 2006. In the case of promotion of a PBOR from one grade pay to another in the revised pay structure, the fixation of pay in the running pay band will be done as follows:-

a. One increment equal to 3% of the sum of the pay in the pay band and existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promoted rank will be thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped up to such minimum.

b. On promotion from one rank to another / financial upgradation under ACP, PBOR has an option to get his pay fixed in the higher post either from the date of his promotion, or from the date of his next increment, viz 01 Jul of the year. The pay will be fixed in the following manner in the revised pay structure:-

I. In case PBOR opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher rank will be granted. Further re-fixation will be done on the date of his next increment i.e. 01 Jul. On that day, he will be granted two increments; one annual increment and the second on account of promotion. While computing these two increments, Basic Pay prior to the date of promotion was Rs 100, first increment would be computed on Rs 100 and second on Rs 103:

II. In case of a PBOR opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment in the higher grade on the next 01 Jul, if he was promoted between 02 Jul and 01 Jan. However, if he was promoted between 02 Jan and 30 Jun of particular year, he shall get his next increment on 01 Jul next year.

(Emphasis supplied)"

III. PBOR will have the option to be exercised within one month from the date of promotion to have his pay fixed from the date of such promotion or to have the pay fixed from the date of his next increment. Option once exercised shall be final. Form of option is given at Appendix 'E' to this SAFT.

11. With regard to the contention of the applicant concerning his alleged batchmate drawing higher pay, it becomes necessary to advert to the relevant portion of Appendix 'A' of Special Air Force Instruction No. 1/S/2008, which is reproduced herein below for ready reference:-

"Appendix 'A'

(Refers to para 4 of SAFT 1/S of 2008)

REVISED PAY STRUCTURE - JUNIOR COMMISSIONED OFFICERS (INCLUDING HONORARY COMMISSIONED OFFICERS), NON-COMMISSIONED OFFICERS AND OTHER RANKS OF AIR FORCE

Present Scale			Revised Pay Structure				
Ser No	Rank	Present Scale	Pay Band	Corresponding Pay Band/Scale	Grade Pay	Military Service Pay	X Gp Pay
1	2	3	4	5	6	7	8
<u>'X' Gp</u>							
(a)	AC	3675	PB-1	5200-202200	2000	2000	1400
(b)	LAC	4025-60-4925	PB-1	5200-202200	2000	2000	1400
(c)	CPL	4150-70-5200	PB-1	5200-202200	2400	2000	1400
(d)	SGT	4670-85-5945	PB-1	5200-20200	2800	2000	1400
(e)	JWO	5530-125-7780	PB-2	9300-34800	4200	2000	1400
(f)	WO	6750-190-9790	PB-2	9300-34800	4600	2000	1400
(g)	MWO	7250-200-10050	PB-2	9300-34800	4800	2000	1400
<u>'Y' Gp</u>							
(a)	AC	3250	PB-1	5200-20200	2000	2000	NA
(b)	LAC	3650-60-4550	PB-1	5200-202200	2000	2000	NA

(c)	CPL	3900-70-4950	PB-1	5200-202200	2400	2000	NA
(d)	SGT	4320-85-5595	PB-1	5200-202200	2800	2000	NA
(e)	JWO	5620-140-8140	PB-2	9300-34800	4200	2000	NA
(f)	WO	6600-170-9320	PB-2	9300-34800	4600	2000	NA
(g)	MWO	6750-200-9550	PB-2	9300-34800	4800	2000	NA
<u>'Z' Gp</u>							
(a)	AC	3050	PB-1	5200-20200	2000	2000	NA
(b)	LAC	3080-60-3980	PB-1	5200-20200	2000	2000	NA
(c)	CPL	3200-70-4250	PB-1	5200-20200	2400	2000	NA
(d)	SGT	3775-85-5050	PB-1	5200-20200	2800	2000	NA
(e)	JWO	5200-125-7450	PB-2	9300-34800	4200	2000	NA
(f)	WO	6170-155-8650	PB-2	9300-34800	4600	2000	NA
(g)	MWO	6600-200-9400	PB-2	9300-34800	4800	2000	NA
<u>Hony Commissioned Officers</u>							
(a)	Hony Fg Officer	10500	PB-3	15600-39100	5400	6000	NA
(b)	Hony Flt Lt	10850	PB-3	15600-39100	6100	6000	NA

12. Upon perusal of the aforesaid comparative table, it emerges that on re-classification to LAC under the 5th CPC regime, the pay band underwent a change, resulting in an increase of the basic pay from Rs. 3675/- to Rs. 4025/-. This is borne out from the comparative statement of the applicant vis-à-vis his batchmate. The said statement clearly indicates that when the batchmate was re-classified as LAC on 01.09.2005, i.e., prior to the implementation of the 6th CPC, his basic pay was fixed at Rs. 4025/- w.e.f. 01.09.2005. In contrast, since

the applicant had not been granted such re-classification to LAC, his basic pay continued at Rs. 3675/- at the time of transition to the 6th CPC.

13. Upon a bare perusal of Para 14(b)(ii) of Special Air Force Instruction No. 1/S/2008, it is evident that the applicant had consciously exercised the beneficial option of having his pay fixed in the higher grade from the date of his promotion, i.e., 01.02.2006 (on classification as LAC). In terms thereof, since the applicant was promoted between 02 January and 30 June, his entitlement to the next increment would accrue only on 01 July of the succeeding year, i.e., 01.07.2007.

14. We further observe that the applicant's pay was, in fact, fixed in the most beneficial manner upon transition to the 6th CPC, i.e., from the date of his promotion, in accordance with the principles enunciated by this Tribunal in Sub Mahendra Lal Srivastava (supra), which order has been upheld vide verdict dated 05.05.2025 of the Hon'ble High Court of Delhi in W.P.(C) 5880/2025. To elucidate, had the fixation been done w.e.f. 01.01.2006 (the non-beneficial option), his pay would have been Rs. 7050/- (i.e., Rs. 3650 x 1.86). If fixed w.e.f. the date of next increment (i.e., 01.07.2006 – the more beneficial option), the pay would have been Rs. 7370/- (after addition of 3%). However, the applicant's pay was actually fixed at Rs. 7490/-, which was the most beneficial fixation. Thus, while the applicant ('A') received his first increment on 01.07.2007, his batchmate ('B'), having already

been reclassified as LAC prior to induction into the 6th CPC, became entitled to his first increment earlier, i.e., on 01.07.2006. In our considered view, this disparity in pay fixation at the time of transition to the 6th CPC emanated solely from the belated re-classification of the applicant as LAC.

15. It is further pertinent to note that the applicant ('A') was promoted to the rank of Corporal on 21.01.2009, consequent upon which he became entitled to an increment w.e.f. 01.08.2009. By contrast, his batchmate ('B') was promoted to the rank of Corporal earlier, i.e., on 01.09.2008. As a result, while the applicant's pay on 01.07.2009 stood at Rs. 8870/-, his batchmate ('B') was already drawing the same basic pay w.e.f. 01.09.2008. This difference, arising out of the additional increment, persisted through subsequent CPCs, culminating at the 7th CPC stage, wherein, as on 01.01.2016, the applicant's basic pay stood fixed at Rs. 36,400/-, whereas that of his batchmate stood at Rs. 37,500/- as per the fitment table issued under the 7th CPC.

16. On further scrutiny of the respective promotions, we find that the applicant ('A') was promoted to the rank of Sergeant on 19.01.2017, merely two days before the date on which he would otherwise have been entitled to MACP upgradation. His batchmate ('B'), however, had already been granted MACP w.e.f. 01.09.2016, i.e., upon completion of 8 years' service in the rank of Corporal, and was thereafter also promoted to the regular rank of Sergeant

on 19.01.2017, contemporaneously with the applicant. Consequently, up until their promotion to the rank of JWO (Junior Warrant Officer) on the same date, i.e., 01.07.2023, there remained a disparity of one increment between them. Specifically, as on 01.01.2023, the applicant's pay stood at Rs. 48,200/-, while that of his original batchmate stood at Rs. 49,600/-. Following their promotion to the rank of JWO, the pay fixation was effected at Rs. 49,000/- for the applicant and Rs. 50,500/- for his batchmate.

17. We have also taken into consideration the case of Sgt Ram Pravesh Kumar Vs Union of India (OA 1390/2022), decided by a Coordinate Bench of this Tribunal on 28.08.2023. In that matter, the Tribunal, having considered the factual matrix, found that the applicant therein was drawing a lower pay despite having been promoted to the rank of Corporal on 23.12.2007, earlier than another employee who was promoted to the same rank on 01.09.2008 and was junior to him. In such circumstances, the Tribunal directed the stepping up of the pay of the senior at par with the junior. For ready reference, paras 13 and 14 of the order dated 28.08.2023 in OA 1390/2022 (*Sgt. Ram Pravesh Kumar v. Union of India*) are extracted herein below:

"13. It is observed from the above chart that the basic pay of the applicant was fixed at Rs. 7490 on 01.02.2006 in the classification of LAC, while the said junior's pay was fixed at Rs. 7490 on 01.01.2006, the difference being one month. We find that the next comparison arising in case of the applicant and the junior is on the date 01.07.2007, wherein the applicant's pay has been fixed at Rs. 7820 and junior's pay has been fixed at Rs. 8160,

which is evidently, one increment more. We also find that the applicant's pay has been fixed at Rs. 39,200 on 01.07.2016 with his next increment due on 01.07.2017. Meanwhile, the aforesaid junior was getting the basic pay of Rs. 38,600, and on grant of MACP-II (Sgt.), the junior's basic pay was fixed at Rs. 39,200, which is equivalent to the basic pay of the applicant.

14. It is pertinent to note that the applicant got his next increment on 01.07.2017, and his basic pay was fixed at Rs. 40,400. However, the aforesaid junior on exercising option of DNI, got his basic pay fixed at Rs. 41600 on grant of one increment after completion of 1 year, and then, another increment was granted to the applicant on completion of 6 months, thereby, fixing his pay at Rs. 42800, giving rise to the pay disparity, resulting in junior getting more pay than his senior. As on 01.01.2022, the applicant is drawing Rs. 46,800 while the junior is getting basic pay of Rs. 48,200, thereby implying that the junior is getting more pay than his senior."

18. We have also taken into consideration Note 8 (iii) to Para 9 Section II of SAFI 1/8/2008 which clearly states that the senior PBOR/NCs(E) at the time of promotion should have been drawing equal or more pay than his junior. Furthermore as per note 8 (iv) to Para 9, of the Sub section II of of SAFI 1/S/08, the relevant portion is extracted below :-

"Note 8 - Stepping Up of Pay of a Senior If a Junior Promoted After 01st January 2006 Draws More Pay. In cases where a senior promoted to a higher rank before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher rank on or after the 1st day of January, 2006, the pay in the pay band of the senior should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher rank. The stepping up should be done with effect from the date of promotion of the junior subject to the fulfillment of the following conditions:-

(i) Both the junior and senior should belong to the same group and trade and the ranks to which they are promoted should be identical.

(ii) *The pre-revised scales of pay and the revised grade pay of the lower and higher ranks in which they are entitled to draw pay should be identical.*

(iii) *The senior PBOR/ 'NCs(E) at the time of promotion should have been drawing equal or more pay than his junior.*

(iv) *The anomaly should be directly as a result of the application of the provisions of this instruction regulating pay fixation on such promotion in the revised pay structure. If even in the lower rank, the junior PBOR/NC(E) was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior PBOR.*

2PBOR whose date of increment falls on 1st January 2006 shall get an increment in the pre-revised pay scale as on 1st January, 2006 and then fixing their pay in the revised scale and get their next increment on 1st July, 2006"

19. That apart, the case of Sgt Ram Pravesh Kumar (supra) also deals with the question of stepping of pay of senior with that of his junior in the backdrop of Fundamental Rule 22(24) and the facts thereof are distinguishable. Paras 15 to Para 19 of the order dated 28.08.2023 in OA 1390/2022 in Sgt Ram Pravesh Kumar (supra) are reproduced as under :-

"15. It is also important to examine the Fundamental Rules of which relevant Fundamental Rule 22(24) is reproduced as under:

(24) Stepping up of pay of senior for a second time in order to remove an anomaly in pay vis-a-vis same junior admissible.- Doubts have been raised by various Ministries/Departments as to whether provisions relating to stepping up of pay of senior employee with reference to his junior in order to remove an anomaly may be invoked to step up the pay of a senior employee for second time, in case he happens to draw less pay than his junior again, due to stepping up of pay of the latter with reference to pay of persons further junior to him by applying the above provisions.

2. According to the clarification contained in Comptroller and Auditor General's Decision below this rule, while stepping up pay in accordance with the aforesaid general instructions, the benefit

should be allowed only once with reference to the pay of the 'first junior' (not necessarily 'Immediate junior') on whose promotion an anomaly arose in pay of the senior incumbent. In case where pay of such 'first junior' at par with whom the pay of a senior employee was initially stepped up, gets stepped up in the event of an anomaly arising on promotions of persons junior to him and thus gives rise to a situation where the said senior employee again draws less pay than his 'first junior', the benefit is not admissible in terms of the aforesaid decision. The position has been reviewed and after careful consideration, it has been decided that on the pay of the 'first junior', being stepped up with reference to that of his junior, the pay of such senior employees may be stepped up for a second time at par with the 'first junior', provided all the conditions laid down in the general orders, are satisfied with reference to that junior at par with whom the pay of the aforesaid 'first junior' was stepped up. The principle to be followed in such cases is explained by way of a suitable illustration as follows:-

The situation is that the pay of Senior 'A' is first stepped up with reference to the pay of his first Junior 'B' and at a later date, pay of 'B' is stepped up with reference to another Junior 'C'. Then the pay of 'A' may be stepped up for a second time at par with 'B', provided all the conditions under the general orders for stepping up of pay of 'A' vis-a-vis are fully satisfied.

3. The provisions for stepping up of pay for a second time contained in these orders will take effect from the date of issue of this OM. Past cases may be reviewed in the light of these instructions, but the effect of refixation of pay of the employees concerned under FR 27 and under the normal rules from time to time, will only be notional for periods prior to the date of issue of these orders.

Clarification.- It is clarified that the benefits of stepping up of pay can be allowed to a senior official, second time, provided the anomaly has arisen with reference to the pay of the same junior, with reference to whom the pay of senior was stepped up first time. Type of cases quoted below can be examined and decided at their own merits in consultation with this Department as and when they occur.

Type of cases quoted. After the stepping up of 'A', if it is noticed that there is anomaly directly between the Senior 'A' and the second Junior 'C' and the first Junior 'B' has, by then ceased to be in service

(by resignation, retirement or death) and consequently the need for stepping up of his pay may not arise, it may be clarified whether the anomaly in the case of Senior Official 'A' is rectifiable with respect to his Junior 'C' direct.

16. It is observed from the aforesaid rule that while the provision of step up of pay for second time of a senior with respect to his first junior has been made permissible by subsequent amendments, there is no mention of a situation where pay anomaly arises between the senior and the 2nd junior, except that in the clarification to Sub-Rule 3, it provides a example stating that the type of cases quoted below can be examined and decided at their own merits in consultation with this Department as and when they occur. We find that the example quoted in the aforesaid clarification, clearly notes that the anomaly in case of Senior Official is rectifiable with respect to his second junior directly, with the only condition that the first junior 'B' has ceased to be in service and therefore, in view of the above analysis, we examine the instant case on merit as well.

17. 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,

18. 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....."

19. 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."

20. In our considered view, although the applicant and JWO Krishna Prasad had commenced their service on the same day, the subsequent divergence in the dates of their classification as LAC, promotions to higher ranks, and accrual of increments, has led to distinct service trajectories. Consequently, they cannot be treated as strict batchmates for the purpose of pay parity, notwithstanding the fact that the dates of their promotion to the ranks of Sergeant and JWO, i.e., 19.01.2017 and 01.07.2023 respectively, as well as their date of discharge, i.e., 01.07.2025, are identical.

CONCLUSION

21. In light of the foregoing discussion, we hold that the applicant has already been extended the most beneficial option, in consonance

with the principles laid down by this Tribunal in Subedar Mahender Lal Srivastava (supra). Although the applicant and JWO Krishna Prasad had entered service on the same date, it stands established beyond cavil that the applicant's belated reclassification as LAC resulted in his drawing a lesser pay than his counterpart. The disparity, however, is a natural consequence of service-related events and not one that can be construed as an anomaly warranting rectification. Accordingly, the applicant is not entitled to the relief of stepping up of pay at par with his so-called batchmate.

22. The OA No 3886/2024 is thus dismissed.

23. Pending Miscellaneous Applications, if any, stand disposed of.

Pronounced in the open Court on the 7th day of October, 2025.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/akc/