

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

19.

RA 39/2025 in MA 5719/2025 in OA 3886/2024

JWO S Murali Tharan Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Brajesh Kumar, Advocate with
Mr. Navneet, Advocate
For Respondents : Mr. Atulesh Saran Mathur, Advocate
Dharmendra Kumar, &
Sgt Saurabh Yadav AFCAO (Legal Cell)

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
16.12.2025

The applicant vide the present RA makes the following
prayers:-

"32. PRAYER

In view of the foregoing, the Applicant most respectfully prays that this Hon'ble Tribunal may graciously be pleased to:

(i) Review the judgment dated 07.10.2025 passed in O.A. No. 3886/2024 and direct the respondents to Re-fix and step up the Basic Pay of applicant at par with his Entry mate/junior (In service no.) 794407-A JWO Krishna Prasad (Radio Fitter) (not less than his batchmate/junior in same trade.)

(ii) To direct the Respondents to grant annual increment during training period and also till he was granted the benefit for the rank of LAC.

(iii) To direct the respondents to Review the pay fixed of the Applicant under 6th CPC and also in 7th CPC and after due verification re-fix his pay in a manner that is most beneficial to him.

(iv) To direct the respondents to release the arrears of pay and allowances along with 12 percent interest.

(v) 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 observations in the order dated 07.10.2025 in OA 3886/2024 vide paragraphs 15 to 20 are categorical and read to the effect:-

"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 that 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 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 an 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 Honble 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 as 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."

3. In terms of Rule 18 of the AFT (Procedure) Rules 2008, it has been provided to the effect:-

"18. Application for review.-(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.

(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.

(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed."

4. Though, apparently the definition of 'review' is not detailed in the Armed Forces Tribunal (Procedure) Rules 2008 nor in the Armed Forces Tribunal Act 2007 nor in the Armed Forces Tribunal (Practice) Rules 2009, we consider it essential in the circumstances of the prayer made to advert to Order XLVII Rule 1 of the CPC 1908, as amended which reads to the effect:-

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on

the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

The parameters of review are stipulated specifically therein which relate to the prayers made for a review being premised on:-

- The discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order made; or
- On account of some mistake or error apparent on the face of the record;

or for any other sufficient reason.

5. Apparently, the submissions made by the applicant seek to contend that there has been an erroneous application of mind by the Tribunal and that the determination made vide the order dated 07.10.2025 in OA 3886/2024 is wholly erroneous. A mis-appreciation of the record or a non application of mind or an

erroneous application of mind can only fall within the domain of an appeal and not within the ambit of review.

6. In the circumstances, the application RA 39/2025 is not maintainable and is dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

AP