

**COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 661/2019

Sgt D. P. Singh Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Raj Kumar, Advocate for
Mr. Rakesh Kumar Singh, Advocate
For Respondents : Dr. V. S. Mahdiyan, Advocate with
Ms. Apurva Mahndiyan, Advocate
Sgt Pankaj Kumar Yadav, OIC, Legal Cell

CORAM :

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

ORDER

Being aggrieved by the arbitrary action of the respondents in rejecting his request for reconsideration of the Senior–Junior Pay Anomaly, the applicant has challenged Annexure A1 dated 9th October, 2018 by filing the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007.

2. The brief facts of the case are that the applicant was enrolled in the Indian Air Force on 6th May, 1999 and was borne on the posted strength of 40 Wing, Air Force Station, Gwalior with effect

from 21st April, 2013. On 11th June, 2018, he came to know that his junior, Sgt Noor Alam, was drawing a higher basic pay of Rs. 41,600/-, whereas he was drawing a basic pay of Rs. 40,400/-. Consequently, he submitted an application seeking re-fixation of his pay in terms of DAFL 38/81 and AFCAO/10104/7D/PFC dated 10th September, 2009 in the prescribed proforma. His request for re-fixation of pay was rejected by the third respondent on 16th July, 2018 vide Letter No. AFCAO/10104/7D(4)/Sr/Jr. Thereafter, he submitted a representation dated 17th September, 2018 seeking reconsideration of his claim for stepping up of pay with reference to Sgt Noor Alam. The said request was rejected by the third respondent vide order dated 9th October, 2018. Hence, the present OA has been filed seeking the following reliefs:

(a) To quash and set aside the impugned order dated 09.10.2018 and to direct the respondents to grant the benefit of stepping up of pay to the applicant, as his junior is drawing a basic pay higher by Rs. 1,200/-; and

(b) To grant any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case.

3. Learned counsel for the applicant submitted that the respondents have committed an illegality in passing Annexure A1, as there is no bar to granting further stepping up of pay of a senior employee with reference to his junior, provided the prescribed conditions are satisfied. The anomaly, namely, that Sgt Noor Alam is drawing a higher basic pay of Rs. 41,600/- as against the applicant's basic pay of Rs. 40,400/-, was brought to the notice of the respondents. However, without reasonable justification, the respondents rejected his request. It is contended that the stand of the respondents, namely, that the applicant had already availed Senior-Junior benefit in the rank of Corporal at par with Cpl K.K. Acharya (900564-A) and that a second stepping up with reference to a different junior is not permissible under FRSR Pt I, Vol I, Rule 23, is legally untenable. It is argued by the applicant that Rule 23 has to be read in its entirety. As per FR 23(2), the position has been reviewed and it has been decided that where the pay of a first junior has been stepped up with reference to his junior, the pay of the senior employee may be stepped up for a second time

at par with the first junior, provided all conditions laid down in the general orders are satisfied with reference to that junior. It was further submitted by the applicant that the earlier Senior–Junior benefit availed by the applicant was system-generated and forwarded by AFCAO to all eligible air warriors on implementation of the 6th CPC in order to remove anomalies and that the applicant had neither applied for nor demanded the said benefit. It is also contended that the applicant seeks stepping up of his pay at par with Sgt Noor Alam and not with Ex-Sgt J.P. Arya, whereas the respondents have referred to MACP granted to Ex-Sgt J.P. Arya. It is further pointed out that Sgt Noor Alam had also availed Senior–Junior benefit at par with Cpl K.K. Acharya pursuant to the system-generated proforma forwarded by AFCAO. The applicant thus submits that therefore, the rejection of the applicant's request for stepping up of pay to remove the anomaly is arbitrary and unsustainable.

4. The respondents have filed a detailed counter affidavit denying the averments made in the OA. Referring to Para 9 of the Government of India, Ministry

of Defence letter dated 3rd June, 2011, it is stated that no stepping up of pay in the pay band or grade pay is admissible where a junior draws higher pay than a senior on account of pay fixation under the MACP Scheme. Therefore, according to the respondents, there is no illegality in the impugned action. Further, in response to the contention raised by the applicant regarding FR 23(2), it is stated that as per FRSR Pt I, Vol I, Rule 23(2) and the clarification contained in the decision of the Comptroller and Auditor General below the said rule, the benefit of stepping up is to be allowed only once with reference to the pay of the first junior (not necessarily the immediate junior) on whose promotion an anomaly arose. The respondents have further contended that the applicant's claim that the earlier stepping up at par with Cpl K.K. Acharya was neither applied for nor demanded is incorrect. According to them, although AFCAO identified cases where pay anomalies had arisen, the benefit was granted only upon receipt of the prescribed proforma for re-fixation of pay as per

DACL 38/81 and AFCAO/10104/7D/PFC dated 10th September, 2009.

5. The respondents also deny that Sgt Noor Alam is junior to the applicant. As per Annexure A2, Sgt Noor Alam is stated to be at par with the applicant. Hence, according to the respondents, no pay anomaly has arisen warranting stepping up of pay. It is further submitted that stepping up with reference to Ex-Sgt J.P. Arya is not admissible as the anomaly arose due to the grant of MACP to Ex-Sgt J.P. Arya with effect from 1st September 2008 and in view of Para 9 of the MoD letter dated 3rd June, 2011, no stepping up is permissible where the higher pay of the junior is on account of MACP. Accordingly, the respondents have prayed for dismissal of the OA with costs.

6. We have carefully considered the pleadings, documents placed on record and the rival submissions advanced by both sides. The controversy lies within a narrow compass, namely, whether the applicant, being admittedly senior in the same cadre and rank, can be

denied stepping up of pay when his junior is drawing a higher basic pay.

7. The seniority list of Corporals in the CLK/PA trade as on 1st February, 2011 made available vide AFRO letter No.RO/3901/1/ICC dated 29th July, 2025 clearly establishes that the applicant is senior to Sgt Noor Alam. The relative inter se seniority between the two has not been disputed by the respondents and the records placed before us substantiate this position. Once it is established that a junior officer in the same trade and rank is drawing higher basic pay, the foundational requirement for examining a claim for stepping up stands satisfied.

8. It is also an admitted position that the applicant had earlier been granted stepping up in the rank of Corporal at par with Cpl K.K. Acharya (900564-A). However, the material on record indicates that the said benefit arose during implementation of the 6th Central Pay Commission and appears to have been processed at the level of AFCAO as part of a broader anomaly rectification exercise. There is no evidence to suggest that the applicant misrepresented facts or deliberately sought

multiple stepping ups. The respondents have not produced any material to demonstrate that the earlier benefit was secured through concealment or manipulation. The earlier stepping up, therefore, was an administrative correction of an anomaly in the rank of Corporal and cannot, by itself, operate as an absolute bar against consideration of a fresh anomaly arising subsequently in the rank of Sergeant.

9. It is also necessary to address the contention of the respondents that the applicant had already availed the benefit of stepping up earlier and, therefore, cannot seek similar relief again. The material on record does not indicate that the applicant had, at the relevant time, independently sought such anomaly rectification in the rank of Corporal. On the contrary, it appears that during the implementation of the 6th Central Pay Commission, the respondents undertook a general anomaly review and processed certain cases at the level of AFCAO. The earlier stepping up granted to the applicant thus appears to have been part of a system-driven or *suo moto* rectification exercise undertaken by the department. In such

circumstances, the earlier correction cannot be treated as a repeated claim made by the applicant so as to attract a bar against further consideration. If an error exists in pay fixation, it is always open to the authorities to reopen and rectify the same in accordance with law. Administrative correction of an anomaly undertaken on the respondents' own initiative cannot be used as a ground to deny examination of a subsequent and distinct anomaly that has arisen later.

10. The rejection dated 16th July, 2018 proceeds solely on the premise that since the applicant had already availed Senior-Junior benefit once, a second stepping up with reference to a different junior is impermissible under FRSR Pt-I Vol-I Rule 23. Such reasoning, in our view, is legally unsustainable. Rule 23 cannot be applied mechanically without examining whether a distinct and fresh anomaly has arisen. The restriction contained therein is intended to prevent repetitive or artificial stepping up in identical circumstances and not to deny correction of a genuine disparity arising between senior and junior. Where a new anomaly arises owing to

subsequent pay fixation, including implementation of CPC or MACP provisions, the authority is required to examine the claim on its own merits. The impugned rejection reflects non-application of mind to the specific grievance raised and is founded merely on the fact of earlier stepping up.

11. The documents on record (Annexure A-2) demonstrate that Sgt Noor Alam, who is junior to the applicant, is drawing higher basic pay in the same rank. The difference affects not only present emoluments but also future increments and pensionary benefits. There is nothing to indicate that the disparity is attributable to misconduct, penalty, grant of advance increments or any element of personal pay. The anomaly is structural and arises out of pay fixation. Stepping up is a recognized mechanism in service jurisprudence precisely to remove such anomalies between a senior and his junior placed in identical service conditions.

12. The respondents have contended that the higher pay of the junior is on account of MACP and, therefore, stepping up is barred in terms of Para 9 of the MoD letter

dated 3rd June, 2011. However, from the material placed before us, it does not clearly and conclusively emerge that the higher pay of Sgt Noor Alam is solely attributable to MACP. Even assuming that MACP has some bearing, it is only a financial upgradation granted in lieu of promotion due to stagnation and does not amount to a functional promotion nor does it alter cadre seniority. A financial upgradation meant to alleviate stagnation cannot ordinarily place a senior who has earned regular promotion at a financial disadvantage vis-à-vis his junior and logically the Tribunal cannot mandate such consequence.

13. We are fortified to so observe in view of the observations of the Hon'ble High Court of Delhi in WP (C) 7840/2012 in the case of SH. Tejbir Singh Dagar and Ors Vs. Union Of India and Ors dated 3rd January, 2014 whereby it has been observed vide paragraphs 22 to 24 thereof to the effect:-

“22. It does not appeal to the common sense of a reasonable man that Scheme which has been envisaged/formulated to benefit those employees who are stagnating in the same rank, either due to lack of promotion or failure to clear the departmental

examination, by granting them financial up gradation to such stagnant employees, would prejudice meritorious and hardworking employees, who had qualified the Limited Departmental Competitive Examination and climbed the ladder of success. They cannot be penalised for their efficiency in securing a promotion to next rank instead of stagnating in same rank. The scheme is a welfare scheme for those employees who stagnate. It is certainly not intended to prejudice senior personnel by compelling them to draw lesser salary than those junior and less meritorious than them. The Scheme certainly did not envisaged the disadvantage it was causing to its bright employees. Such working of the Scheme would result in rewarding those who did not succeed in the competitive examination.

23. Despite the fact that this anomaly in ACP Scheme was recognised, no efforts were made to remove it while promulgating the MACP Scheme on coming into force of the Sixth Pay Commission.

24. 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."

Furthermore, the Hon'ble Supreme Court in Union Of India and Others Vs. P. Jagdish and Ors. [(1997) 3 SSC 176] has held to the effect that Article 39(d) of the Constitution of India is the guiding factor in interpreting effort and the principle of stepping up contained in the fundamental rules comes into play when a junior person in the same post starts receiving salary more than his senior and that the principle of stepping up prevents violation of the principle of 'equal pay for equal work' and the only way to remove the anomaly whereby juniors

are permitted to draw higher salary in the same rank than their seniors is by stepping up the salary of the seniors.

14. The verdict of the Hon'ble High Court of Delhi in WP (C) 6838 of 2016 and other connected petitions in W.P.(C) 11451/2016, W.P.(C) 12177/2016, W.P.(C) 489/2017, W.P.(C) 5987/2017, W.P.(C) 5996/2017, W.P.(C) 5997/2017, W.P.(C) 5998/2017 and W.P.(C) 15378/2022 in Arjun Dass and Anr., Jung Bahadur Singh and Ors., Pawan Kumar Pradeep Kumar Sat Pal and Ors., Shamlal and Ors., Sohinder Singh and Ors., Des Raj and Ors. Pratap Singh Vs Union Of India and Ors. decided vide a common judgment dated 19th September, 2024, allowed the WP (C) 6838/2016 and other connected petitions by directing the respondents therein i.e. the Union of India and others arrayed thereto to suitably upgrade the pay scale of the petitioners from the date their juniors were given the higher pay at the same rank at par as set out in each of the petitions with those juniors having been given the financial upgradations in view of the benefits of the Assured Career Progression Scheme on the ground that

those juniors, unlike the petitioners, had availed of two promotions.

15. In the case of Yudhister Mudgal and Ors. Vs. Union of India and Ors. in WP (C) 8826 of 2014 decided on 06.04.2015, likewise, the Hon'ble High Court of Delhi vide paragraphs 8 and 14 to 18 thereof had observed to the effect:-

“8. Those who earned promotion through the Limited Departmental Competitive Examination as a Head Constable and then as an Assistant SubInspector were denied the two financial upgradations, but those who were directly promoted from Constable to an Assistant Sub-Inspector were granted a financial upgradation. The result is obvious. These Assistant SubInspectors started drawing higher salary.

9. xx

10. xx

11. xx.

12. xx

13. xx

14. Petition seeking Special Leave to Appeal against the decision dated December 07, 2009 was dismissed by the Supreme Court on May 12, 2010.

15. In Tej Bir Singh Dagar's case same issue cropped up, but with the only difference that it concerned even the post of a Naik in the Railway Protection Force, which was abolished on December 04, 1997. The post of a Naik was in-between that of a Constable and a Head Constable. Another additional issue which was decided related to the Modified Assured Career Progression Scheme which envisaged financial upgradation on the 10th, 20th and 30th year of service being completed if first, second or third promotion was not earned.

16. Adopting the principle of law declared in *T.S.Dagar's case*, comparing *Tej Bir Singh Dagar* with his junior *Ram Chander*, an anomaly similar to the kind which was brought out by the Division Bench in its decision dated December 07, 2009 vis-à-vis *T.S.Dagar*, the first writ petitioner of said writ petition and one *Sh.Ram Chander* was illustratively brought out.

17. Learned counsel for the respondents fairly concedes that the law declared by the Division Bench in the decision dated February 07, 2009 followed by the Division Bench on January 03, 2014 is squarely applicable to the case of the petitioners.

18. Accordingly, we dispose of the writ petition granting relief to the petitioners as per prayer (i) made in the writ petition, requiring arrears to be computed and paid within 12 weeks from today failing which interest shall accrue at the simple rate of 8% per annum reckoned from 12 weeks from today."

Significantly, vide order dated 21.02.2025 in Review Petition 92 of 2025 in WP (C) 5997 of 2017 titled *Sohinder Singh and Ors. Vs. Union of India and Ors.* also decided vide the common judgment dated 19th September, 2024, the review petition was dismissed by the Hon'ble High Court of Delhi and though the said order has been assailed by the Union of India vide SLP (C) Diary No. 62400/2025, there is no stay of the operation of the said order granted so far.

16. Though, it is essential to observe that the judgments of the Hon'ble High Court of Delhi in:-

- WP (C) 7840/2012 in the case of *sh. Tejbir Singh Dagar and Ors. Vs. Union Of India and Ors.* dated 3rd January, 2014;
- W.P.(C) 6838/2016, W.P.(C) 11451/2016, W.P.(C) 12177/2016, W.P.(C) 489/2017, W.P.(C) 5987/2017, W.P.(C) 5996/2017, W.P.(C) 5997/2017, W.P.(C) 5998/2017, and W.P.(C) 15378/2022 in *Arjun Dass and Anr. Jung Bahadur Singh and Ors., Pawan Kumar Pradeep Kumar Sat Pal and Ors., Shamlal and Ors., Sohinder Singh and Ors., Des Raj and Ors.. Pratap Singh Vs. Union of India and Ors.* dated 19.09.2024, _

relate to personnel other than the Armed Forces, nevertheless, the principles of '*equal work and equal pay*' have universal application to all and consequentially a junior in the same post cannot be allowed to draw a salary higher than the senior and the only way to remove the anomaly, if any, due to grant of ACP benefits to the juniors is by stepping up of the salary of seniors for as observed vide para 22 of the Hon'ble High Court of Delhi in WP

(C) 7840/2012 in the case of *Sh. Tejbir Singh Dagar and Ors* (supra) already adverted to hereinabove, the meritorious and hard working employees who have climbed the ladder of success cannot be penalized for their efficiency in securing a promotion to the next rank instead of stagnating in the same rank by compelling them to draw lesser salary than those junior and less meritorious than them and that the ACP and MACP schemes certainly do not envisage the disadvantage caused thereby.

17. As observed by the the Hon'ble High Court of Delhi in WP (C) 7840/2012 in the case of *Sh. Tejbir Singh Dagar and Ors*. (supra) vide para 23 already referred to herein above despite this anomaly in the ACP scheme having been recognized earlier, no efforts have been made while promulgating the MACP scheme on coming into force of the 6th Pay Commission.

18. The settled principles governing stepping up require that the officers concerned belong to the same cadre or trade, hold the same rank, and that the senior is drawing less pay than the junior due to pay fixation and

not on account of any personal disqualification. All these conditions stand satisfied in the present case. It is a well-recognized principle of service law that a senior cannot be left to draw lesser pay than his junior in the same cadre and rank unless the disparity is attributable to a legally sustainable and personal cause. No such distinguishing factor has been established by the respondents.

19. In view of the above discussion, we find that the applicant's seniority vis-à-vis Sgt Noor Alam stands established and the pay disparity is not denied. The rejection order has proceeded solely on the ground of prior stepping up, without examining whether a fresh anomaly has arisen in the rank of Sergeant. Further, no statutory disqualification under Rule 23 or under the MACP policy has been conclusively demonstrated. The applicant has, therefore, made out a case for removal of the Senior-Junior pay anomaly.

CONCLUSION

20. Accordingly, the order dated 16th July, 2018 and the consequential impugned rejection

dated 9th October, 2018 are set aside. The respondents are directed to examine the pay fixation of the applicant vis-à-vis his junior 796169-F (Sgt Noor Alam) and to step up the pay of the applicant at par with his said junior in the rank of Sergeant. Consequential monetary benefits arising therefrom shall be granted and the entire exercise shall be completed within three months from the date of receipt of this order.

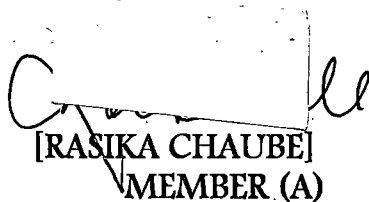
21. The OA is accordingly allowed as detailed hereinabove.

22. Parties to bear their own costs.

23. This order be uploaded on the website of AFT (PB) forthwith by the Registry.

24. Subject to the orders of the Hon'ble Chairperson, this order may be circulated to all Hon'ble Members of the AFT (PB), New Delhi, and also to all Hon'ble Members of the Regional Benches of the AFT.

Pronounced in the open Court on this ^{20th} day of April, 2026.


[RASIKA CHAUBE]
MEMBER (A)

/vks/Alex/


[JUSTICE ANU MALHOTRA]
MEMBER (J)