

SEE RULE 102 (1)ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATAAPPLICATION : O.A. : 85/2016

DATED : THE

Fifth

DAY OF SEPTEMBER, 2018

CORAMHON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

APPLICANT (S) : No. 255208 Ex-Flight Sergeant
Purnendu Bikash Chakraborty
Son of Late P. N. Chakraborty
Residing at - 11, Baishali Park,
P.O. - Garia, P.S. - Banskroni,
Kolkata (W.B.) - 700 084

Versus

RESPONDENT (S) :

- (1) The Union of India, service through
The Defence Secretary
Ministry of Defence
South Block, DHQ, PO,
New Delhi - 110 011
- (2) The Chief of the Air Staff
Vayu Bhawan
South Block, New Delhi - 110 011
- (3) The Air Officer Commanding
Air Force Record Office
Subroto Park, New Delhi - 110 010
- (4) The Principal Controller of Defence
Accounts
Draupadighat, Allahabad (UP)-211 014
- (5) The Director, Air Veterans,
Air Headquarters,
Subroto Park, New Delhi - 110 011
- (6) The Secretary
National Ex-Servicemen
Co-ordination Committee
Room No. 21/1, Ezra Mansion
10, Govt. Place East
Kolkata (WB) - 700 069

.....Proforma Respondents

Counsel for the applicant (s) : Mr. Jagadish Ranjan Das, Ld. Advocate

Counsel for the Respondent (s) : Mr. Satyendra Agrawal, Ld. Advocate

ORDER

**PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)**

1. This application has been filed under Section 14 of The Armed Forces Tribunal Act, 2007 (The Act); assailing that he has not been granted the pension on the last rank held by him i.e., Junior Warrant Officer (J.W.O.).

Facts of the Case (O.A. No. – 85/2016)

2. That the applicant was enrolled in the Indian Air Force on 11.06.1964 and was released on 12.04.1982 on completion of 15 years 307 days of Regular Service and two years of Reserve Service. The terms of conditions for the applicant at the time of his enrolment as per the Indian Air Force Regulations was for a period of 9 years Regular Service and 6 years of Reserve Service. Initially, he was enrolled as an Aircraft Man 2 (Engine Fitter) and subsequently was promoted to the rank of Sergeant on 01.08.1979 (the rank of Non Commissioner Officer– NCO). On successful completion of training and after completion of required courses and qualifications, he was promoted to the post of Flight Sergeant, which corresponds to the present rank of Junior Warrant Officer (J.W.O.). The applicant was finally

discharged on 12.04.1982 in the rank of JWO. At the time of his discharge, for earning the rank pension, 10 months service was required; thereby there was a shortfall of 18 days of service in the rank of J.W.O. in respect of the applicant.

M.A. No. – 138/2016

3. The Ld. Counsel for the Respondents submits that since the applicant was finally released on 12.04.1982 and came up with this application only on 29.06.2016, there has been a delay of 23 years 7 months and 13 days. He further requested that such delay should not be condoned.

4. The Ld. Counsel for the applicant has stated that his client had made several representations to the concerned authorities i.e., on 11.11.1997, 20.04.1998, 04.12.1998, 01.09.1999 and lastly on 29.06.2016.

5. We find that this issue is no longer res-integra and since pension is a continuous cause of action occurring from month to month and since, the applicant was corresponding with the authorities concerned for granting re-fixation of his pension in the rank of J.W.O., the above delay is liable to be condoned and hence, condoned.

6. Accordingly, this M.A. (M.A. No. – 138/2016) is allowed on contest. M.A. is disposed of.

O.A. – No. 85/2016

7. The Govt. of India have relaxed the policy for pensionary benefits for granting pension to all in the rank last held including for the pre-1996 retirees. The Principal Bench of the AFT disposed off a batch of petitions in this regard allowing the pension on revised rates in the rank last held. They are :-

(i) O.A. No. 882/2016 Ex JWO Ashok Kumar Tanwar & Ors. Vs. UOI.

(ii) O.A. No. – 545/2015 with M.A. No. 382/2016 Ex JWO Rameshwar Daya Shakya & Ors. Vs. UOI & Ors.

(iii) O.A. No. – 917/2016 Ex JWO Jogi Ram Sharma Vs. UOI & Ors.

(iv) O.A. No. 1294/2016 with M.A. No. – 967/2016 Sgt. Naresh Kumar Sharma (Retd) Vs. UOI & Ors.

(v) O.A. No. 1545/2016 with M.A. No. 1146/2016 Ex JWO Pritam Singh & Ors. Vs. UOI.

(vi) O.A. No. 1619/2016 Ex JWO CR Krishnan Vs. UOI.

(vii) O.A. No. – 1630/2016 Ex Sgt. KR Krishna Rao & Ors Vs. UOI & Ors.

(viii) O.A. No. – 64/2017 with M.A. No. 62/2017 and O.A. No. 423/2017 Ex JWO Pradeep Kumar Sahal Vs. UOI & Ors. dated 17.04.2017.

8. In addition, the following judgments on the above aspect are also referred :-

(a) AFT, Regional Bench, Chennai Order in O.A. No. 62/2014 dated 13.02.2014 – JWO P. Gopalakrishnan Vs. UOI & Ors.

(b) This Bench Order No. 12 of 30.06.2015 in O.A. No. 65/2013 – Shri Barun Mukherjee Vs. UOI & Ors.

9. Recently, this Bench in O.A. No. 20/2018 Ex JWO Sailen Chakraborty Vs. UOI & Ors., dated 03 Sep 18, held that that the applicant too was entitled to pension in the rank of J.W.O. (Junior Warrant Officer) w.e.f. the date of his promotion.

Relevant paragraphs of the judgment are set out below:-

7. *In this case, we refer to the Judgment of the Armed Forces Tribunal, Regional Bench, Kochi in O.A. No. 20 of 2012 (Ex Sgt Vasudevan. K. Vs. UOI & Ors.). While allowing the application, vide order dt. 23.03.2012, it has been held as under :-*

"10. In our view the respondent No. 2 as also the respondent No. 4 while passing the order Annexure A8 overlooked the terms and conditions of the Government letter dated 9th February, 2001, whereby the requirement of 10 month's service in a particular rank or group had been taken away, therefore, there was no question of invoking the provisions of Regulations 122 and 123 of the Pension Regulations for the Air Force, 1961 for the condition of the deficiency in service. According to the Government of India letter dated 9th February, 2001, the pension of all pre 01.01.1996 retirees were required to be revised according to the group / rank last held by them. Therefore, the question of denying the pension to the applicant of the rank of Sergeant only on the ground that he had not rendered 10 month's service on the rank of Sergeant was not proper. Had the respondent No. 1 and 4 perused the Government letter dated 09th February, 2001 (Annexure A-2) they would not have taken the decision at Annexure A-8. More so, the second contention of the respondents that the pension of the rank of Sergeant was not beneficial to the applicant also has no substance. In this contention reference may be made to para 2.2 (b) of the Government letter dated 07th June, 1999 (Annexure R-2) whereby a provision has been made for grant of pension on the maximum pay for 33 years of qualifying service, subject to a minimum pension of Rs. 1913/- per month. In case the qualifying service is less, the pension is to be reduced proportionately. Therefore, we are unable to understand as to how the Respondents contended that the pension of the rank of Sergeant was not beneficial to the applicant. It appears that the Respondents intended to calculate the applicant's pension of the rank of Sergeant on the minimum of the pay of that rank against the true spirit of the letter date 07th June, 1999, which virtually requires to fix the pension on the basis of the maximum of the pay, therefore, this contention of the Respondents has no substance."

8. *The same view was reiterated by the Armed Forces Tribunal, Regional Bench, Chennai in O.A. No. 60/2014 (Ex Sgt. T. Alavandar Vs. UOI & Ors) vide it's order dated 16.01.2015 and also in O.A. No. 62/2014 JWO P. Gopalakrishnan Vs. UOI & Ors. dt. 13.02.2015. In this judgment, the*

complete import and implication of PCDA Circular No. 430 dt. 02.02.2009, Regulations for the Air Force Part-1, Govt. of India, MoD letters dt. 22.11.1983, 07.06.1999, 09.02.2001 and 17.12.2008 have been considered. To this end, we would like to quote para 14 of the case of JWO P Gopalakirshnan (*supra*) which reads as under :-

"For appreciating the rival contentions, we have gone through the Tables annexed with the Circular No. 430 issued in pursuance of the policy letters dated 11.11.2008 by the Government of India. As per the Circular No. 430 in Table 116, we find the revised pension of Sergeant rank who has completed 20 years of service and retired after 01.04.2004 was fixed at Rs. 3,694/-. The submission of the learned Central Government Standing Counsel as to the pension of Sergeants who retired on 01.05.2005 shall be Rs. 3,694/- is found correct to that extent. However, when we go through the service pension payable to a JWO in Table 116 of Circular No. 430 having 20 years of service and retired after 01.04.2004 would be Rs. 4,711/- and not Rs. 3,358/- as put forth by the respondents. Therefore, the pension payable to the applicant as on 01.05.2005 in accordance with the policy letters of the Government of India dated 07.06.1999 and 09.02.2001 would be Rs. 4,711/- and not Rs. 3,694/-. Similarly, the benefits conferred upon the JCO as per the VIth Central Pay Commission recommendations as tabulated in table 116 of Circular No. 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01.2006 would be Rs. 7,100/- and the revised pension with effect from 01.07.2009 would be Rs. 8,720/-. When the benefits conferred upon the Armed Forces personnel on the changed policies have been clearly laid down in the Circular No. 430 containing several Tables, it ought to have been issued by the respondents without any request from the applicant. However, we find that the applicant had sought for payment of pension the last held rank on several occasions and it was not heeded. The claim for pension is a statutory right and the respondents ought to have granted the entitled pension, admittedly, even without issuing any corrigendum PPO. This has been reiterated in various communications of the Government. Therefore, the respondents are under the obligation to revise the pension when brought to their notice of any defect in granting the pension. However, in this case, the respondents have not acceded to the plea of applicant even when it was raised immediately after his retirement."

9. In finally giving relief in this Order, Para 16 is also of relevant, which reads as under :-

"In the above point, we found that the applicant is entitled for the revised pension with effect from 01.05.2005 in the rank of JWO lastly held by the applicant as per the letter of Government of India, Ministry of Defence, dated 09.02.2001. The said benefit is given to the applicant by virtue of the letters of the Government dated 07.06.1999 and 09.02.2001. The respondents ought to have acted upon the intention of the letters and the revised pension should have been paid to the applicant in the last rank of JWO with effect on

01.05.2005. But it was not fixed as ordered by the respondents. Therefore, the arrears of pension payable to the applicant as per the finding above with effect from 01.05.2005 shall be paid by the respondents with simple interest at 6% per annum from 01.05.2005 till the date of payment. Similarly, the benefit of revised pension payable to the applicant with effect from 01.01.2006 as per the Government letter dated 11.11.2008, Circular No. 430 in Table for 20 years service was not consequently implemented by the respondents. The applicant is also found entitled to the payment of arrears of revised pension in the previous paragraphs with effect from 01.01.2006 till the date of payment. Similarly, the arrears of revised pension found payable from 01.07.2009 shall be paid with 6% p.a. with effect from 01.07.2009 till the date of payment. Accordingly, this point is also decided in favour of the applicant."

10. Hence, keeping in view the finality of the orders passed by the three Benches including the Principal Bench of the AFT (Supra), there is no doubt in our mind that this applicant too is entitled to pension the rank of J.W.O. (Junior Warrant Officer) w.e.f. the date his retirement i.e., 12.04.1982.

11. Accordingly, the Respondents are directed to pay him the revised pension as per the Government of India, Ministry of Defence Circulars / orders in vogue with all arrears with a simple interest of 12 % per annum. The entire arrears shall be paid to the applicant within a period of three months from the date of receipt of this Order and a fresh P.P.O. (Pension Payment Order) shall be supplied to the applicant within the same time.

12. This O.A. (O. A. No. – 85/2016) is thus stands allowed.

13. No order as to costs.

14. A plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIA SHAH)
MEMBER (JUDICIAL)