

ARMED FORCES TRIBUNAL
REGIONAL BENCH
KOLKATA

(Through Video Conferencing)

7.
MA 44/2020 WITH OA 80/2020

Ex JWO Sailen Kumar Kundu
Versus
Union of India and Ors.

..... Applicant

..... Respondents

For Applicant : Mr. Bisikesan Pradhan, Advocate
For Respondents : Mr. Arunava Ganguly, Advocate

CORAM:

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

ORDER
27.01.2021

MA 44/2020

Heard learned counsel for the parties on the point of delay. Delay of 17 years, 03 months and 22 days in filing the OA has been explained by the applicant. Keeping in view the averments made in the MA and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh [2008 (8) SCC 648], we allow the instant MA and condone the delay in filing the OA.

2. M.A. stands disposed of accordingly.

OA 80/2020

3. The present OA has been filed by the applicant praying for revision of his pension in accordance with the last rank held by him before retirement, i.e. Junior Warrant Officer (JWO) on the basis of Govt. of India circular dated 09.02.2001, wherein it has been clarified that ten months continuous service in the last rank held is not required for grant of pension in such rank. In this regard, reference is made to orders of this Tribunal

(Principal Bench) in JWO Pramod Kumar Singh & Ors. Vs. Union of India (O.A. No. 1166 of 2017) and JWO Ashok Kumar Tanwar & Ors. Vs. Union of India & Ors. (O.A. No. 882 of 2016). The applicant has also referred to the order of the Tribunal (Regional Bench) Chennai in the matter of Thiagrajan Vs. Union of India & others (O.A. No. 93 of 2014), which waived-off the ten months as stipulated in Para 123 of Pension Regulations for Air Force 1961 and opined that *“pension cannot be deprived to an individual to a rank for which he has already rendered his service and that the applicant had earned his pension in the rank of JWO already, and therefore, is entitled to be paid pension in the rank of JWO. Even if, for some reason, such a pension is found to be less, the applicant is entitled to receive the highest pension he earned already. The said statutory right for pension already earned by the applicant cannot be reduced even if an undertaking is executed by him for the receipt of any lower pension in the rank of JWO.”*

4. Though the respondents concede that the requirement of holding the last rank before retirement has been dispensed with, keeping in view Government of India Circular dated 09.02.2001, they, however, contended that they are correct in giving pension to the applicant in the lower rank as it is financially more beneficial.

5. We find that there is a catena of judgments of various Benches of the Armed Forces Tribunal on this issue. Consequently, the fact that the applicant is entitled to pension in the last rank held by him, even if he held it for duration of less than 10 months, stands clearly established.

6. On the issue of pension amount so authorized, we find that the argument that a junior promoted to a senior rank (e.g. JWO, MWO or WO) should be pegged at a pension of his last but one rank (i.e. one rank junior to the one he retired), as proposed by the respondents is fallacious. It is also violative of the ratio and principles laid by the Hon'ble Supreme Court in D.S. Nakara Vs. Union of India [1983 (1) SCC 125]. It is also not possible, in rational calculations, to peg the pension of a PBOR, who has held the higher rank for less than ten months, to be computed a pension for his previous and lower rank. Additionally, all future pay revisions due to new Pay Commission and five yearly OROP revision are primarily based on two factors i.e. last rank held and years of service, hence reflection of a lower rank in PPO as compared to the actual higher rank (held for less than 10 months) is bound to reduce future upgradation and revision of pension.

7. On the exact method of calculation, we find that in a judgment of the Tribunal, Regional Bench, Chennai in JWO P. Gopalakrishnan Vs. Union of India & Others (O.A. No. 62 of 2014 decided on 13.02.2015), the complete import and implication of Circular dated 02.02.2009, Regulations for the Air Force Part I and the GoI MoD letter dated 22.11.1983 has been explained. The Government Policy letters dated 07.06.1999, 09.02.2001 and 17.12.2008 have been considered. Most significantly, the recommendations of the 6th CPC, accepted by Government of India through its letter dated 11.11.2008 and Circular dated 02.02.2009, have also been considered. We find that the specific letter number being identical, in all probability, the date of Government of India communication is 12.11.2008 and not 11.11.2008.

8. In consideration of all these issues as well as circulars, the Tribunal, in that case, came to the conclusion that the basis of calculation being pursued in the instant case was detrimental for the pension of petitioner. To this end, we would like to quote Para 14 of the order in the case of *JWO P. Gopalakrishnan (supra)*, which reads as under:

"For appreciating the rival contentions, we have gone through the Tables annexed with Circular 430 issued in pursuance of the policy letters dated 11.11.2008 by the Government of India. As per the Circular 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 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 13 01.2005 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 JWO as per the VI Central Pay Commission recommendations as tabulated in Table 116 of Circular 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 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 in 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 in the PPO. This has been reiterated in various communications of the Government. Therefore, the respondents are under the obligation to revise the pension when it is brought to their notice of any defect in granting the pension. However, in this case, the respondents have not acceded to the plea of the applicant even when it was raised immediately after his retirement”.

9. We find that the respondents need to implement the calculation of revised pension for the applicant as mentioned above, as he is similarly placed to the applicant in JWO P. Gopalakrishnan (*supra*).

10. Accordingly, the instant OA is allowed. Subject to verification, the respondents are directed as under :

- (i) Calculate the pension of the applicant based on the last held rank by him before retirement i.e. JWO, and in consonance with the principles of calculation that have been upheld in *JWO Gopalakrishnan (supra)* in this regard; and
- (ii) The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him within four months and arrears paid accordingly, *failing which*, it shall carry interest @ 6% till actual payment.

11. No order as to costs.

(RAJENDRA MENON)
CHAIRPERSON

(P. M. HARIZ)
MEMBER (A)

Vks/priya