ARMED FORCES TRIBUNAL
REGIONAL BENCH
KOLKATA

(Through Video Conferencing)

2.
MA 40/2020 in OA 75/2020

Smt. Mousumi Barh ..... **Applicant**
Versus
Union of India and Others ..... **Respondents**

For Applicant : Mr. Bisekesan Pradhan, Advocate
For Respondents : Mr. Madhu Jana, Advocate

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

O R D E R
27.01.2021

M.A No. 40 of 2020:

Keeping in view the averments made in the Miscellaneous Application and finding the same to be bona fide and in the light of the decision in *Union of India and others v. Tarsem Singh* (2008 (8) SCC 648), we allow the instant M.A condoning the delay in filing the O.A.

O.A No. 75 of 2020:

The applicant, widow of Ex JWO Sailen Chakraborty, has filed this O.A seeking the following reliefs:

(i) Direct fourth respondent to dispose of the representation dated 03.09.2019 of the applicant placed at Annexure –A6 within a stipulated period; and

(ii) Direct the fourth respondent to issue a corrigendum PPO in favour of the applicant granting her difference of pension from 01.09.2002 to 15.03.2018 in respect of her deceased husband corresponding to his JWO rank for his 20 years and 13 days service in Group 'X' (Diploma) and family pension thereafter with accrued interest @ 12% per annum;

2. The facts of the case, in brief, are that the husband of the applicant was enrolled in the Indian Air Force as an Airman in Air Frame Fitter trade (Group-X, Diploma Stream) on 19.08.1982. Thereafter, on 01.08.2002, he was promoted to the rank of Junior Warrant Officer (JWO). On 31.08.2002, he was discharged from service on completion of 20 years and 13 days of service with two years' reserve liability. He was thereafter issued a PPO granting pension corresponding to his previous rank i.e. Sergeant (SGT) Group-X. The husband of the applicant died on 15.03.2018. Since then, the applicant has been getting enhanced family pension with effect from 16.03.2018 in respect of her husband's previous rank SGT corresponding to his 20 years and 13 days of service in Group – X. Being aggrieved, the applicant submitted a representation before the fourth respondent on 03.09.2019 for revision of her husband's pension corresponding to his last rank i.e. JWO. So far, no reply has been issued by the respondents. Hence the instant O.A.

3. According to the learned counsel for the applicant, since the Government, vide its circular dated 09.02.2001, clarified that 10 months' continuous service in the last rank held is not required for grant of pension in the last rank held, the husband of the applicant is entitled to get his pension re-fixed in the rank last held by him before retirement.

4. Having heard the learned counsel for the parties, we are of the considered view that the matter is squarely covered by the decision of the Chennai Bench of this Tribunal in *Ex JWO Krishnamoorthy and others v. Union of India and others* (O.A No. 1038 of 2017 decided on 23.08.2017).

5. It is an admitted position that the husband of the applicant was enrolled in the Indian Air Force as an Airman on 19.08.1982 and he was promoted to the rank of Junior Warrant Officer (JWO) on 01.08.2002. On 31.08.2002, he was discharged from service on completion of 20 years and 13 days of service. He was issued a PPO granting pension corresponding to his previous rank i.e. Sergeant (SGT). The husband of the applicant died on 15.03.2018. Though a representation was submitted by the applicant claiming her husband's pension corresponding to his last rank held i.e. JWO, no action has been taken.

6. There is no dispute that as per Section 2(2) of the Armed Forces Tribunal Act, 2007, widows of Defence personnel have full right to approach the Tribunal in the capacity of being dependent, heir or successor in so far it relates to service matters of deceased personnel, which term includes pension as per Section 3(o)(i) of the said Act.

7. We, therefore, allow the instant O.A directing the respondents to re-fix the pension of the applicant's husband in the rank last held by him before retirement from the date of his discharge from service, in the light of the principles laid down in the case *Ex JWO Krishnamoorthy* (supra) till his death on 15.03.2018 and thereafter family pension to the applicant at the revised rate. The respondents are directed to pay the entire arrears to the applicant within four months from the date of receipt of a copy of this order. If the due amount is not paid to the applicant within the time fixed hereinabove, the unpaid amount will carry interest @ 8% per annum till actual payment is made. No order as to costs.

(RAJENDRA MENON)
CHAIRPERSON

(P.M HARIZ)
MEMBER (A)

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