

SEE RULE 102(1)

ARMED FORCES TRIBUNAL, KOLKATA BENCH

O. A. NO.105/2015

THIS 12TH DAY OF FEBRUARY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

Ex-JWO Prabhat Kumar Dey
AT-36, Abdul Latiff Street
PO/P.S. Belghoria,
Dist.- 24 Parganas (North)
Pin – 700-056 (West Bengal).

-versus-

RESPONDENT(S)

1. The Union of India,
represented through Secretary,
Ministry of Defence, South Block
New Delhi, Pin -110 011.
2. Secretary, Deptt. of Ex-Servicemen Welfare & Pension
Ministry of Defence,
South Block
New Delhi - 110.011.
3. Dy. C.D.A. (Air Force)
Air Force Station, Subroto Park,
New Delhi – 110 010.
4. Air Officer Commanding (AOC)
Air Force Station, Subroto Park,
New Delhi – 110 010.
5. Director-III
Directorate of Air Veterans
Air Headquarters, Subroto Park
New Delhi – 110 010.

For the petitioner(s) : Mr. Bisikesan Pradhan, Advocate

For the respondent(s) : Mr. Sudipto Panda, Advocate

ORDER**PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)**

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking reliefs to set aside the impugned letter dated 15.04.2015 issued by respondent No.3 (Annexure-A7) and issue direction to the respondent No.3 to disburse pension in favour of the applicant corresponding to his last rank i.e. JWO (Group-X) for 20 years' service in the Indian Air Force with effect from 01 Dec 2002 with 12% interest and disburse pension and other benefits within a specified time frame.

2. The applicant was initially enrolled in the Indian Air Force as Airman (Airframe Fitter) on 22-11-1982. During the course of service applicant got several promotions and his last promotion was in the rank of the Junior Warrant Officer (JWO) on 01.09.2002. The applicant was discharged on 30.11.2002 on completion of 20 years and 09 days of service. He has served three months in his last rank JWO. Consequent to his discharge from service, P.P.O. was issued corresponding to his previous rank i.e. Sergeant, Group-X (SGT) instead of JWO taking into consideration his basic pay in the rank of SGT. Subsequently, a corrigendum PPO was issued only incorporating the rank of JWO, remaining other endorsements being same (Annexure – A3 & A4). The applicant, after lapse of 13 years, came to know that in similar circumstances one Ex-JWO was granted pension and he sent representation through e-mail to respondent no. 5 for re-fixation of his pension. The same has been rejected on 15.04.15. Hence this application.

3. The respondents have contested the case by filing the affidavit in opposition. They admit that the applicant enrolled in the Indian Air Force on 22.11.1982 and discharged from service on 30.11.2002 after completing 20 years and 09 days of qualifying service. The applicant was promoted as JWO (Group-X) on 01.09.2002 and he continued in the said post for three months till his discharge.

4. The respondents have submitted that in terms of Regulation 122 of Pension Regulations for the Air Force, 1961 (Pt.I) and MoD letter dated 22.11.1983 pension is assessed in the lowest acting paid rank or substantive rank and lowest group held by the applicant during the last ten months' qualifying service. Regulation 123 states that competent authority may condone the deficiency in a particular rank not exceeding three months except on the ground of voluntary retirement. The applicant has not also completed the requisite remaining period of seven months in the last rank to make him eligible for condonation in the last rank service. Hence, he was sanctioned service pension in the rank of SGT (Group-X).

5. We have heard the learned counsel for parties and perused records.

6. In our opinion, the question that arises for determination of this Tribunal are as under :

- a) Whether the applicant is entitled for revision of pension in the rank of JWO (Group-X) w.e.f. 30-11-2002?

b) If so, whether the applicant is entitled for interest on the amount of arrears of pension?

7. While denying pension to the applicant in the rank of JWO (Group-X), it appears that the instruction/direction issued by the Government of India, Ministry of Defence vide its letter dated 09-02-2001 had been ignored by the respondent authorities, which reads as under:

“No.B/39013/AG/PS-4(a&c)/131/A/D(Pension/Services)
Government of India
Ministry of Defence

New Delhi, dated the 9th February, 2001

I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen/Sers) dated 7-6-99 as amended wherein the government has decided that w.e.f. 1-1-96 pension of all armed forces pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96. PCDA (P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However there is no such stipulation on the government order under reference.

The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply”.

8. From the above directions issued by the Government it is manifestly clear that the Government had decided that w.e.f. 01-01-1996 pension of all Armed Forces Pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced

with effect from 01-01-1996. It has also been observed that PCDA(P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However, there is no such stipulation on the government order under reference.

9. The aforesaid order has thus clarified that the requirement of minimum 10 months in the rank/group to earn pension in that rank/group was taken away and it is sufficient for a pensioner to hold the post even if for one day at the time of his discharge to earn the pension for that rank.

10. The Armed Forces Tribunal, Kochi Bench had occasion to consider the aforesaid Government Orders in OA No.20 of 2012 (**Ex Sergeant Vasudevan. K. and Union of India and Others**). While allowing the applicant's application vide order dated 20-3-2013 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 condonation of the deficiency in service. According to the Government of India letter dated 9th February 2001, the pensions of all pre 1.1.1996 retirees were required to be revised according to the group/rank last held by them. Therefore, the question of denying pension to the applicant of the rank of Sergeant only on the ground that he had not rendered 10 months service on the rank of Sergeant was not proper. Had the respondents No.2 and 4 perused the Government letter dated 9th February 2001 (Annexure A2) they would not have taken the decision Annexure A8. 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 connection reference may be made

to para 2.2 (b) of the Government letter dated 7th June 1999 (Annexure R2) 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 contend 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 dated 7th 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."

11. The same view was reiterated by the Armed Forces Tribunal, Regional Bench, Chennai in O.A. No.60 of 2014 (**Rank Ex-Sgt, T. Alavandar vs Union of India and Others**) vide its order dated 16-1-2015 and also by this Bench vide Order dated 14.12.2015 in O. A. No.112 of 2011 in the case of **Jaydev Konar vs. Union of India & Ors.**

12. In a case where dispute arose due to disparity for determination of pension for pre 01.01.1996 and post 01.01.1996 retirees who retired from Defence Service as Major General or equivalent posts. The disparity arose because pension of those retired as Major General prior to 01.01.1996 were given the same pension as that of a Brigadier, the Hon'ble High Court of Punjab and Haryana directed the Government to fix minimum pay scale of the Major General, above that of the Brigadier and grant pay above that of a Brigadier as been done in the case of post 01.01.1996 retirees and consequently fix pension and family pension accordingly. While dismissing the appeal filed there against the Hon'ble

Supreme Court in the case of **Union of India vs. SPS Vains & Ors. (2008 Vol. 9 SCC 125)** modified the directions of the High Court as indicated below :-

“31. We accordingly, dismiss the appeal and modify the order of the High Court by directing that the pay of all pensioners in the rank of Major General and its equivalent rank in the two other wings of the Defence Services be notionally fixed at the rate given to similar officers of the same rank after the revision of pay scales with effect from 1-1-1996, and, thereafter, to compute their pensionary benefits on such basis with prospective effect from the date of filing of the writ petition and to pay them the difference within three months from date with interest at 10% per annum. The respondents will not be entitled to payment on account of increased pension from prior to the date of filing of the writ petition.

32. The appeal is accordingly dismissed.

33. There will be no order as to costs.”

13. The concept of Pension is now well known and has been clarified by Hon’ble Apex Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whims of or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. (Please see **All India Reserve Bank Retired Officers Assn. v. UOI** reported in **1992 Supp (1) SCC 664**)

14. Yet in another judgment of the Hon’ble Apex court reported in **(2011) 11 SCC 702** in the case of **PEPSU RTC vs. Mangal Singh**, it has been held:

“39. Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. “

From the aforesaid it is clear that earlier the respondents have wrongly denied the applicant's legitimate claim of JWO (Group-X) rank pension.

15. In view of above, we are of the considered opinion that the applicant is entitled for JWO rank pension with effect from 30-11-2002. Accordingly, the respondents are directed to pay revised pension as per the Government of India, Ministry of Defence circular dated 9-2-2001 in accordance with the Judgement and Order with all arrears with a simple interest of 12% per annum w.e.f. 30-11-2002. The entire arrears shall be paid to the applicant within a period of three months from the date of receipt of this order and the PPO shall be amended within the same time.

16. Application thus stands allowed. No order as to costs.

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

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice N.K. Agarwal)
Member (Judicial)

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