

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION : O.A. NO. – 107/2015
{WITH M.A. NO. 83/2016}

DATED : 05 JUNE, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Smt. Dipsikha Sarkar & Ors.
w/o (Late) No. 608593G Instrument Fitter
Flight Sergeant Nirmal Kumar Sarkar
s/o Late Manindra Lal Sarkar
residing at "Dui Kanya" Old Police Line
PO , PS & Distt – Jalpaiguri (WB) - 735101

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, New Delhi-110011

(3) The Air Officer Commanding Air Force
Records Office, Subroto Park, New Delhi-110010

(4) The Principal Controller of Defence Accounts
(Pensions), Drapaudi Ghat, Allahabad (UP)
PIN – 211 014

(5) The CDA (Air Force), Subroto Park
New Delhi – 110 010

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

Counsel for the Respondent (s) : Mr. Ashish Kumar Chatterjee

ORDER

PER LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

1. This is an application filed under Section 14 of the AFT Act, 2007 was initially filed on 24.11.2015 by Ex No. 608954G Instrument Fitter, Ex Flight Sergeant Shri Nirmal Kumar Sarkar, s/o Late Manindra Pal Sarkar residing at Old Police Line, PO, PS & Dist – Jalpaiguri (WB) – Pin-735101 (since deceased) assailing for the non grant of rank pension in last rank held i.e., Sergeant including all other pensionary benefits of the rank.
2. This application was filed by Ex Sgt Nirmal Kumar Sarkar on 24.11.2015. The applicant has since deceased on 18.12.2015 (Death Certificate at Annexure A (Page 56).
3. This application has been substituted by Smt. Dipsikha Sarkar (W/O (Late) Ex Sgt Nirmal Kumar Sarkar) and her two daughters namely, Km. Nandini Sarkar (aged about 28 years) and Km. Nirajana Sarkar (aged about 21 years) and accordingly amendments were carried out following the order of the Hon'ble Bench in M.A. No. 31 of 2016 (O.A. No. 107/2015) dated 29.03.2016.

M.A. No. 83/2016

4. An application for Condonation of Delay has been filed vide M. A. No. 83/2016. Since, this is a case of family pension and is a recurring course of action and in view of the catena of judgements, we are of the view that the delay be condoned. Hence, the delay is condoned.

Brief Facts of the Case

5. The applicant's husband was enrolled in the Indian air Force under the terms and conditions for a period of 9 years Regular Service and 6 Years Reserve Service as Group-II airman in rank C-2 (under training) trade Inst./Rep and subsequently promoted to the rank of C-I on 01.05.1975, re-classified to LAC on 01.10.1984, promoted to Corporal on 02.10.1984 and to the rank of Sergeant on 01.09.1987.
6. He was enrolled into the Indian Air Force on 26.02.1973 and was subsequently discharged on 29.02.1988 after 15 years and 4 days of service on fulfilling the terms and conditions of the IAF Rule 1969 – III Rule 15 Clause 2 (b).
7. Earlier he was promoted to the rank of Sergeant on 01.09.1987. Though he retired from the rank of Sergeant, he was in receipt of pension of that of a Corporal from the date of his retirement i.e., 01.03.1988.
8. The applicant submitted an application to the Air Officer I/C Records, Air Force Records Office, Air Force, Subroto Park, New Delhi on 08.06.2007 (Annexure A4) praying for the revision of pension as per his entitlement i.e., in the rank of Sergeant (and not in the rank of a Corporal) including the revision of family pension.
9. The same was replied to vide their letter dt. 30.07.2007 (Annexure 5) denying the revision of pension.
10. We do not feel it necessary to even call for the Records as it is clear that as the applicant retired in the rank of Sergeant, he is entitled for the pension in that rank in view of the catena of Judgements. In O. A. 65/2013 vide order sheet

No. 12 dt. 30.06.2015 in Shri Barun Mukherjee Vs UOI, this Bench has ordered the Respondents to issue corrigendum P.P.O. after restructuring of pension in the rank of JWO and grant all arrears as per the revised rates.

11. This order was quoted extensively in the order of AFT, Regional Bench Chennai dt 13.12.2015 and also in another order of the AFT, Principal Bench, New Delhi in OA 894/2016, MA 1388/2017 dt. 12.04.2018 in MWO Kailash Chand Gupta Vs UOI wherein it was held : -

"We have heard the arguments from both the sides. What strikes us is that in view of a catena of judgements and basic principles of equity and law, there is no question of a person who has retired at a higher rank to be drawing pension less than what he would be getting at a lower rank. It is also observed from the respondents' submissions that since PCDA (P) circular No. 551 dated 28.12.2015 clarified that the revision of pension with effect from 01.01.2006, may be done on the basis of the last rank held and not for the rank of which pensioned, settles this issue once for all and references to circulars Nos 430, 501 and 555 of 01.06.2009, 24.09.2012 and 01.7.2014 automatically got superseded."

12. In view of the above, it is clear that the applicant is entitled to pension of her husband in the rank of Sergeant w.e.f. from the date it was applicable to him, i.e., 01.03.1988 as it was illegally denied to her husband by the authorities. This should have been revised by the authorities concerned automatically after the issuance of GOI, MOD letter dt. 12.11.2008 consequent to the recommendations of 6th CPC.

13. The arrears are to be calculated accordingly and to be paid within a period of 3 (three) months from the date of receipt of this order, failing which, 8% interest will be levied upon the Respondents till realization of full entitlement.

14. Accordingly, this OA (O.A. No. 107/2015) is disposed of.

15. No order as to cost.

16. A plain copy of this order will be supplied to both the parties by the Tribunal Officer after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

dks