

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. : 20/2018

DATED : THE *Third* DAY OF SEPTEMBER, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

APPLICANT (S) :No. 676342A Ex JWO SAILEN CHAKRABORTY
At-15/2, K. N. Banerjee Road, Ariadaha
PO – Ariadaha, PS-Belgharia
Dist – Kolkata (W.B.) – PIN – 700 057

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 Secretary
Deptt. Of Ex-Servicemen
Welfare & Pension
Ministry of Defence
South Block, New Delhi - 110011

(3) The Dy. C.D.A. (Air Force)
Air Headquarters, Subroto Park
New Delhi – 110 010

(4) The Jt. C.D.A. (Air Force)
Air Headquarters (Air Force)
Subroto Park, New Delhi – 110 010

(5) The Director – III
Directorate of Air Veterans
Air Headquarters
Subroto Pak, New Delhi – 110 010

(6) The WO IC Pen & Wel Wing (Pre-06)
Air Force Record Office
Subroto Park, New Delhi – 110 010

Counsel for the applicant (s) : Mr. B.K. Pradhan, Ld. Advocate
Mrs. Sonali Das, Ld. Advocate

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

ORDER

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

1. This case has been filed Under Section 14 of The Armed Forces Tribunal Act, 2007 (The Act); wherein the application, a retired person of the Indian Air Force has prayed for pension in the rank in that he retired, i.e., J.W.O. (Junior Warrant Officer).

Facts of the Case

2. The applicant was employed in the Indian Air Force (I.A.F.) on 19.08.1982 as Airman (Air Frame Fitter, Group-X-Diploma). On 01.8.2002, the applicant was promoted to the rank of J.W.O. He was discharged from the services of I.A.F. on 31.08.2002 after completing 20 years and 13 days of regular service. At the time of his discharge, the applicant was getting the Basic Pay of Rs. 5770 P.M. with admissible D.A. in the scale of Rs. 5700 - 140-8290 as per the 5th Central Pay Commission Report. However, the Pension Payment Order (P.P.O.) that was issued in favour of the applicant was for pay scale of Rs.

5000-100-6500 as per the 5th CPC. The last Basic Pay was endorsed as Rs. 5400/- instead of Rs. 5700/- and his last rank was endorsed as Sergeant instead of JWO (Junior Warrant Officer).

3. The Ld. Counsel for the applicant stated that his client is getting pension of Sergeant whereas at the time of his retirement, the rank held by the applicant was J.W.O. and that the Respondents have not implemented the circular of the PCDA (Pension) Allahabad No. 397 dated 18.11.2008 which makes the applicant eligible for revision of pension as JWO @ Rs. 6400/- w.e.f. 01.01.2006 to 30.06.2009. Further, in terms of Circular No. 430 dated 10.03.2010 (Table 112) his pension is to be revised to Rs. 7206/- P.M. with effect from 01.07.2009.

4. The Respondents on the other hand has stated that since the applicant has not completed for 10 months of service in the rank of J.W.O. he is entitled his service pension in the rank of Sergeant only as per the extant of policies in vogue at the time of his discharge. The Respondents have also stated that the requirement of 10 months of service was waived of w.e.f. 01.01.2006.

5. On this point, the counsel for the applicant has also produced several judgments in support. In O.A. No. 105/2015 dated 12th February 2016, Ex-JWO Prabhat Kumar Dey vs. UoI & Ors, this Bench ruled that since the applicant was holding the rank of J.W.O. at the time of his retirement, he was allowed pension of JWO. In O.A. 65 of 2013 dt 30 Jun 2015, Barun Mukherjee vs. UOI & Ors, this Bench had held that as the applicant was discharged in the rank of J.W.O., he was allowed pension in the rank of J.W.O.

6. We have heard the Ld. Counsels for both the parties. The only question arises before us are two :-

(i) Whether the applicant is entitled for pension in the rank of J.W.O. from the date of his retirement i.e. 31.08.2002?

(ii) Whether the applicant is entitled for interest of the accrued arrears of his pension?

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 Sergeant Vasudevan. K. Vs. UoI & Ors). While allowing the applicant's application, vide order dt. 20.03.2012 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 condonation of the deficiency in service. According to the Government of India letter dated 9th February, 2001, the pension of all pre 1.1.96 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 month's service on the rank of Sergeant was not proper. Had the respondent No. 1 and 4 perused the Government letter dated 9th February, 2001 (Annexure A2) they would not have taken the decision at 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 contention 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."

8. The same view was reiterated by the Armed Forces Tribunal, Regional Bench, Chennai in O.A. No. 60 of 2014 (Ex-Sgt T. Alavandar Vs. UOI & Ors) vide its order dated 16.01.2015 and also in OA 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 02.02.09, 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 Gopalakrishnan (supra) which reads as under:-

"For appreciating the rival contentions, we have gone through the Tables annexed with 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 JWO as per the VI 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 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 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. 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 09.02.1001. 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 held rank of JWO with effect from 01.05.2005. But it was not fixed and 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 Government letter dated 11.11.2008, Circular No. 430 in Table 116 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 favour of the applicant."

10. In a batch of judgments of the Armed Forces Tribunal, Principal Bench, New Delhi, the Bench allowed the pension on revised rates in the rank last held. Those judgments are :-

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

(b) O.A. No. 545/2015 with M.A. No. 382/2016 Ex JWO Rameshwar Dayal Shakya & Ors Vs. Uol & Ors.

(c) O.A. No. 917/2016 Ex JWO Jogi Ram Sharma Vs. Uol & Ors.

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

(e) O.A. No. 1549/2016 with M.A. No. 1146/2016 Ex

JWO Pritam Singh & Ors. Vs. Uol.

(f) O.A. No. 1619/2016 Ex **JWO CR Krishnan Vs. Uol,**

(g) O.A. No. 1630/2016 Ex **Sgt. KR Krishsna Rao & Ors**
Vs. Uol & Ors.

(h) O.A. No. 1643/2016 with M.A. No. 1226/2016 Ex
JWO Sushil Kumar Singh & Ors. Vs. Uol & Ors.

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

11. In view of the above, there is no doubt in our mind that this applicant too is entitled to pension in the rank of J.W.O. (Junior Warrant Officer) w.e.f. the date of his promotion i.e., 01.09.2002.

12. Accordingly, the Respondents are directed 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.

13. Application is thus stands allowed.
14. No order as to costs.
15. 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 INDIRA SHAH)
MEMBER (JUDICIAL)