

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

THROUGH VIRTUAL HEARING

1. At 2.15 PM

MA 1330/2022 IN OA 1996/2019

Ex Sgt R Sadacharam Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Ms. Suman Chauhan, Advocate

WITH

2.

RA 26/2022 WITH MA 1534/2022 IN OA 1996/2019

Union of India and Ors. Applicant
VERSUS
Ex Sgt R Sadacharam Respondents

For Applicant : Ms. Suman Chauhan, Advocate
For Respondents : Mr. Ajit Kakkar, Advocate

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

ORDER
27.07.2022

Seeking review of an order passed by this Tribunal on 24th September, 2021 in OA 1996/2019, Review Application No.26/2022 has been filed by Union of India seeking recall and re-hearing of the application on various grounds.

Similarly, seeking implementation of the order passed by this Tribunal in OA 1996/2019 on 24th September, 2021;

MA 1330/2022 is an application by the applicant for execution filed under Section 29 of the Armed Forces Tribunal Act, 2007.

The applicant Ex Sgt R. Sadacharam invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 seeking revision of his pension in accordance to the last rank held by him before retirement, i.e., Sergeant (Sgt). It was his case that on the basis of a circular issued by Government of India on 09th February, 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. The Principal Bench of this Tribunal in various cases had decided the issue and the Regional Bench at Chennai in *JWO P. Gopalakrishnan Vs. Union of India and Ors.* (OA No.62 of 2014 decided on 13th February, 2015), indicated the implication of the circular dated 2nd February, 2009, Regulations for the Air Force Part I and the Government of India, Ministry of Defence, various letters and after considering various aspects of the matter, it was held that the respondents' department is under obligation to revise the pension on the basis of the last rank held even if the incumbent has not held the last rank for a period of ten months continuously. Considering various judgments on the issue, which held that pension cannot be deprived to an individual who had rendered service in a particular rank, orders have been consistently passed in various cases by Benches of this Tribunal. Following the said principle in

paras 10 and 11 of the order passed by this Tribunal on 24th September, 2021, the following directions were issued:

“10. We are of the view that the respondents shall implement the calculation of pension for the applicant as mentioned above, as he is similarly placed to the applicant in JWO P. Gopalakrishnan (supra).

11. Accordingly, the instant OA is allowed. 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., Sergeant 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 issued a fresh corrigendum PPO, subject to verification, in the last rank of Sergeant held by him within a period of three months and arrears paid accordingly, failing which, it shall carry interest at the rate of six per cent till payment.”*

4. Now in this Review Application filed, the applicant – Union of India in para 3 and 4 contends that AFRO vide their letter dated 21st November, 2019 and the PCDA (P) have intimated that no record showing the applicant having been promoted to the rank of Sergeant is available and hence the request was made for review of the order on the ground that no record is available with the respondents showing the applicant to have been promoted as a Sergeant. That apart, inviting our attention to various orders passed by the High Courts in the matter of delay in approaching this Tribunal, the applicants

pray for interference into the matter to review or recall of the order.

5. On notice being issued the respondent – original applicant represented by Mr. Ajit Kakkar appeared and invited our attention to various documents filed along with the application and the rejoinder, Annexures A-9 and A-10. The Discharge Book indicates that the respondent-applicant was a Sgt at the time of discharge. The Trade Proficiency Certificate issued by Air Force Station, Begumpet also shows the rank of the respondent-applicant as Sgt.

6. As we had decided this OA based on these documents, we now direct the applicant-respondents to cause an inquiry with the office of Air Force Station, Begumpet, the respondent's-applicant's last duty station. Inquiry must examine the documents at Annexures A-9 and A-10. After completing this inquiry, the applicant-respondents shall file an affidavit indicating the final position to confirm that the applicant was/was not promoted as Sgt. The applicant-respondents shall conduct the said inquiry calling for all documents of the respondent-applicant held on record at Air Force Central Accounts Office where as per Item No.39(c) of the Appendix – Particulars of Personnel Occurrence Reports to be retained are as under:-

(c) Personnel Occurrence Report	15 years in Unit Accounts Section and to be retained permanently in AF Central Accounts Office
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7. Applicant-respondents to complete the Inquiry and file an affidavit within four weeks of this order.

8. List again on 30th September, 2022.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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