

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

52.

MA 1330/2022 IN OA 1996/2019

Ex Sgt R Sadacharam

..... Applicant

Versus

Union of India and Ors.

..... Respondents

For Applicant :

Shri Ajit Kakkar, Advocate

For Respondents :

Shri. R. S. Chillar, Advocate

WITH

53.

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 :

Shri. R. S. Chillar, Advocate

For Respondents :

Shri Ajit Kakkar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

MA No 1330/2022 AND RA No 26/2022

Both these applications i.e. the application for review under Section 18 of the Armed Forces Tribunal (Procedure) Rules 2008 and the application under Section 29 of the Armed Forces Tribunal Act 2007 seeking execution of the order dated 24.09.2021 passed by this Tribunal in O.A No. 1996 of 2019 are being disposed of by this common order.

2. Invoking the jurisdiction of this Tribunal, The applicant Ex Sgt R Sadacharam in MA 1330/2022 sought for payment of pension in accordance with the last rank of Sergeant held by him at the time of his discharge from service. It was his case that as, at the time of retirement he was holding the rank of Sergeant, in accordance with the circular of the Government of India dated 09.02.2001, wherein it has been clarified that holding of a rank continuously for a period of ten months is not necessary and pension can be granted on the last rank even if the rank is held only for a lesser period than ten months. This circular was issued in the light of the law laid down by this Tribunal in various cases particularly in the case of **JWO P. Gopalakrishnan** (O.A No. 62 of 2014 decided by the Chennai Bench of this Tribunal on 30.02.2015). Following the law laid down in the aforesaid case, several orders have been passed by this Tribunal granting same relief to similarly situated employees. Taking note of all these factors, the prayer made by the applicant Sadacharam, was allowed on 24.09.2021 and it was directed that the respondents should calculate the pension of the applicant based on the last rank held by him before his retirement i.e. the rank of Sergeant in consonance with the principles of calculation as upheld in the case

of **JWO Gopalakrishnan** (supra). When this order was not complied with and when no action was taken for implementing the order, the applicant in O.A No. 1996 of 2019 Ex Sgt R Sadacharam Ram filed M.A 1330/2022 seeking execution of the order. When the application for execution came up for hearing on 18.05.2022, Ms. Suman Chauhan, the learned counsel who had appeared for the respondents informed us that the Union of India has filed an application seeking review of the order passed in O.A 1996/2019 and therefore the Registry was directed to list both the execution application and the review application together. Accordingly, both the applications came up for hearing together and when the matter was considered by us on 27.07.2022, it came to our notice that in the review application, it was the case of the Union of India that while verifying the claim of the applicant for grant of pension in the last rank stated to have been held by him, it was found that no record showing the applicant having been promoted to the rank of Sergeant is available and as there is nothing to indicate that the applicant in O.A 1996/2019 was promoted to the rank of Sergeant, review was sought for to the effect that the order may be reviewed and recalled.

3. Taking note of all these factors, and after hearing the counsel for the parties, on 27.07.2022, we issued the following directions:

"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, Annexure 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"

Accordingly, the respondents have completed the inquiry and have brought on record the proceedings of the COI.

4. We have heard the learned counsel for the parties at length and now the moot question is, as to whether the review sought for by the department in R.A 26/2022 is required to be considered, the order recalled and the application dismissed only on the ground that no records are available with the respondents to verify as to whether the applicant in O.A 1996/2019 was ever promoted to the rank of Sergeant before his retirement.

5. Before advertng to consider various issues, we may take note of the action taken by the respondents in the conduct of the inquiry after directions, as reproduced herein above, were issued by us on 27.07.2022 in MA 1330/2022. We find that after the orders were passed, station routine order dated 25.08.2022 was issued and vide para 3 of the aforesaid order, a Court of Inquiry (CoI) was directed to be convened on 25.08.2022 to find out documents relating to the discharge of Ex Sgt R Sadacharam from service with effect from 31.07.2018. Sqn Ldr R.C Sharma was nominated as the Presiding Officer and WO V. K. Tripathi was nominated as Member of the CoI. Thereafter, the CoI assembled

on 25.08.2022 at 1000 hrs. and collected IAF(P) 28 from the Station Adjutant, checked the documents filed and conducted its proceedings again on 26.08.2022, as is evident from the record and submitted its report to the competent authority on 26.08.2022 itself. The findings recorded by the CoI read as under:

"1. The CoI assembled on 25 Aug 22 to systematically peruse all the available documents with the NE desk at AF Stn Begumpet and ascertain the availability/non-availability of documents in respect of 288523 Ex Sgt R Sadacahalam.

2. As per AFO 06/2015, all the documents of NE personnel are to be dispatched "not later than seven days" to DAV and AFRO.

3. The stated date of retirement of 288523 Ex Sgt R Sadachalam is 31 Jul 1980, which is 42 years back. Notwithstanding, all the documents held at AF Stn Begumpet were checked and it was found that there are NIL documents available in respect of 288523 Ex Sgt R Sadachalam in the Station Orderly Room with respect to his discharge from the service.

4. As per GoI letter No. Air HQ/25601/40/D Accts/3386/D (Pay/Services) dated 18 Aug 1980, all the PORs are retained by AFCAO for a period of 10 years. The PORs in respect of the applicant 288523 Ex Sgt R Sadachalam was destroyed on completion of 10 years after fulfilling of condition of enrolment.

5. As there is no service documents available at Air Force Station, Begumpet and PORs at Air Force Central Accounts Office, due to destruction after a stipulated period of time mentioned in policy in

vogue. The Court could not verify the Exhibits 'A' & 'B' produced by the applicant, before the Hon'ble Tribunal as Annexure-A/9 and A/10 with his petition and cannot ascertain whether the applicant was/was not promoted as Sgt."

The proceedings of the CoI further indicate that it collected three documents (i) Trade Proficiency Certificate; (ii) National Trade Certificate; and (iii) AFCAO/10186/1/RR dated 26.08.2022. While going through these three documents, the CoI did not cause any inquiry as it was supposed to have done, in that the applicant was not summoned, he was not examined and even the documents produced by the applicant, which were available with the respondents, viz. the Trade Proficiency Certificate, the National Trade Certificate and other documents available on record particularly the discharge certificate of the applicant were never examined. That apart, even in the inquiry proceedings, there is no mention about the personal occurrence report being produced according to Item No. 39 (c) of the appendix, particulars of the personal appearance report are to be retained permanently in the Air Force Central Office. Without taking note of the aforesaid important aspects of the matter, the CoI simply recorded a finding to say that there is no service document available at AFO Station,

Begumpet and the PORs of the Air Force Central Accounts office due to destruction of the stipulated documents within the stipulated period. It is stated that the CoI could not verify Exhibit 'A' and 'B' namely the Trade Proficiency Certificate and the National Trade Certificate produced by the applicant before the Tribunal and they are unable to ascertain as to whether the applicant was promoted as Sergeant or not.

6. Accordingly, from the materials that have come on record, in our view, the CoI was not conducted in the manner as we had directed. We may take judicial notice of various facts which are within our knowledge, in various cases at least in two other cases similar situations had arisen and we had directed for conduct CoI and in the CoI, the applicant was examined, his documents were considered and thereafter decisions were taken by recording specific reasons with regard to the evidence provided and we had disposed of the matter based on such CoI. However, in the present case, except for recording a finding that no documents are available, nothing has been brought on record. There is no whisper anywhere in the CoI as to why the personal occurrence report, which is to be retained permanently in the Air

Force Central Accounts office, has not been produced or examined by the competent authority. On the contrary, we find that the O.A filed by the applicant apart from making specific averment that he was promoted as Sergeant before his retirement he had brought on record photo copies of Part II of the certificate of discharge from regular service which is issued on 30.11.1980 showing the rank of the applicant as Sergeant. That apart, he has produced a Radio Trade Proficiency Certificate issued by the Indian Air Force under the signature of Wg Cdr D.K Ghosh on 31.07.1980 showing the rank of the applicant as Sergeant and having been qualified in the proficiency test for Radio Technician. Similarly, a National Trade Certificate issued by the Indian Air Force has also been filed certifying that the applicant, a Sergeant, has cleared the examination. The Director of Studies, Institute of Industrial Security, Maharashtra, has issued a certificate where the applicant is shown to be a Sergeant and the identify card issued to the applicant by the Wg Cdr Air Force Station, Begumpet attested along with its photo copy also indicate that the designation of the applicant is Sergeant. These documents were available on record and despite the fact that the applicant had produced all these documents, the CoI did not consider any of these documents nor

did it call the applicant to verify these documents. Except for pointing out that in the pension papers submitted by the applicant shows his rank as Sergeant/ Corporal and further holding that no records are available to verify these documents submitted by the applicant, no inquiry in the manner as directed by us have been conducted and nothing has been brought to our notice even to indicate as to why the personal occurrence report of the applicant which is retained permanently in the Air Force Central Accounts Office was not produced. Taking note of all these aspects, we proceed to consider the issue in hand and we find that in the review application except for contending that no documents are available to verify the authenticity of the documents submitted by the applicant, no inquiry worth its name has been conducted by the respondents. Even the applicant was not examined and questions put to him with regard to the documents filed by him particularly Exhibits A and B which were available with the CoI. We find from the records that even in the O.A, in spite of the applicant filing all these documents along with the application and rejoinder, the respondents except for contending that the documents are not available and they have been destroyed after a period of time have not whispered anything as to why the documents produced

by the applicant should not be relied upon or given due weightage. On analyzing the documents produced by the applicant in support of his contention, we find that he has produced Annexure A1 Trade Proficiency Certificate, which is Exhibit A in the record of the CoI proceedings. This was issued on 31.07.1980 by the Indian Air Force itself under the signature of Wg Cdr D.K Ghosh and another officer from Air Force Station, Begumpet. In these documents, the rank of the applicant is shown as Sergeant. Similarly, the National Trade Certificate is also issued by the same authorities of the Indian Air Force and here also the rank of the applicant is shown as Sergeant. Even in the certificate issued by the Institute of Industrial Security, Deolali, Maharashtra vide Annexure A3, the rank of the applicant is shown as Sergeant. That apart, the identity card issued to the applicant by the office of Air Force Station, Begumpet available at Annexure A4 indicates that the applicant is a Sergeant. In these circumstances, we see no reason to disbelieve all these overwhelming documents which are retained by the applicant since a long period of time and there is nothing on record to indicate that these documents are manufactured, tampered or fabricated. On the contrary, the respondents' only

contention is that they could not conduct the verification as the documents were not available in the office.

7. In our considered view, the applicant is claiming the benefit based on last rank held by him and when the documents available on record indicate that the applicant was holding the rank of Sergeant and when the records to be maintained permanently like the personal occurrence report are not available, the benefit of doubt in such cases should go to the employee and the Court should not reject the claim of the employee merely because the documents have been destroyed. We gave an opportunity to the respondents to conduct a proper inquiry in accordance with law and to come to us with specific findings. Except for conducting a formal inquiry and submitting a report stating that documents are not available, the respondents did not avail of the opportunity granted by us to cause a proper inquiry into the matter. They did not even think it proper to verify the certificates available on record and to find out the correct position.

8. Taking note of the totality of the circumstances, we are of the considered view that in the peculiar facts and circumstances of this case, we are satisfied that O.A No. 1996/2019 was allowed

by us after considering the documents that were available on record and even when the review application was filed, an opportunity was granted to the respondents, the respondents having failed to make out any case to show an error apparent on the face of record or cogent reasons for deviating from the decision already taken by us while deciding O.A No. 1996/2019, accordingly, we see no reason to entertain this review application and reconsider the matter again. Review of an order can be permitted only if there is an error apparent on the face of record and there are reasons to hold that the decision taken was contrary to the material available on record. In the present case, the original decision was taken based on the documents and evidence adduced by the applicant, which was never rebutted by the respondents. In spite thereof, we granted an opportunity to the respondents to verify the documents and the respondents having failed in that endeavour now no case for review is made out.

9. Accordingly, we dismiss R.A No. 26/2022 and dispose of M.A No. 1330/2022 by directing the respondents to comply with the order passed in O.A 1996/2019 within a period of two months from the date of receipt of a copy of this order.

10. No order as to costs.

11. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 23rd day of March, 2023.


[RAJENDRA MENON]
CHAIRPERSON


[P. M. HARIZ]
MEMBER (A)

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