

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA 1184/2020 with MA 1365/2020

Ex JWO Tejomurtula Srinivas Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
06.10.2023

MA 1365/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 7015 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UOI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1365/2020 is allowed and the delay of 7015 days in filing the OA 1184/2020 is thus condoned. The MA is disposed of accordingly.

OA 1184/2020

The applicant, vide the present OA makes the following prayers:

“ (a) To direct the respondents to revise the pension of the applicant on the basis of the last rank held by him i.e. Junior Warrant Officer(JWO) w.e.f. 01.07.2000.

(b) Direct respondents to pay interest @12% p.a. on the arrears of pension and other benefits.

(c) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper”

2. The applicant was enrolled in the Indian Air Force on 18th June, 1980 and discharged from service on 30th June, 2000 after rendering 20 years and 13 days of service. The applicant was promoted to the rank of Junior Warrant Officer(JWO) on 01.01.2000 from the rank of Sergeant and held this rank for 05 months but did not complete 10 months of service in the rank of Junior Warrant Officer(JWO). The applicant submits that as per Policy decision dated 09.02.2001 and 11.11.2008, whereby the pension of all the retired Armed Forces Personnel has been revised on the basis of the rank/group last held by the individual and the requirement of 10 months service in the last rank held for all the officers and personnel below of the officer rank is waived off.

3. The applicant further submits that with the implementation of the recommendations of the 6th CPC, the condition for holding last rank for 10/07 months have been waived off and even if a person holds a rank for 01 day, he was entitled for pension of last rank held. Furthermore, the MoD letter No.17(4)/2008(1)/D(Pen/Pol) dated 11.11.2008 expressly states that it was specifically mentioned that Rank means rank last held and not the rank for which pensioned. It is submitted by the applicant that he is entitled for the fixation of his pension in the rank of Junior Warrant Officer as per Govt of India Letter No.PC10(1)/2008-D(Pen/Pol) dated 08.03.2010.

4. The applicant places reliance on the order dated 17.04.2017 in OA 882/2016 in case of *EX JWO Ashok Kumar Tanwar & Ors Vs Union of India & Ors*, order dated 03.02.2015 in OA No.62/2014 in case of *JWO P Gopalakrishnana Vs Union of India & Ors*, Order dated 13.12.2010 in RA 31/2010 in TA No.339/2010 dated 13.12.2010 and *Thiagrajan Vs Union of India & Ors* (AFT) (RB) Chennai and catena of other orders of the Armed Forces Tribunal.

5. The respondents fairly do not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

6. We find that there are a catena of orders of various Benches of the Armed Forces Tribunal on this issue. Consequently, the fact that the

applicant is entitled to pension in the last rank held by him, even if he held it for a duration of less than 10 months, stands clearly established.

7. The judgments relied on behalf of the applicant make it apparent that pension cannot be declined to an individual for the rank he last held and rendered his services as laid down in **Thiagrajan versus UoI & Ors** in OA 93/2014 by the (RB) Chennai. The said statutory right already earned by the applicant cannot be reduced even if an undertaking is executed by him for the receipt of any lower pension in a lower rank from that what he last held. Vide a catena of cases it has been laid down that the defence personnel are entitled to the benefits of the last rank held by them even if it has been of a duration of less than 10 months. Thus, the respondents are required to implement the calculation of pension of the applicant in the rank of Junior Warrant Officer as he is similarly placed as the applicant in the case of **JWO P Gopalakrishnan vs UoI & Ors.** in OA 62/2014 decided on 13.02.2015, by the AFT, Chennai.

8. The OA 1184/2020 is thus allowed and 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. Junior Warrant Officer, and in consonance with the principles of calculation that have been upheld in *JWO Gopalakrishnan* in this regard; and

- (ii) The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him within two months and the arrears paid accordingly, *failing which*, it shall carry interest @ 6% till actual payment.
9. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/