

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

10.

OA 586/2020 WITH MA 1474/2021
AND MA 713/2020

Ex JWO Hemachandra B	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate
For Respondents	:	Ms. Barkha Babbar, Advocate

CORAM :

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

ORDER
10.10.2023

MA 713/2020

This is an application filed under Section 5 of the Limitation Act read with Section 22 of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 6228 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Union of India and Ors Vs Tarsem Singh [2009 (1)AISLJ 371] and in Ex Sep Chain Singh Vs Union of India and Ors (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 713/2020 is allowed despite opposition on behalf of the respondents and the delay of 6228 days in filing the OA 586/2020 is thus condoned. The MA is disposed of accordingly.

MA 1474/2021

2. This is an application filed under Rule 12(5) of the Armed Forces Tribunal (Procedure) Rules, 2008 by the respondents seeking

condonation of delay of 132 days in filing the counter affidavit and reply to the application for condonation of delay. In view of the averments made in the application, which are duly supported by an affidavit, the delay in filing the counter affidavit is condoned. The MA stands disposed of.

3. OA 586/2020

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

- a) *To direct the respondents to revise the pension on the basis of the last rank held, i.e., Junior Warrant Officer (JWO) from 01.12.2002.*
- b) *To direct the respondent to quash the impugned order dated 13.02.2020.*
- c) *To direct the respondents to pay arrears with 12% interest on pension and other benefits."*

4. The applicant, who was enrolled in the Indian Air Force on 25.11.1982 and discharged on 30.11.2002 in the rank of JWO which he held for the period 01.09.2002 till 30.11.2002 (i.e. for 03 months) submits that he seeks the pension for the last rank of JWO held before the retirement which has been declined to him as he had not held the rank of JWO for 10 months as per the Policy at that time. It has, however been submitted by the applicant that in view of the Govt of India/Ministry of Defence Circular dated 09.02.2001, it has been clarified that all Armed Forces pensioners irrespective of their date of retirement shall not get less than 50% of the minimum received pay as introduced w.e.f. 01.01.1996. The applicant has submitted that despite the said circular dated 09.02.2001, the PPO shows his rank as **Sgt** for the purpose of calculation of pension though

he has served as JWO for 03 months. He further submits that though he retired in the rank of JWO, which is duly mentioned in the PPO No.SCDRR/066808/2001, he was not granted pension of the JWO rank, since he had not completed 10 months service in that rank.

5. The respondents do not dispute the factum of the applicant having held the rank of JWO for 03 months as claimed by him for the period of 01.09.2002 till 30.11.2002, his date of discharge.

6. It cannot be overlooked that the verdict dated 29.01.2010 of the Armed Forces Tribunal (PB) in TA 339/2010(WP(Civil) No.567/2002 of Delhi High Court) Ex JWO Bharat Singh Khatana Vs Union of India and Ors. whereby it was observed to the effect that:

"According to the provisions of the Armed Forces Rules, the incumbent has to serve at least 10 months on the last rank for full pension of that post but he was not given the pension of the last rank held by him i.e. JWO. Hence, petitioner aggrieved by this filed the present petition before the Hon'ble Delhi High Court which has been transferred to this Tribunal after formation of Armed Forces Tribunal and prayed that his pension may be given on the basis of last rank held by him. In this connection, petitioner has referred to a Notification dated 09.02.2001 whereby the Government of India, Ministry of Defence has issued a Circular implementing the Government decision on the recommendations of Fifth Pay Commission relating to pensionary benefits in respect of commissioned officers and personnel below officers ranks and in that it has been clarified that all Armed Forces pensioners irrespective of their date of retirement shall not get less than 50% of the minimum revised scale on pay introduced w.e.f. 01.01.1996. Since this was not being given by the PCDA, Allahabad and that matter came before the Government and the Government had clarified as under:

"It is clarified that pension of all pre-96 retiree Armed forces Personnel will be revised on the basis of the rank/group last held

by the individual and the revised pay scales connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply.”

In view of this clarification, we do not find any reason as to why petitioner should not be given pension of the last rank held by him for a period of 06 months. Therefore, condition of 10 months has now been waived by the government. Consequently, we direct that petitioner’s pension should be determined in the light of the aforesaid Circular and he may be given the pension @ 50% of the last post held by him as JWO. His pension should be worked out and arrears shall be paid to the petition with 12% interest. This whole exercise should be done within three months from today. Petition is according allowed. No order as to costs.”

has been upheld vide order dated 08.03.2016 of the Hon’ble Supreme Court in Union of India and Ors. Vs. Ex JWO Bharat Singh Khatana Civil Appeal no. 7366-7367/2011.

7. The applicant further submits that this issue has already been settled in terms of the verdicts in OA 1038/2017 in the matter of Ex-JWO Krishna Moorthy K and Ors. Vs. Union of india and Ors.

8. 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 Vs. Union Of India and 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.

9. Thus, the respondents are required to implement the calculation of pension of the applicant in the rank of JWO as he is similarly placed as the applicant in the case of JWO P Gopalakrishnan Vs Union of India and Ors. in OA 62/2014 decided on 13.02.2015, by the AFT(RB), Chennai and OA 1038/2017 in the matter of Ex-JWO Krishna Moorthy K and Ors. Vs Union of India and Ors.

10. Inter alia, the Hon'ble Supreme Court in Uttaranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P., (2006) 10 SCC 346 has adverted to the verdict of the Hon'ble Supreme Court in State of Karnakata and Ors Vs C. Lalitha (2006) 2 SCC 747 wherein it has been observed that service jurisprudence evolved by the Hon'ble Supreme Court postulates that all the persons similarly situated should be treated similarly.

11. The OA 586/2020 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. JWO, and in consonance with the principles of calculation that have been upheld in the case of JWO Gopalakrishnan in this regard inclusive of revised pension as per rules; and

- (ii) The applicant will be accordingly issued a fresh Corrigendum PPO, subject to verification, in the last rank of JWO held within a period of three months and arrears paid accordingly, *failing which*, it shall carry interest @ 6% till actual payment. However, the arrears shall be restricted to three years prior to the filing of the OA on 18.03.2020.

12. No order as to costs.

[JUSTICE ANU MALHOTRA]
MEMBER (J)

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

13.

MA 1228/2024 in OA 586/2020

Ex JWO Hemachandra B	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Ms. Eti, proxy for Mr. Ajit Kakakr, Advocate
For Respondents	:	Ms. Barkha Babbar, Advocate

CORAM

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

ORDER
03.05.2024

Qua MA 1228/2024 filed by the applicant seeking the change of his name from Ex JWO Hemachandra B to EX JWO B Hemachandar and to modify the name of the applicant in the order dated 10.10.2023 of this Tribunal in OA 586/2020 submitting to the effect that his name is in fact EX JWO B Hemachandar, on behalf of the respondents has been produced a letter dated 03.05.2024 to the Directorate of AIR Veterans-III to indicate that name of the applicant is EX JWO B Hemachandar along with the copy of the record of the particulars and the copy of the PPO, copies of which are directed to place on record by the respondents during the course of the day with a copy being supplied to the applicant through counsel.

2. In view of the document produced on behalf of the respondents, the prayer made by the applicant vide the present

MA is allowed and the name of the applicant in the order dated 10.10.2023 in OA 586/2020 in the cause title thereof shall be read as EX JWO B Hemachandar.

3. The application is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL ~~DHIREN VIG~~)
MEMBER (A)

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