

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

45.

OA 941/2017

Ex Sub Nitranjan Singh
VERSUS
Union of India and Ors.

..... Applicant
..... Respondents

For Applicant : Mr V S Kadian, Advocate
For Respondents : Ms Jyotsna Kaushik, Advocate for R 1-4
Mr. Khushhal Mohal, for R-5

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
26.10.2023

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

*“ (a) to direct the respondents to fix the service pension of the applicant of the rank of Subedar with effect from the date of discharge from service and/or
(b) Direct respondents to pay the consequential benefits of the rank of Subedar with effect due arrears with interest @12% p.a. with effect from the date of discharge from service.
(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents”*

2. The applicant was enrolled in the Indian Army on 30th June, 1977 and discharged from service on 30th November, 1999 after rendering 22 years and 05 months of service. The applicant was promoted to the rank of Subedar on 01.03.1999 and held this rank for 09 months but did not complete 10 months of service in the rank of Subedar. There being no bar for 10 months of compulsory service in the last rank, the respondents granted the pension granted the pension to the applicant in the rank of Subedar vide PPO No.S/Corr/0127746/2002 vide Records Raj Rif Letter No.RNE/SP/JC-498411L dated 16.08.2002. Later, based on the revision of the policy of one rank one pension, the pension of the applicant was again revised vide PPO NO.S/Corr/6th CPC/118234/2012 in which service pension of Subedar ceased and the applicant was granted a service pension of Naib Subedar.

3. Learned counsel for the applicant contends that vide CDA(A) Allahabad Circular No.551 dated 28.12.2015 in terms of Para, it has been mentioned that revision of pension w.e.f. 01.01.2006 may be done on the basis of rank last held and not for the rank which pensioned. Based on the policy, CDA(A) Allahabad further revised the pension w.e.f. 01.07.2009, 24.09.2012 and 01.07.2014 vide circular Nos. 430, 501 and 555 respectively. Aggrieved with the action of the respondents, the applicant submitted a representation to the Rajya Sainik Board vide letter No.26/A/SP/RSB/1612 dated 22.03.2017 for initiating the matter with the

PCDA(A), Allahabad for the grant of service pension of Subedar and stoppage of the recovery from the pension of the applicant already made by the respondents with immediate effect.

4. 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 hold a rank for 01 days, 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 vide which 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 Subedar as per Govt of India Letter No.PC10(1)/2008-D(Pen/Pol) dated 08.03.2010. The applicant further placed reliance on the terms of Para 6 of PCDA Circular No.551 dated 28.12.2015 to submit that it is mentioned therein that revision of pay/pension may be done on the basis of last rank and not for the rank for which pensioned.

5. 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.

6. 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.

7. We find that there is a catena of judgments 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.

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 by this Tribunal in **Thiagrajan versus UoI & Ors** in OA 93/2014 by the (RB) Chennai vide order dated 16.01.2015, it was held that 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 Subedar 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.

9. *Inter alia*, the Hon'ble Supreme Court in **Uttaranchal Forest Ranger's Assn.(Direct Recruit) v. State of UP.,(2006) 10 SCC 346** has adverted to the verdict of the Hon'ble Supreme Court in **State of Karnataka 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.

10. The OA 941/2017 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. Subedar, 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.

10. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C. P. MOHANTY)
MEMBER (A)

/CHANANA/