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

1.

OA 1608/2024 with MA 2069/2024

JWO Girjuba Bapu Tayade (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Rajendra Kumar Rustogi, Advocate

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

ORDER
15.05.2024

MA 2069/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 8342 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 2069/2024 is allowed and the delay of 8342 days in filing the OA 1608/2024 is thus condoned. The MA is disposed of accordingly.

OA 1608/2024

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

> *" (A) To direct the respondents to calculate and revise applicant's pension as per the last rank JWO, the last rank held for 05 months before retirement, and in consonance with the principle of calculation, upheld in the case of JWO P Gopalakrishnan as referred in the judgment(supra) placed at Annex A-4; and/or*
> *(B) Direct respondents to issue fresh PPO for the restructured and revised pension in the rank of JWO w.e.f.. 31.12.2000(date of discharge) and pay the arrears of pension with 10% interest; and/or*
> *(C) pass any other just and equitable order as you deem fit and proper in the interest of justice."*

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant was enrolled in the **Indian Air Force** on **31st December, 1980** and discharged from service on **31st December, 2000** after rendering 20 years of service. The applicant was promoted to the rank of Junior Warrant Officer (JWO) on 01.08.2000 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, 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.

4. The applicant further submits that with the implementation of the recommendations of the 5th CPC, the condition for holding last rank for 10 months has 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 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.

5. The applicant places reliance on the order dated 04.01.2022 in OA 2728/2021 in case of ***EX JWO Rakesh Kumar & 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 orders of the Armed Forces Tribunal.

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. 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 & 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:*
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> > *"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 & Ors.*** vs ***Ex JWO Bharat Singh Khatana*** Civil Appeal no. 7366-7367/2011.

8. The applicant further submits that this issue has already been settled in terms of the order in OA 1038/2017 in the matter of ***Ex-JWO Krishna Moorthy K & Ors.*** Vs ***UoI & Ors.***

9. 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** ***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.

10. 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 ***UoI & 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 & Ors.*** Vs ***UoI & Ors.***

11. Inter alia, the Hon'ble Supreme Court in ***Uttaranchal Forest Rangers' Assn. (Direct Recruit)*** v. ***State of U.P.***, (2006) 10 SCC 346 has adverted to its verdict 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.

12. The OA 1608/2024 is thus allowed and subject to verification of the date of enrolment and the rank held by the applicant on the date of retirement, 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.

13. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/