COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

2.

OA 1467/2024 WITH MA 2366/2024

Ex Nk Rathod Raja Bhai Bavanji Bhai ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Devendra Kumar, Advocate
For Respondents : Mr. Shagun Shahi Chaugh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
31.05.2024

MA 2366/2024

Keeping in view the averments made in these applications and in the light of the decision in *Union of India and others* Vs. *Tarsem Singh* (2009(1) AISLJ 371), the delay in filing the OAs is condoned. MAs stand disposed of.

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2. The instant OA has been filed by the applicant praying for revision of his pension in accordance with the last rank held by him before retirement, i.e., **Naik** on the basis of the Government of India circular dated 9th February, 2001, wherein it has been clarified that ten months' continuous service in the last rank held is not required for grant of pension in such rank. Reference is made to orders of this

Tribunal in ***JWO Pramod Kumar Singh and Ors.*** *Vs.* ***Union of India and Ors.*** (OA No.1166 of 2017) and ***JWO Ashok Kumar Tanwar and Ors.*** *Vs.* ***Union of India and Ors.*** (OA No.882 of 2016). The applicant has also referred to the order of the Tribunal (Regional Bench), Chennai in the matter of ***Thiagrajan*** *Vs.* ***Union of India and Ors.*** (OA No.93 of 2014), which waived off the ten months as stipulated in Para 123 of Pension Regulations for Air Force 1961 and opined that *"pension cannot be deprived to an individual to a rank for which he has already rendered his service and that the applicant had earned his pension in the rank of JWO already, and therefore, is entitled to be paid pension in the rank of JWO. Even if, for some reason, such a pension is found to be less, the applicant is entitled to receive the highest pension he earned already. The said statutory right for pension already earned by the applicant cannot be reduced even if an undertaking is executed by him for receipt of any lower pension in the rank of JWO."*

3. Though the respondents concede that the requirement of holding the last rank before retirement has been dispensed with in keeping with the Government of India circular dated 9th February, 2001, however, they contended that they

are correct in giving pension to the applicant in the lower rank as it is financially more beneficial.

4. 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 less than ten months, stands clearly established.

5. On the issue of pension amount so authorized, we find that the argument that a junior promoted to a senior rank should be pegged at a pension of his last but one rank (i.e. one rank junior to the one he retired), as proposed by the respondents is fallacious. It is also violative of the ratio and the principles laid by the Hon'ble Supreme Court in ***D.S. Nakara*** Vs. ***Union of India and Ors.*** [(1983) 1 SCC 125]. It is also not possible in rational calculations to peg the pension of a PBOR who has held the higher rank of Sergeant for less than ten months to be computed less than his pension in his previous rank (Corporal).

6. On the exact method of calculation, we find that in a judgment of the Tribunal, Regional Bench, Chennai in ***JWO P. Gopalakrishnan*** Vs. ***Union of India and Ors.*** (OA No.62 of 2014 decided on 13th February, 2015), the complete import and implication of the circular dated 2nd February, 2009,

Regulations for the Air Force Part I; GOI MoD letter dated 22nd November, 1983 has been explained. The Government Policy letters dated 7th June, 1999, 9th February, 2001 and 17th December, 2008 have been considered. Most significantly, the recommendations of the 6th CPC, accepted by Government of India through its letter dated 11th November, 2008 and the circular dated 2nd February, 2009, have also been considered. We find that the specific letter number being identical; in all probability the date of Government of India communication is 12th November, 2008 and not 11th November, 2008.

7. In consideration of all these issues as well as the circulars, the Tribunal, in that case, came to the conclusion that the basis of calculation being pursued in the instant case was detrimental for the pension of petitioner. To this end, we would like to quote Paragraph 14 of the order in the case of *JWO P. Gopalakrishnan* (supra), which reads as under:

> *For appreciating the rival contentions, we have gone through the Tables annexed with Circular 430 issued in pursuance of the policy letters dated 11.11.2008 by the Government of India. As per the Circular 430 in Table 116, we find the revision pension of Sergeant rank who has completed 20 years of service and retired after 01.04.2004 was fixed at Rs.3,694/-. The submission of the learned Central Government Standing Counsel as to the pension of Sergeants who retired on 01.05.2005 shall be Rs.3,694/- is found correct to that extent. However, when we go through the service pension payable to a JWO in Table 116 of Circular 430 having 20 years of service and retired after 01.04.2004 would be Rs,4,711/- and not Rs.3,358/- as put forth by the respondents. Therefore, the pension payable to the applicant*

as on 13.01.2005 in accordance with the policy letters of the Government of India dated 07.06.1999 and 09.02.2001 would be Rs.4,711/- and not Rs.3,694/-. Similarly, the benefits conferred upon the JWO as per the VI Central Pay Commission recommendations as tabulated in Table 116 of Circular 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01.2006 would be Rs.7,100/- and the revised pension with effect from 01.07.2009 would be Rs.8,720/-. When the benefits conferred upon the Armed Forces personnel on the changed policies have been clearly laid down in the Circular 430 containing several Tables, it ought to have been issued by the respondents without any request from the applicant. However, we find that the applicant had sought for payment of pension in the last held rank on several occasions and it was not heeded. The claim for pension is a statutory right and the respondents ought to have granted the entitled pension, admittedly, even without issuing any corrigendum in the PPO. This has been reiterated in various communications of the Government. Therefore, the respondents are under the obligation to revise the pension when it is brought to their notice of any defect in granting the pension. However, in this case, the respondents have not acceded to the plea of the applicant even when it was raised immediately after his retirement."

8. We are of the view that the respondents shall implement the calculation of pension for the applicant as mentioned above, as he is similarly placed like the applicant in *JWO P. Gopalakrishnan* (supra).

9. Accordingly, the instant OA is allowed. 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., **Naik** and in consonance with the principles of calculation that have been upheld in *JWO Gopalakrishnan* (supra) in this regard;

(ii) The applicant will be issued a fresh corrigendum PPO, subject to verification, in the last rank of **Naik** held within a period of three months and arrears paid accordingly, failing which, it shall carry interest @ 6% till payment.

10. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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