

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

3.

OA 1387/2024 with MA 1712/2024

WO Ram Sarup Bhardwaj (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Jitender Kumar Deo, Advocate
For Respondents : Mr. Vaibhav Sabharwal, Advocate

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

ORDER
26.04.2024

MA 1712/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 8097 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 1712/2024 is allowed and the delay of 8097 days in filing the OA 1387/2024 is thus condoned. The MA is disposed of accordingly.

OA 1387/2024

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

In the view of the facts mentioned in Para 4 and 5 of the OA, the applicant prays that this Hon'ble Tribunal be graciously pleased to allow the present application with cost of passing following orders/directions

- (a) To direct the respondents to revise the pension on the basis of the last rank held i.e. WO to the first applicant and as per the rank mentioned in rank from the date of discharge.*
- (b) To direct the respondents to pay 12% interest 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 1st May, 1964 and discharged from service on 31st May, 2001 after rendering 38 years of service. The applicant was promoted to the rank of Warrant Officer (WO) on 01.12.2000 from the rank of Junior Warrant Officer (JWO) and held this rank for 06 months but did not complete 10 months of service in the rank of Warrant Officer (WO). 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.

3. 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 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 20.03.2013 in OA 20/2012 of the AFT(RB) Kochi in case of *Ex Sergeant Vasudevan K. 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. 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:

“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.

7. The applicant further submits that this issue has already been settled in terms of the order of the AFT(PB) in OA 3803/2023 in the matter of *JWO Mohan Mehandiratta (Retd) Vs UoI & Ors.*

8. The judgment relied on behalf of the applicant makes 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 this Tribunal 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 WO 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.*

10. 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 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.

11. The OA 1387/2024 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. 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.

12. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/

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

15.

RA 62/2024 with MA 5111/2024 & 5112/2024 in OA
1387/2024

UOI & Ors. Applicant
VERSUS
WO Ram Sarup Bhardwaj (Retd.) Respondents

For Applicant : Mr. Vaibhav Sabharwal, Advocate
For Respondents : None

CORAM

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

ORDER
03.04.2025

RA 62/2024 has been filed by the applicant i.e. the Union of India & Ors. arrayed as respondents to the OA 1387/2024 disposed of vide order dated 26.04.2024 in OA 1387/2024 whereby it was directed to the vide Para 11 thereof, to the effect :-

"11. The OA 1387/2024 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. 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."

2. The prayer made vide MA 5111/2024 seeks condonation of 153 days delay in institution of the Review Application no. 62/2024 and the Review Application itself seeks the confinement of the grant of the arrears of the last rank pension to the applicant to a period of three years prior to the institution of the OA.

3. There is no representation on behalf of the respondents to the present application, that is of the applicant of the OA 1387/2024 who however has been served on 12.11.2024 with the advance notice of these applications as per record and is thus deemed to have been served.

4. Reliance is placed on behalf of the applicant on the order dated 20.12.2024 of the Hon'ble High Court of Delhi in WP(C) 6815/2024, whereby vide Para 13 thereof, it was directed to the effect :-

“13. In view of the above, the learned Tribunal has clearly erred in directing the revised pension to be paid to the respondent right from the date of his discharge instead of confining the relief to the period commencing from three years prior to the date of his filing the OA.”

5. In view thereof, the prayer made by the applicants that is the Union of India & Ors., seeking the modification of the directions dated 26.04.2024 in OA 1387/2024 to the extent that the grant of the arrears of a last rank pension be confined to commence to run from the period of three years prior to the

institution of the OA instituted on 03.04.2024 is allowed, the RA 62/2024 is thus disposed of, accordingly.

6. In view thereof, the PFO be thus issued by the Union of India & Ors. respondents arrayed to OA 1387/2024 in terms of directions dated 26.04.2024 therein as modified vide the order hereinabove within a period of two months without default failing which the respondents would be liable to incur the interest @8% p.a. till the date of payment.

7. As a consequence thereof, MA 5112/2024 filed by the applicants seeking a stay of the operation of the order dated 26.04.2024 in OA 1387/2024 is rendered superfluous and is disposed of, accordingly. Copy of this order be served on the respondents to the application of RA 62/2024 as well as on his counsel.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Yogita