

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

1.

OA 1463/2024 with MA 1829/2024

JWO Chaval Singh (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ram Niwas Bansal, Advocate
For Respondents : Mr. Vijender Singh, Advocate

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

ORDER
03.05.2024

MA 1829/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3566 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 1829/2024 is allowed and the delay of 3466 days in filing the OA 1463/2024 is thus condoned. The MA is disposed of accordingly.

OA 1463/2024

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

- “ (a) To quash and set aside the impugned order dated 10 Nov 2024, PPO No.08/14/B/06488/2004 dated 14 September 2004 and Corrigendum PPO No.08/14/B/Corr/20789/2005 dated 07 Jun 2005, to the extent the orders deny grant of pension for the rank of Junior Warrant Officer(JWO) to applicant, in contravention to the law settled on the subject; and*
- (b) To direct the respondents to grant the applicant pension as per the last rank of Junior Warrant Officer(JWO), held by him before his retirement, from the date of discharge and make payments of arrears, in consonance with the principle of calculation upheld in the case of JWO Gopalakrishnan (supra) in this regard;*
- (c) To direct respondents to issue amended PPO for the revised pension of the applicant in the rank of Junior Warrant Officer(JWO), w.e.f. 01.11.2004 and make payment of the arrears of pension alongwith 9% interest per annum and other consequential benefits, within a stipulated time;*
- (d) To grant such other relief appropriate to the fact and circumstances of the case as deemed fit, equitable and proper in the interest of justice.”*

2. The applicant was enrolled in the **Indian Air Force** on **09th October, 1984** and discharged from service on **31st October, 2004** after rendering 20 years of service. The applicant was promoted to the rank of Junior Warrant Officer(JWO) on 01.07.2004 from the rank of Sergeant(Sgt) and held this rank for 04 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.

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 Junior 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 03.02.2015 in OA No.62/2014 in case of *JWO P Gopalakrishnana Vs Union of India & Ors.* and a catena of 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 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 cases 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.

8. 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.*
9. 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.
10. The OA 1463/2024 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. Junior Warrant

Officer(JWO), 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.

11. 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

24.

MA 2236/2024 in OA 1463/2024

JWO Chaval Singh (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

ORDER
22.05.2024

MA 2236/2024 has been filed by the applicant seeking modification of the order dated 03.05.2024 in OA 1463/2024 with the following prayers:-

“(a) The correct date of impugned order may be amended as “10 Nov 2004” in para 1 (a) and condonation of delay of “7112 days” in para 1 of the aforesaid order.

“(b) Any other order which the Hon'ble Tribunal may deem fit and proper in the interest of justice.”

2. The records of OA 1463/2024 indicate that the date of the impugned order is 10.11.2004 and has apparently been erroneously mentioned as being 10.11.2024 on page 2 of the order dated 03.05.2024 in OA 1463/2024 in the first paragraph and it has been stated to the effect:-

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

*" (a) To quash and set aside the impugned order dated 10 Nov 2024, PPO No.08/14/B/06488/2004 dated 14 September 2004 and Corrigendum PPO (No * 0.08 / 14) / B /Corr/20789/2005 dated 07 Jun 2005, to the extent the orders deny grant of pension for the rank of Junior Warrant Officer(JWO) to applicant, in contravention to the law settled on the subject; and*

Which is thus rectified to read to the effect:-

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

*" (a) To quash and set aside the impugned order dated 10 Nov 2004, PPO No.08/14/B/06488/2004 dated 14 September 2004 and Corrigendum PPO (No * 0.08 / 14) / B /Corr/20789/2005 dated 07 Jun 2005, to the extent the orders deny grant of pension for the rank of Junior Warrant Officer(JWO) to applicant, in contravention to the law settled on the subject; and*

3. As regards, the other prayer made by the applicant submitting to the effect that the condonation of delay of 7112 days be granted in place of the prayer having been allowed vide order dated 03.05.2024 qua MA 1289/2024 whereby the condonation of delay was granted for a period of 3566 days in institution of the OA.Counsel for the applicant submits that the mentioning of the period of 3566 days in MA 1289/2024 has filed in OA 1463/2024 was an inadvertent error.On behalf of the respondents there is no opposition to the prayer even in relation to the period of condonation of delay in institution of the OA.

4. In view thereof, in the interest of justice the prayer made by the applicant seeking modification of the observations in the order dated 03.05.2024 qua MA 1289/2024 whereby the

condonation of delay 3566 days was allowed and it has been stated that the delay of 3466 days has been condoned, is modified to read to the effect that the delay of period of 7112 days is condoned.

5. The MA 2236/2024 is thus disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

AP