

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

44.

OA 2234/2024

Ex Sgt.(Radio Fitter) Daya Ram (No.604903K) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Mohan Kumar, Advocate  
For Respondents : Mr. Kuldeep Singh, Advocate

CORAM

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

ORDER  
04.09.2024

The applicant, Ex Sgt.(Radio Fitter) Daya Ram(No.604903K)  
vide the present OA makes the following prayers:

*“(a) To declare the applicant entitled to Service Pension as applicable to the rank of Sergeant with effect from 1.1.1996*

*(b) To direct the respondents to re-calculate and disburse the pension for the applicant as per his late rank of Sergeant and pay subsequent revisions of pension in accordance with GOI MoD Letter*

*No.B/39013/AG/PS4(A&C)/131/A/D/(Pen/Service)  
dated 9.2.2001, No.1(2)/2016-D(Pen-Pol) dated  
30.09.2016 and PCDA(P) Circular No.568 dated  
13.1.0.2016.*

*(c) To direct respondents to grant the entire arrears  
and other consequential benefits to the applicant  
alongwith 18% interest thereon.*

*(d) Any other relief which this Hon'ble Tribunal may  
deem fit and proper in the facts and circumstances of  
the case.*

2. The applicant was enrolled in the Indian Air Force on 6th April, 1972 and discharged from service on 31st December, 1987 after rendering 15 years of service. The applicant submits that despite discharge in the rank of Sergeant (Sgt) on 31.12.1987, the PPO No.08/14/B/12521/87 issued by the respondents indicated his rank as Corporal which is one rank lower than his actual rank of Sergeant and thus he was denied his entitled pension of the rank of Sergeant. Even in response to the representation/legal notice dated 18.03.2024 of the applicant, the respondents state vide their reply dated 12.04.2024 that as per records, the applicant was promoted to the rank of Corporal on 02.10.1980 and that he was never promoted to the rank of Sergeant. This is, despite the last rank mentioned in his discharge book as Sergeant in the Part-II certificate dated 31.12.1987. Despite order dated 12.07.2024, the respondents have not placed any document on record to refute the discharge book of the

applicant placed on the record of the OA and the last pay certificate placed at page 21 vide which the payment of the pay and allowances on 31.12.1987 to the applicant are in the rank of Sgt. Thus, the contents of the impugned letter dated 12.04.2024 cannot be accepted. 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 the matter is covered by the policy on the subject i.e. GoI, MoD Policy Letter No.1(2)/2016-D(Pen/Policy) dated 30.09.2016, PCDA(P) Circular No.568 dated 13.10.2016 read with GoI. MoD letter No.B/39013/AG/PS-43(A&C)/131/A/D(Pen/Services dated 09.02.2001 and a catena of judgments passed by the Armed Forces Tribunal.

4. The applicant places reliance on the order dated 29.01.2010 in TA No.339/2010 in case of *Ex JWO Bharat Singh Khatana Vs Union of India & Ors.* 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 judgment 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.

8. Thus, the respondents are required to implement the calculation of pension of the applicant in the rank of Sgt. 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 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.

10. The OA 2234/2024 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. Sergeant(Sgt) and in consonance with the principles of calculation that have been upheld in *JWO Gopalakrishnan* in this regard after proper verification of the service records of the applicant.
- (ii) The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him within three months and the arrears paid accordingly for a period of three years prior to the institution of the present OA filed on 01.07.2024 in view of the order dated 23.07.2021 of the Division Bench of the

Hon'ble High Court of Delhi in WP (C) 6815/2024 in the case of *UOI & Ors. vs Hav D Srinivasa Rao*, failing which, it shall carry interest @ 6% p.a. till actual payment.

However, after disposal of the issue in WP (C) 6815/2024 by the Hon'ble High Court of Delhi, it would be open to the applicant to seek redressal, if any, that he may be entitled to in accordance with law.

11. No order as to costs.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

/CHANANA/