COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

1.

OA 1513/2025 with MA 2241/2025

CPO (CHELP) Mahadev Kulkarni (Retd.) ..... Applicant

VERSUS

Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate with
Ms. Devangana Sharma, Advocate

For Respondents : Mr. R S Chhillar, Advocate

CORAM
HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
16.07.2025

MA 2241/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 11,620 days in filing the present OA. In the absence of any opposition from the respondents and in view of the judgments of the Hon'ble Supreme Court in the matter of *Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648]*, and in *Ex Sep Chain Singh Vs. Union of India & Ors.* (Civil Appeal No. 30073/2017) and the delay of 11,620 days in filing the OA 1513/2025 is thus condoned. The MA is disposed of accordingly.

2. The applicant vide the present OA makes the following prayers :-

> *"A. To direct the respondent to calculate and revise applicant's pension as per the Last rank CHELP/CO, the last rank held for 09 months before retirement, and in consonance with the principle of calculation, upheld in the case of JWO P Gopalakrishnan (Supra) and ratio of order pass by co-ordinate Bench, copy of same is placed at Annex-A4; and/or*
> *B. Direct the respondents to issue fresh/Corr PPO for the restructured and revised pension in the rank of C?P/CHELP from date of discharge (without restriction of arrears) in terms of Law settled and pay the arrears of pension with 8% interest; and/or*
> *C. Pass any other just and equitable order as you deem fit and proper in the interest of justice."*

3. The applicant was enrolled in the **Indian Navy** on **27th December, 1978** and was discharged from service on **31st December, 1993** in the rank of Chief Petty Officer(CPO) (CHELP) after rendering about 15 years and 04 days of service. The applicant was promoted to the rank of CPO on 1st April, 1993 vide promotion order No. 24726/93 dated 18.08.1993 issued by the respondents and held this rank for 09 months but did not complete 10 months of service in the rank of CPO(CHELP). The applicant submits that as per Policy decision dated 09.02.2001 and 12.11.2008, 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 is entitled for pension of the last rank held. Furthermore, the MoD letter No.17(4)/2008(1)/D(Pen/Pol) dated 12.11.2008 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 CPO as per PCDA (Pension) Allahabad Circular No. 551 dated 28.12.2015 wherein it has been clarified at Para 6 that revision under these order may be done on the basis of rank last held and not for the rank for which pensioned.

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 13.02.2015 in OA No.62/2014 in case of ***JWO P Gopalakrishnana*** Vs ***Union of India & Ors***, and also order dated 17.08.2021 in case of ***CPO KC Parida &***

Ors. Vs *Union of India & Ors* in OA 117/2018 and a 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:

"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 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 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 CPO/CHELP as he is similarly placed as the applicant in the case of ***JWO P Gopalakrishnan*** vs ***UoI & Ors.*** in OA 62/2014 decided on 03.02.2015, 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 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.

11. The OA 1513/2025 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. Chief Petty Officer(CPO), Subject to verification 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 four months and the arrears paid accordingly, *failing which*, it shall carry interest @ 6% till actual payment.

(iii) However, in view of the order dated 20.12.2024 of the Hon'ble High Court of Delhi in Writ Petition (C) 6815/2024, the grant of arrears of the last rank pension due to the applicant shall be confined to commence to run from the period of three years prior to the institution of the present OA instituted on 24.04.2025.

12. No order as to costs.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)

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