

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

6.

OA 22/2025 with MA 33/2025

JWO Mantri Sambaiiah (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate
with Ms. Nisha Singh, Advocate
Pankaj Sharma, DAV, Air Force

CORAM

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

ORDER
09.01.2025

MA 33/2025

This is an application filed by the applicant under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of 7571 days delay 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), the MA 33/2025 is allowed and the delay in filing the OA 22/2025 is thus condoned.

OA 22/2025

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 of JWO, held for 02 months before retirement, and in consonance with the principle of calculation, upheld in the case of JWO P Goplalakashnan as referred in the judgment (Supra) placed at Annex-A6&7; and/or

B. Direct the Respondent to issue fresh PFO for the restructured and revised pension in the rank of JWO w.e.f 30 Sep 2003 (date of discharge) in terms of law laid down by the 03 judge Bench of Hon'ble Supreme Court in Davinder Singh(Supra) and pay the arrears of pension with 10% interest; and/or

C. Pass any other just and equitable order as you deem fit and proper in the interest of justice."

3. Notice thereof is issued and accepted on behalf of the respondents.

4. The prayers that have been made by the applicant are premised on the submission to the effect after his having joined the services of the Indian Air Force on 20.09.1983, he was promoted to the rank of 'JWO' on 01.08.2003 and was discharged from the services of the Air Force in the rank of 'JWO' on 30.09.2003, but the Air Force Authorities have not granted him pension in the last rank and vide an impugned letter dated 02.12.2024 no. Air

HQ/99798/690436/21/SPARSH/Pre-06/DAV, it has been stated to the effect:-

“As per policy in vogue, prior to 01 Jan 06 an individual had to serve for a period of 10 months in present rank for grant of pension of that rank. As per records available at this office you had served 02 months of service in the rank of JWO (Last Rank Held). Hence, you have been sanctioned pension for the rank of Sgt instead of JWO. Hence, you are not eligible for JWO rank pension.”

5. Whilst accepting notice on behalf of the respondents, learned counsel for the respondents fairly does not dispute the prayers made by the applicant seeking the grant of last rank pension in the rank of ‘JWO’, subject to verification of dates of promotion of the applicant in view of the settled law.

6. In view of the verdict of the Hon’ble High Court of Delhi in Writ Petition (C) 6815/2024 dated 20.12.2024 read with the order dated 23.07.2024 in the said Writ Petition (C) 6815/2024 itself, in the case of *UOI & Ors vs Hav D Srinivasa Rao (Retd)*, whereby vide order dated 23.07.2024, it had been observed in similar circumstances to the effect:-

“ORDER
23.07.2024

1. xxx

2. *The petitioners’ challenge to the impugned order is premised on two grounds. The first being that the directions to the petitioners to grant pension of the rank of Havaldar to the respondent, even though he had not completed 10 months of service as a Havaldar at the time of his superannuation is erroneous. The second ground being that the Tribunal, has without appreciating the fact that the O.A. was filed in the year 2022 wrongly directed that arrears of revised pension be paid to the respondent w.e.f. 01.01.2001.*

3. *Insofar as the first plea of the petitioners is concerned, we find that the learned Tribunal has relied on the decision of its Regional Bench at Chennai in O.A. 62/2014 titled JWO Gopalakrishnan v. UOI & Ors. Having perused the said decision, which was unsuccessfully assailed before the Apex Court, we find no merit in this plea of the petitioners. However, we are prima facie inclined to accept the petitioners’ second plea that arrears of revised pension could not have been directed to be paid to the respondent w.e.f. 01.01.2001 and the same should have been restricted to a period of 3 years to the date of filing of the O.A.*

4. xxx

5. xxx.”

and vide order dated 20.12.2024:-

1. xxx

2. xxx

3. xxx

4. Aggrieved by the above order, the present petition has been filed inter alia on two grounds: the first being that the respondent was not entitled to the benefit of his rank of Havildar as he had not completed 10 months of service in the said rank before his superannuation; the second being that the learned Tribunal has erred in directing the payment of the pension with effect from 01.01.2001 though the OA was filed by the respondent before the learned Tribunal only on 31.10.2022.

5. This Court, as far as the first ground is concerned, rejected the same vide its Order dated 23.07.2024, observing as under:

“3. Insofar as the first plea of the petitioners is concerned, we find that the learned Tribunal has relied on the decision of its Regional Bench at Chennai in O.A. 62/2014 titled JWO Gopalakrishnan v. UOI & Ors. Having perused the said decision, which was unsuccessfully assailed before the Apex Court, we find no merit in this plea of the petitioners. However, we are prima facie inclined to accept the petitioners’ second plea that arrears of revised pension could not have been directed to be paid to the respondent w.e.f. 01.01.2001 and the same should have been restricted to a period of 3 years to the date of filing of the O.A.”

6. xxx

7. xxx

8. xxx

9. xxx

10. xxx

11. xxx

12. xxx

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.

14. *We, therefore, partially allow this petition and modify the directions given by the learned Tribunal in its Impugned Order, by directing that the revised pension shall be paid by the petitioners to the respondent commencing from three years prior to the filing of the OA before the learned Tribunal and to be continued to be paid in future.*

15. xxx.”

(emphasis supplied)

the said issue is no more *res integra* and the applicant is undoubtedly entitled to the grant of the last rank pension of the last rank held by him:

7. However, in view of the order dated 20.12.2024, in the said Writ Petition (C) 6815/2024 of the Hon'ble High Court of Delhi itself, the OA is allowed subject to verification of the date of promotion of the applicant with the grant of the arrears of the last rank pension of the applicant being confined to commence to run from a period of three years prior to the institution of the instant OA instituted on 24.12.2024.

8. The requisite PPO be issued by the respondents and the payments be made in terms of the directions hereinabove within a period of three months from the date of receipt of copy of this order, failing which, the applicant would be entitled to interest @ 6% per annum, till the date of payment.

9. In terms of the directions dated 21.10.2022 in OA 2392/2022 of this Tribunal in *JWO Ram Chander vs UIO & Ors*, the calculation of the last rank pension of the applicant is directed to be made in terms of the directions in the case of *JWO P. Gopalakrishnan vs UIO & Ors* in OA 62/2014 decided on 13.02.2015.

10. A submission has further been made on behalf of the applicant to the effect that in relation to the confinement of the grant of the last rank pension to the applicant to commence to run from a period of three years prior to the institution of the OA, the applicant may be granted liberty to seek redressal if any permissible in accordance with law. Such liberty as prayed is granted.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL) DHIREN VIG
MEMBER (A)

AP
09.01.2025