

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

1.

OA 1744/2025

MWO Bishwanath Sinha (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Nandita Lal, Advocate for
Mr. S S Pandey, Advocate
For Respondents : Ms. Deepti Kathpalia, Advocate
Sgt Pankaj Sharma, DAV Incharge Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
21.11.2025

On behalf of the respondents it is submitted that the refund of the amount recovered despite order dated 30.05.2025 has since been made to the applicant. The recovery has already been stopped from the month of October 2025 as stated on behalf of the respondents on 31.10.2025.

2. The prayers made by the applicant vide the present OA were to the effect:-

"8. RELIEF (S) SOUGHT:

In view of the facts mentioned in Para 4 and 5 above, the Applicant prays that this Hon'ble Tribunal may be graciously pleased to allow the present application with exemplary costs/damages by passing following orders/directions: -

a) Call for the Records based on which the Respondents did not grant the benefit of last rank pension to the Applicant from the date of his retirement by extending the Applicability of the Policies dated 07.06.1999, 09.02.2001 as well as 11.11.2008 as also the records based on which the Respondents have now revised the pension of the Applicant by issuing corrigendum PPO dated 02.05.2025 of only reducing the rank of the Applicant but also his pension from Rs.35,063/- to Rs.32,614/- which is now sought to be recovered from him and thereafter, quash all such orders including the corrigendum PPO dated 02.05.2025.

b) Direct the Respondent to pass necessary orders by restoring the pension of the Applicant based on his earlier PPO in the rank of MWO with further direction to grant him arrears of such pension as well as restoration of any recovery if carried out in the meanwhile by making such payment of recovered amount and arrears from the date of his retirement with interest @18% in time bound manner.

c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.

9. INTERIM ORDER, IF ANY PRAYED FOR:

a) That from the facts & circumstances brought-out in the instant OA it emerges that the Applicant has a good case to succeed and balance of convenience also lies in his favour. However, having regard to the time constraint, the instant OA is unlikely to be disposed of in near future, therefore, it is most humbly prayed that this Hon'ble Tribunal may be pleased to allow the Applicant's interim prayer by passing the orders/ directions to Stay the operation of the Impugned PPO dated 02.05.2025 and restrained the Respondent from carrying out any recovery from his pay and allowances till the disposal of the present OA or till further Orders whichever is later.

b) Pass any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.”

3. The counter affidavit filed by the respondents does not refute the factum of the applicant having been designated as 'MWO' on 01.08.1997, in as much as in para 14 of the counter affidavit of the respondents it is stated as under:-

"14. That in reply to contents of corresponding paragraph 5 A to P it is submitted that 5 A to P It is clarified that if pension is revised in the rank of MWO which will be as per ibid policy, then it will not be beneficial to the applicant as pension will be revised on minimum of pay scale for the rank of MWO which is lesser than maximum pay scale of WO Petitioner was promoted to the rank of WO wef 01 Aug 1997 and retained the rank till discharge date i.e. for a period of 06 months only. The minimum period to earn service pension in the last rank held at the time of discharge was 10 months. Hence, as per the extant policies, applicant was granted pension for the rank of WO."

4. The applicant places reliance on the order dated 04.01.2022 in OA 2728/2021 in case of *EX JWO Rakesh Kumar Tanwar & Ors 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 in OA 1038/2017 in the matter of *Ex-JWO Krishna Moorthy K & Ors. Vs UoI & Ors.*

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 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. The respondents vide their counter affidavit dated 10.09.2025 vide para 14 have sought to assert, to the effect that the grant of the

last rank pension to the applicant would not be beneficial to him. The said submission is wholly incoherent and cannot be accepted as the applicant in terms of the settled law and the verdict in *JWO P Gopalakrishnan* (supra) as upheld by the Hon'ble Supreme Court in *Ex JWO Bharat Singh Khatana' case* (supra) is entitled to the grant of last rank pension.


10. In view thereof, the OA 1744/2025 is disposed of with directions to the respondents to ensure that the grant of the last rank pension in the rank of MWO to the applicant is continued to be paid. This is so as the Pension Slip for October 2025 filed by the respondents show the Rank of the Applicant as 'Master Warrant Officer'.

11. The OA 1744/2025 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. Master 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 @ 8% p.a. 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 29.05.2025.

12. No order as to costs.


(JUSTICE ANU MALHOTRA)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)

AP
21.11.2025