

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

OA 2716/2023

Ex Hav Avninder Kumar Pandey ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Mr. VS Mahndiyan, Advocate

CORAM

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

ORDER

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

*“(a) To direct the respondents to revise the pension of the Applicant on the basis of the last rank held by him i.e. Havildar (Hav) from the date of discharge (01.04.1998).*

*(b) To direct the Respondents to refund the recovered pension since February 2023.*

*(c) To grant stay on recovery of amount Rs.8746/- per month. The amount is being recovered on the account of Pension reduced as fixed at the rank of Naik Instead of Havildar.*

*(d) To direct the respondents to pay 12% interest on the arrears of pension as per the judgments passed by this Hon'ble Tribunal.*

*(e) To issue a corrigendum PPO in respect of the Applicant reflecting the Last Rank held and the pension be revised accordingly.*

*(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”*

2. The applicant 14247248P Ex Hav Avninder Kumar Pandey was enrolled in the Indian Army on 02<sup>nd</sup> December, 1982 and discharged from service on 1<sup>st</sup> April, 1998 after rendering more than 15 years of service. The applicant was promoted to the rank of Havildar (Hav) on 17.07.1997 from the rank of Naik(Nk) and held this rank for 08 months and 15 days in his last rank but did not complete 10 months of service in the rank of Havildar (Hav). 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 5<sup>th</sup> 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 Havildar (Hav) 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 other orders of the Armed Forces Tribunal.

5. The respondents in the counter affidavit filed on 05.01.2024 have stated as as under:-

*"2. that the petitioner was promoted to the rank of Havildar w.e.f. 17 July 1997 as published vide Signals Records Part II Order No. CA/481/0117/1997 and discharged from service on 31 Mar 1998 (AN). The petitioner had not completed minimum 10 months of Mandatory Physical Service in the last rank(Havildar).*

*3. That as per Para 133 of Pension Regulations (1961) (Part-I), "Service Pension is assessed on the lowest substantive rank held by an individual and the lowest group for which he is paid, during the last two years of his service" and the same has been revised under Para 48 of Pension Regulations 2008 (Part-I):-*

*(a) Service pension shall be assessed on the basis of the rank actually held by an individual regardless of whether it is held in a substantive or paid acting capacity, and the lowest group for which he is paid, during the last 10 months of his service.*

*(b) Pension in respect of individual granted Assured Career Progression (ACP) upgradation will be calculated based on the maximum of the pay scale granted under ACP upgradation including 50% of the highest classification allowance, if any, of the rank held and group in which paid subject to the condition that the upgraded pay scale should be held continuously for 10 months preceding his discharge from service.*

*Notes: Condition of 10 months service will not be required to be fulfilled by the Personnel Below Officer Rak who is granted Hony Commission and who retires on completion of tenure of appointment or is discharged on account of causes beyond his control." (Emphasis supplied)*

Thereafter, in para 5 of the counter affidavit, it has further been stated:

*"5. That in the instant case, the petitioner was promoted to the rank of Havildar on 17 Jul 1997 and discharged from service wef 31 Mar 1998 (AN) as per Army Rule 13 (3) item III(iv) at his own request on compassionate grounds without completing 10 months of mandatory physical service in his present rank. The petitioner had completed only 08 months and 15 days in his last rank. Hence, he was not eligible for pension in the rank Havildar and was granted pension of the rank of Naik."*

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 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 No.93/2014 by the AFT (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 Havildar (Hav) 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. Significantly, vide order dated 18.09.2023 in the past proceedings it was directed to the effect:-

*"2. To issue a Corrigendum PPO in respect of the Applicant reflecting the last rank held and the pension be revised accordingly. To grant such other relief appropriate to the facts and circumstances of*

*the case as deemed fit and proper. Notice of the OA is issued and accepted on behalf of the respondents. As regards prayer clause-(a) on behalf of the respondents it is submitted that there is no opposition to the prayer made by the applicant, subject to verification qua the applicant having held the last rank of Havildar from the date of discharge i.e. 01.04.1998 which prayer is allowed in view of the order 21.12.2015 in JWO P. Gopalkrishnan vs. Union of India and Ors. in OA 62/2014 of AFT (PB) as adhered to by this Tribunal in a catena of the orders.*

*3. The requisite corrigendum PFO be issued by the respondents with the calculation and sanction of the pension of the applicant accordingly for payment of the pension to the applicant of the pension on the date of discharge and the last rank held by him as Havildar till the date of payment with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, failing which, the respondents would be liable to pay interest @ 6% p.a. on the arrears due from the date of this order.*

*4. Qua the remaining prayers made through the present OA, notice thereof is issued and accepted on behalf of the respondents. The counter affidavit be filed by the respondents within a period of four weeks. Rejoinder, thereto, if any, be filed by the applicant within a period of four weeks thereafter."*

Thus the prayer (a) was allowed vide the last order dated 18.09.2023 in OA 2716/2023 subject to verification of the facts averred therein. However, the arrears of the last rank pension are now confined to commence to run from a period of three years prior to the institution of the present OA on 04.09.2023 in view of order dated 20.12.2024 of the Hon'ble Delhi High Court in WP(C) No.6815 of 2024.

11. The respondents are thus directed as under:-

- (i) Calculate the pension of the applicant based on the last rank held by him before retirement i.e.Havildar(Hav), and in consonance with the principles of calculation that have been upheld in *JWO Gopalakrishnan* in this regard; and
- (ii) The applicant be accordingly issued a fresh Corrigendum PPO in the last rank held by him within two months and the arrears be paid accordingly in terms of para 10 hereinabove, *failing which*, it shall carry interest @ 6% till actual payment, with it being directed that the arrears shall commence to run from a period of three years prior to the institution of this OA instituted on 04.09.2023.

12. Furthermore, interim relief granted vide order dated 18.09.2023 is made absolute and the respondents shall make no recovery whatsoever from the pension of the applicant on the ground of granting of the rank of Naik in place of Havildar, as the applicant is entitled to the pension in the last rank held by him of Havildar.

13. It is observed that the respondents are routinely filing their counter affidavits based on the old Rules and Regulations and have not updated themselves with the

verdict of the Hon'ble Supreme Court and the High Court of Delhi and with the law laid down vide a catena of orders of this Tribunal. This is a sorry state of affairs as far as the respondents are concerned as they continue to file their counter affidavits in a very casual manner. The respondents are directed to be careful in future in filing their counter affidavits before this Tribunal.

14. No order as to costs.

Pronounced in the open court on 6 day of March, 2025.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

/vb/