

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

22.

OA 4423/2024 with MA 4602/2024

266668-H Ex JWO Amod Ranjan Mitra Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Ms Deepti Kathpalia, Advocate

CORAM

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

ORDER
26.05.2025

MA 4602/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 14309 days 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 and the reasons mentioned, the MA 4602/2024 is allowed and the delay of 14309 days in filing the OA 4423/2024 is thus condoned. The MA is disposed of accordingly.

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

“(a) To direct the respondents to bring all documents on record about fixation of the pension of the applicant since his discharge.

(b) To direct respondents to revise the pension of the applicant on the basis of the last rank held by him i.e. Junior Warrant Officer(JWO) wef 01.01.1996 to 31.05.2005 as per Policy Letter 09.02.2001.

(c) To direct the respondents to demonstrate the fixing of pension of the applicant and raise the recovery.

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

(e) To issue a Corrigendum PPO in respect of the applicant reflecting the rank last 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 was enrolled in the Indian Air Force on 21st January, 1964 and was discharged from service on 31st January, 1985 on completion of his terms and condition of service. The applicant was promoted to the rank of Junior Warrant Officer(JWO) on 01.08.1984 from

the rank of Sergeant and held this rank for 06 months but did not complete 10 months of service in the rank of Junior Warrant Officer(JWO). 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 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 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 Junior Warrant Officer 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 17.04.2017 in OA 882/2016 in case of *EX JWO Ashok 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 vide order dated 16.01.2015 in OA 93/2014 of the (AFT) (RB) Chennai and catena of other orders of the Armed Forces Tribunal.

5. The respondents initially through their counter affidavit dated 02.04.2025 submitted that the applicant was sanctioned service pension @ Rs.245/- p.m. with effect from 01.02.1984 for the rank of Sergeant vide PPO No.AF/S/C/416/85 but the promotion record of the applicant to the rank of JWO is not available in the Long Roll. It has, however, been stated in the said counter affidavit itself that other documents reveal that the applicant was promoted to the rank of Junior Warrant Officer(JWO) w.e.f. 01.08.1984 and retained this rank till the date of discharge i.e. for a period of six months, whereas the minimum period to earn service pension in the last rank held is 10 months. The respondents further submit that as per the PCDA(P) Allahabad Circular No.568 dated 13.10.2016 the applicant is entitled for revised pension in the last rank held i.e. JWO with effect from 01.01.2006.

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. Thus, the respondents are required to implement the calculation of pension of the applicant in the rank of JWO 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.*

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 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.
11. The OA 4423/2024 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. Junior 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 @ 6% till actual payment.
 - (iii) However, in view of the order dated 20.10.2024 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 04.10.2024.

12. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/26.05.2024