

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 90/2025

Air Cmde S Bahukhandi VSM(Retd.) ... **Applicant**
Versus
Union of India &Ors. ... **Respondents**

For Applicant : Shri Y. Venugopal, Advocate
For Respondents : Shri Jagdish Chander, Advocate

CORAM :
HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

Brief Facts

The applicant has filed this application invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007 and he claims for grant of pension and other non-effective (Retirement) benefits in the rank of Air Cmde from the date of his superannuation from the service.

2. The applicant was commissioned in the Indian Air Force on 16.12.1989 and superannuated in the rank of Air Cmde on 29.02.2024 after rendering 34 years 02 months 16 days of service. It is an admitted position that the applicant was

holding the rank of GP Captain (Substantive) wef 01.01.2016 and was holding the rank of rank of Air Cmde (Substantive) wef 01.10.2022, for which Gazette notification was yet to be vetted. Though the applicant performed the duties of Air Cmde for about 1 year 5 months but due to the non-vetting of the Gazette Notification for the rank of Air Cmde (Substantial), the applicant has been granted the pension and non-effective benefits of the rank of GP Captain (Substantive) vide PPO No. 501202400033 dt. 24.01.2024, and not of the rank of Air Cmde, for which Gazette Notification is yet to be vetted. The grievance of the applicant is that even though, the last rank held by him at the time of retirement is that of Air Cmde, the respondents have not granted him the pension on the aforesaid rank, but are still granting him pension in the lower rank held by him i.e. GP Captain (Substantive). A representation had been submitted by the applicant on 18.06.2024 to the respondents and since no action was taken on the same, the applicant has now filed this OA 90/2025.

Contentions of the Parties

3. Learned counsel for the applicant submitted that the applicant was promoted to the rank of Air Cmde (Substantive) on 01.10.2022 and retired on 29.02.2024 and drawing the basic pay of Rs. 2,17,600/- however, his Pension and other Non-Effective retirement benefits had been fixed in the rank of Gp Capt (Substantive) on basic pay of Rs. 2,15,900/- stating the reason that the Gazette Notification with regard to applicant has not yet vetted. It is further contended by the counsel that it is more than two and a half years since he was granted the rank of Air Cmde, however, till date the respondents have neither published the gazette nor have they re-fixed the pension and other retirement benefits as per the Basic Pay being drawn by him at the time of his superannuation.

4. Per contra learned counsel for the respondents drew our attention to the Regulation-28 of the Pension Regulations for the Air Force 1961 (Part-1) stating that the retiring pension is based on the substantive rank held at the time of retirement. It was further submitted by them that as per Certificate of Service (CoS)

dt. 23.05.2023, the applicant was holding the rank of Gp Capt (Substantive) wef 01.01.2016 and Air Cmde (Substantive) wef 01.10.2022, though the Gazette for the later rank is yet to be vetted, therefore, his pension was sanctioned based on the rank of Gp Capt (Substantive).

Analysis

6. Heard rival submissions made by both the parties and perused the record.

7. The issue involved in this application has already been decided by the Coordinate Bench' of this Tribunal in the case of **Gp Captain Prabhakar Zola v. Union of India & Ors.** (OA 1763/2021) decided on 29.05.2023, wherein taking note of the case of **Gp Capt Rajendra Kumar Joshi (Retd.) and Others v. Union of India & Others** (TA No. 2/2003) decided on 18.05.2023 and also the law laid down in the case of **JWO Pramod Kumar Singh and Others v. Union of India and Others** (OA No. 1166/2017), **JWO Ashok Kumar Tanwar v Union of India and Others** (OA No. 882/2016), wherein it has been held that waiver of 10 months period as stipulated in Para

123 of the Pension Regulations for Air Force 1961 could be granted and pension cannot be denied to an individual in a rank to which he had already been promoted. In the instant case applicant has already been promoted and served in the rank of as Air Commodore (substantive) for a period of 17 months. However, he has been denied the pension and other non-effective (Retirement) benefits in the rank of Air Cmde for the reason that the Gazette Notification has not yet vetted. The applicant was drawing a basic pay of Rs. 2,17,600 however, his pension and other non-effective retirement benefits were fixed in the rank of GP Captain in the basis pay of Rs. 2,15,900 only. Merely because there is no Gazette Notification issued, benefit of the Last Rank Pension to which the applicant was promoted cannot be denied. In a similar case of Gp Capt Rajendra Kumar Joshi (supra) in Para 2 to 7, it has been held as under:

2. Though the respondents concede that the requirement of holding the last rank before retirement has been dispensed with, keeping in view Government of India Circular dated 09.02.2001, they, however, contended that they are correct in giving pension to the applicant in the lower rank as it is financially more beneficial.

3. We find that there is a catena of judgments of various Benches of the Armed Forces Tribunal on this issue. Consequently, the fact that the applicant is entitled to pension in the last rank held by him, even if he held it for duration of less than 10 months, stands clearly established.

4. On the issue of pension amount so authorized, we find that the arguments that a junior promoted to a senior rank (e.g. Gp Capt, JWO, MWO or WO) should be pegged at a pension of his last but one rank (i.e. one rank junior to the one he retired), as proposed by the respondents is fallacious. It is also violative of the ratio and principles laid down by the Hon'ble Supreme Court in **D.S. Nakara Vs. Union of India (1983 (1) SCC 125)**. It is also not possible, in rational calculations, to peg the pension of a PBOR, who has held the higher rank for less than ten months, to be computed a pension for his previous and lower rank. Additionally, all future pay revisions due to new Pay Commission and five yearly OROP revision are primarily based on two factors i.e. last rank held and years of service, hence reflection of a lower rank in PPO as compared to the actual higher rank (held for less than 10 months) is bound to reduce future upgradation and revision of pension.

5. On the exact method of calculation, we find that in a judgment of the Tribunal, Regional Bench, Chennai in **JWO P. Gopalakrishnan Vs. Union of India & Others** (O.A No. 62 of 2014 decided on 13.02.2015), the complete import and implication of Circular dated

02.02.2009, Regulations for the Air Force Part I and the GoI MoD letter dated 22.11.1983 has been explained. The Government Policy letters dated 07.06.1999, 09.02.2001 and 17.12.2008 have been considered. Most significantly, the recommendations of the 6th CPC, accepted by Government of India through its letter dated 11.11.2008 and Circular dated 02.02.2009, have also been considered. We find that the specific letter number being identical, in all probability, the date of Government of India communication is 12.11.2008 and not 11.11.2008.

6. In consideration of all these issues as well as circulars, the Tribunal, in that case, came to the conclusion that the basis of calculation being pursued in the instant case was detrimental for the pension of petitioner. To this end, we would like to quote Para 14 of the order in the case of JWO P. Gopalakrishnan (supra), which reads as under:

14. For appreciating the rival contentions, we have gone through the Tables annexed with Circular 430 issued in pursuance of the policy letters dated 11.11.2008 by the Government of India. As per the Circular 430 in Table 116, we find the revised pension of Sergeant rank who has completed 20 years of service and retired after 01.04.2004 was fixed at Rs.3,694/-. The submission of the learned Central Government Standing Counsel as to the pension of Sergeants who retired on 01.05.2005 shall be Rs.3,694/- is found correct to that extent. However, when we go through the service pension payable to

a JWO in Table 116 of Circular 430 having 20 years of service and retired after 01.04.2004 would be Rs.4,711/- and not Rs.3,358/- as put forth by the respondents. Therefore, the pension payable to the applicant as on 13.01.2005 in accordance with the policy letters of the Government of India dated 07.06.1999 and 09.02.2001 would be Rs.4,711/- and not Rs.3,694/-. Similarly, the benefits conferred upon the JWO as per the VI Central Pay Commission recommendations as tabulated in Table 116 of Circular 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01.2006 would be Rs.7,100/- and the revised pension with effect from 01.07.2009 would be Rs.8,720/-. When the benefits conferred upon the Armed Forces personnel on the changed policies have been clearly laid down in the Circular 430 containing several Tables, it ought to have been issued by the respondents without any request from the applicant. However, we find that the applicant had sought for payment of pension in the last held rank on several occasions and it was not heeded. The claim for pension is a statutory right and the respondents ought to have granted the entitled pension, admittedly, even without issuing any corrigendum in the PPO. This has been reiterated in various communications of the Government. Therefore, the respondents are under the obligation to revise the pension when it is brought to their notice of any defect in granting the pension. However, in this case, the respondents have not acceded to the plea of the applicant even when it was raised immediately after his retirement.

7. We find that the applicant is entitled to revised pension from the date of discharge in the rank last held by him on that date in accordance with Govt. of India (MoD) letters dated 07.06.1999 and 09.02.2001 and the respondents need to implement the calculation of revised pension for the applicant w.e.f 01.01.1996.

8. After the decision in the case of Gp Captain Prabhakar Zola, Review Application (RA) 31/2023 was preferred by Union of India on the ground that no Gazette Notification showing the applicant on the post of Gp Captain was vetted and in the absence of non-availability of the Gazette Notification for the Higher Rank in respect of the applicant therein, the Last Rank Pension benefit cannot be given. The Coordinate Bench taking note of this fact that there is already a request made for endorsement of DGN for the rank of Gp Captain and to grant him pension in the last rank of Gp Captain and merely because there is no Gazette Notification issued, benefit of the Last Rank Pension to which the applicant was promoted cannot be denied. In the above facts and circumstances, RA 31/2023 in OA 1763/2021 filed by the respondents got dismissed by an order dt. 21.08.2023.

9. The orders passed in the case of Gp Captain Prabhakar Zola (Supra) as well as in the cases of JWO Pramod Kumar Singh (Supra) and JWO Ashok Kumar Tanwar (Supra) are squarely applicable to the present case also.

10. In view of the aforestated, OA 90/2025 is allowed. Subject to verification, the respondents are directed as under:

- (i) Calculate the pension of the applicant based on the last rank held by him before retirement i.e. Air Cmde and in consonance with the principles of calculation that has been upheld in the judgment of JWO P. Gopalakrishnan (supra) in this regard; and
- (ii) The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him and arrears be paid accordingly within a period of three months w.e.f. date of retirement. It shall carry interest @ 8% till actual payment, failing which, the Rate of Interest (ROI) will be enhanced to 10%.

11. No order as to costs.

12. Pending miscellaneous applications, if any, stands closed.

Pronounced in the open Court on this 17th of October, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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