

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.62 of 2014

Friday, the 13th day of February 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

JWO P. Gopalakrishnan, aged 49 years
Ex. No.696008 A of Indian Air Force
22B, First Street
Jyothi Venkatachalam Nagar
Madambakkam
Chennai-600 073.

.. Applicant

By Legal Practitioners:
M/s. KSL Narain
& B.Ashok Kumar

vs.

1. The Union of India,
Rep. by its Secretary
Ministry of Defence
New Delhi-110 011.

2. The Air Officer Commanding
Air Force Record Office
Subroto Park, New Delhi-110 010.

3. The Principal Controller of Defence
Accounts (Pensions)
Office of the PCDA (P)
Draupadi Ghat
Allahabad, U.P. 211 014.

.... Respondents

By Mr. S. Haja Mohideen Gisthi, SCGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. This application is filed by the applicant for the relief of re-fixing his pension in his last held rank of JWO in X Group with effect from his date of discharge, i.e., 01.05.2005 and for payment of arrears with costs.

2. The factual matrix of the applicant's case would be as follows:-
The applicant submits that he was enrolled in Engine Technical Trade in Indian Air Force on 27.04.1985. Due to his exceptional performance of trade duties, he was posted to IMTRAT, PARO (Bhutan) where the IAF element was having only one Engine Fitter vacancy. The applicant was promoted to the rank of Sergeant on 01.06.1997 on completion of 12 years of service. The applicant was expecting promotion to the higher rank of JWO, but due to new promotion policy, he could not get it. Consequent to the new promotion policy, he could get promotion only on 01.12.2004. Though the applicant was discharged in the rank of JWO, the rank pension for the applicant was Sergeant as per his Original PPO and Corrigendum PPO. The applicant was granted with pension only for the rank of Sergeant on the ground that the applicant did not render service for a minimum period of seventeen (17) months in his last held rank, i.e., JWO. After implementation of VI CPC, the applicant's pension was revised to Rs.5786/- which is applicable for

Sergeant rank and accordingly arrears were credited to his pension account in December 2008. The applicant sent reminders to respondents-2 and 3 for fixing his pension at the rank of JWO of "X" Group. However, the second respondent advised the applicant to follow the guidelines issued vide Circular No.430 dated 02.02.2009 in revising the pension with effect from 01.01.2006. The applicant submits that consequent to the implementation of the Government's decision on the recommendations of VI CPC, the first respondent issued orders dated 18.08.2010 directing all the three services to determine the service pension for the PBOR ranks discharged from the service on or after 01.01.2006 only on the basis of the rank/group lastly held by the individual, even if the rank/group was held for less than 10 months before discharge/invalidment. It is also submitted by the applicant that in the year 2001, the first respondent granted certain benefits for all pre-1996 retirees of Armed Forces personnel also. The applicant further submits that in similar matters, the Hon'ble AFT Principal Bench and the AFT Regional Bench, Kochi delivered judgments in T.A.No.339 of 2010 and O.A.No.135 of 2010 upholding that the applicants were entitled to pension of the rank of JWO in terms of Government letter dated 09.12.2001. It is just and necessary that the respondents be directed to issue orders extending similar benefits to the applicant. The applicant therefore requests that this application may be allowed.

3. The contentions raised in the Reply Statement of the respondents would be as follows:

The applicant's enrolment and the service particulars are not denied by the respondents. As per Regulation 122 of Pension Regulations for the Air Force 1961 (Part-I) and GOI MOD letter dated 22.11.1983, pension to an Army person is assessed in the lowest acting paid rank or substantive rank and lowest group held by him during the last ten months of his service qualified for pension. Further as per Regulation 123 of Pension Regulations for Air Force (1961), a competent authority can condone a deficiency of service in a particular rank not exceeding three months except on voluntary retirement. The applicant did not complete the requisite minimum period of seven (7) months in the last rank to make him eligible for condonation in the last rank service. Accordingly, he was rightly sanctioned service pension of Rs.3,694/- p.m. with effect from 01.05.2005 for Sgt (Group-X). The respondents submit that the facts and circumstances of the present case is squarely covered by the judgment passed by the Hon'ble AFT, Principal Bench, New Delhi in T.A.No.339 of 2010 dated 29.01.2010 which is being challenged before the Hon'ble Apex Court and the case is pending for adjudication. Therefore, the respondents request that this application may be dismissed.

4. On the above pleadings, the following points have emanated for decision:

(1) Whether the applicant is entitled for re-fixation of pension at his last held rank of JWO in X Group from the date of discharge, i.e., 01.05.2005?

(2) To what relief, the applicant is entitled for?

5. We heard Mr. KSL Narain, learned counsel for the applicant and Mr. S.Haja Mohideen Gisthi, learned SCGSC assisted by Sgt. Gyan Prakash, Legal Cell, Air Force. We also perused the documents produced and the records submitted on either side. We have also given our anxious thoughts advanced on either side.

6. **Point No.1:** The indisputable facts are that the applicant was enrolled in Indian Air Force on 27th April 1985 in Engine Technical Trade and was serving to the fullest satisfaction of his superiors, that he was promoted to the Sergeant rank on 01.06.1997 on completion of his twelve (12) years of service, that the applicant was thereafter promoted to the rank of Junior Warrant Officer only at the fag end of the year 2004, i.e., on 01.12.2004 and he had served in the said rank for about 5 months till he was discharged from service on 30.04.2005 and that the applicant was sanctioned service pension of Rs.3694/- per month

with effect from 01.05.2005 for the rank of Sergeant (Group-X) vide PPO No.08/14/BN/11106/2005.

7. However, the applicant has claimed service pension for the rank of JWO he held lastly as per the change of policy of Government expressed in the letters dated 07.06.1999, 09.02.2001 and 17.12.2008. According to the applicant, the rules relied upon by the respondents are not in vogue and the pension was sanctioned to the applicant in the Sergeant rank for the reason that the applicant did not complete the period of ten (10) months or seven months (7) after condonation, if granted in the last rank to make him eligible for a pension in the last rank service after condonation. The learned counsel for the applicant would submit in his written argument that the Government of India, Ministry of Defence letters dated 07.06.1999 coupled with another letter dated 09.02.2001 clarified that the revision of pension for all the pensioners (post-1996 retirees and pre-1996 retirees) would be that the last rank held by the individual. Therefore, he would submit that the applicant is entitled for the grant of pension in the last rank of JWO held by him from the date of his discharge from service, i.e., 01.05.2005. He would also quote the recommendations of the VI Central Pay Commission accepted by the Government of India through its letter dated 11.11.2008 which was followed in the Circular No.430 would also benefit the applicant and his pension in the rank of JWO should be

revised with effect from 01.01.2006 and other dates mentioned in the tables. Therefore, he would submit that the application seeking for revision of pension as per the Government's Policy may be ordered in the last rank of JWO held by the applicant and the application may be allowed.

8. Per contra, the learned Senior Central Government Standing Counsel would submit in his written argument that the applicant is benefited by the pension already granted in the Sergeant rank and the revision sought for would not benefit him. He would further submit that for the qualifying service of 20 years, the pension for JWO would be only Rs.3358/- whereas the pension calculation for a Sergeant would be Rs.3694/- and therefore, re-fixation of pension in the light of the Government order is not beneficial to the applicant. Further, he would argue that the benefit given under the letters of GOI MOD dated 07.06.1999 and 09.02.2001 would benefit only the pre-01.01.1996 retirees and not the post-01.01.1996 retirees.

9. He would also submit that the fixation of pension in the rank of Sergeant was rightly done as the applicant did not serve for 10 months in the last held rank of JWO or at least 7 months for condoning the remaining 3 months' service in order to get pension calculation at the last held rank. On consideration of the arguments submitted on either side, it has become necessary for us to extract the relevant portion of

the policy letters of the Government of India for better appreciation. The letter of Government of India, Ministry of Defence dated 07.06.1999 would refer to the applicability of the policy as hereunder:

" Subject: Implementation of Government's decision on the recommendations of the Vth CPC relating to pensionary benefits in respect of Commissioned Officers and Personnel Below Officer Rank.

...

Consequent on issue of Ministry of Personnel, Public Grievances and Pensions, Deptt. Of Pension & Pensioners' Welfare OM No.45/10/98-P & PW (A), dated 17.12.1998 regarding modified provisions on grant of pension/family pension in respect of civilians, the undersigned is directed to say that the President is pleased to decide that w.e.f. 1.1.96 pension of all Armed Forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the rank, and rank and Group (in case of PBOR) last held by the pensioner. However, the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative. Similarly, w.e.f. 1.1.96 family pension shall not be less"

The removal of stipulation of minimum 10 months' service for grant of pension in the last rank held, has been further clarified and reiterated in the Government of India letter, dated 09.02.2001. The relevant passage would be as under:-

" Subject: Implementation of Government's decision on the recommendations of the 5th Central Pay Commission relating to pensionary benefits in respect of Commissioned Officers and Personnel Below Officer Rank.

Sir,

I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen)/Sers) dated 7.6.1999 as amended wherein Government had decided that w.e.f. 1.1.96 pension of all Armed Forces Pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96. PCDA (P), Allahabad has not been giving the benefit of revision of pension under modified parity to those officers who have not held their rank for last 10 months before retirement as per prevailing rules. However, there is no such stipulation in the Government Order under reference.

The matter has been reconsidered in consultation with O/o CGDA. 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 scale 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.

10. On a careful perusal of the intention of the Government, we find that it had conferred the said benefit on all Armed Forces personnel irrespective of their date of retirement. In the letter dated 09.02.2001, it has been clarified that it is applicable to pre-01.01.1996 retirees also.

Therefore, the argument advanced on the side of the respondents that the policy letters of the GOI MOD dated 07.06.1999 and 09.02.2001 were issued in respect of the pre-01.01.1996 only cannot hold water. Therefore, the benefit conferred by the Government of India on the recommendation of the V Central Pay Commission is applicable to post-01.01.1996 retirees including the applicant who retired from service on 30.04.2005.

11. We have already observed that the requirement of 10 months' service in the last held rank or Group to earn pension of that rank or Group has been removed and it is sufficient for a personnel of Armed Forces to hold the post even for one day at the time of his discharge to earn pension for that rank. Admittedly, the applicant held the rank of JWO for 5 months when he was discharged from service. However, the respondents have calculated the pension at the rank of Sergeant despite the applicant retired from service with effect from 01.05.2005 long after the introduction of the policy of Government through its letters dated 07.06.1999 and 09.02.2001.

12. Therefore, the applicant should not have been denied the grant of pension in the rank of JWO and the said denial is contrary to the guidelines issued by the Government of India, Ministry of Defence, in its letters dated 07.06.1999 and 9.2.2001. The contentions raised by the Learned Senior Central Government Standing Counsel that the said

period of 10 months as stipulated in Para-123 of Pension Regulations for the Air Force, 1961 (Part-I) has not been waived so far, cannot be correct. As such, the calculations arrived at by the respondents both in their pleadings and arguments regarding pension to the rank of Sergeant for the applicant, cannot be sustained.

13. As regards the pension to be calculated in the case of applicant, the rank of Sergeant was considered and a sum of Rs.3,694/- was sanctioned to the applicant. It should have been Rs.4,711/- as per Table 116 of Circulation 430 for the rank of JWO. The revised pension with effect from 1.1.2006 as per the recommendations of VI Central Pay Commission for the ranks of Sergeant or JWO cannot be disputed by the respondents. The issuance of policy letters of Government of India, Ministry of Defence dated 11.11.2008 and 12.11.2008 and the consequent Circular 430 with Tables issued by PCDA have not been disputed by the respondents. The present question is whether the respondents have implemented the policies introduced by the Government for the welfare of Armed Forces personnel upon the VI Central Pay Commission. It was submitted by the respondents that the revision of pension with effect from 1.1.2006 in the rank of Sergeant is more beneficial than JWO for the applicant. As found in the earlier paragraphs, the applicant should have been considered in the rank of JWO on the date of his discharge for the revision of pension with effect

from 01.05.2005, in accordance with Government of India, MOD letter dated 07.06.1999 and 09.02.2001. Further, the revised pension for the applicant on the basis of the recommendations of VI Central Pay Commission should have been calculated as per GOI, MOD letter No.17(4)/2008(1)/D(Pen/Policy) dated 11.11.2008. However, the respondents would contend that in the Circular No.430 dated 10.3.2010 issued by the PCDA (P), Allahabad, a Sergeant, who completed 20 years of pensionable service is entitled to the payment of pension at Rs.3694/-, which is more than the pension for the rank of JWO's pension calculated at Rs.3358/-.

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

01.05.2005 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.

15. While admitting the application, we have condoned the delay in filing the application on a condition that the applicant shall be entitled to the benefit of any order likely to be passed in his favour only with effect from three (3) years prior to the date of filing of the Original Application, in accordance with the principles laid down in **Tarsem Singh's** case. Now we find that the applicant is found entitled to the benefits of the policies of Government enunciated in their letters dated 07.06.1999, 09.02.2001, 11.11.2008 and the Circulars of PCDA bearing No.430 with the Tables. We have already found that the benefits conferred by the Government to the Armed Forces personnel should be conferred immediately even without a request from the aggrieved pensioners. There need be no demand placed by the applicant like pensioners for getting their revised pension and it should have been issued by the Government as early as possible. Therefore, the embargo in granting the benefit from the date of conferring of the benefit, viz., 01.05.2005 and the subsequent benefits should be given to the applicant from the date of entitlement, viz., 01.05.2005 and the subsequent dates as conferred by the Government in their letters. Accordingly, the applicant is entitled for the grant of pension in the rank of JWO with effect from 01.05.2005 at Rs.4,711/- as mentioned in Table 116 of Circular 430 of PCDA. Similarly, the said pension payable to the applicant with effect from 01.05.2005 are to be revised from

01.01.2006 and 01.07.2009, as per the Table 116 of Circular 430. Both the points are therefore decided in favour of the applicant.

16. **Point No.2:** In the above point, we found that the applicant is entitled for the revised pension with effect from 01.05.2005 in the rank of JWO lastly held by the applicant as per the letter of Government of India, Ministry of Defence, dated 9.2.2001. The said benefit is given to the applicant by virtue of the letters of the Government dated 7.6.1999 and 9.2.2001. The respondents ought to have acted upon the intention of the letters and the revised pension should have been paid to the applicant in the last held rank of JWO with effect from 01.05.2005. But it was not fixed and ordered by the respondents. Therefore, the arrears of pension payable to the applicant as per the finding above with effect from 01.05.2005 shall be paid by the respondents with simple interest at 6% per annum from 01.05.2005 till the date of payment. Similarly, the benefit of revised pension payable to the applicant with effect from 1.1.2006 as per Government letter dated 11.11.2008, Circular 430 in Table 116 for 20 years service was not consequently implemented by the respondents. The applicant is also found entitled to the payment of arrears of revised pension in the previous paragraphs with effect from 1.1.2006 along with simple interest at 6% p.a. from 11.11.2008 till the date of payment. Similarly, the arrears of revised pension found

payable from 01.07.2009 shall be paid with 6% p.a. with effect from 01.07.2009 till the date of payment. Accordingly, this point is also decided in favour of the applicant.

17. The respondents are directed to issue corrigendum to the PPO for the restructured pension in the rank of JWO with effect from 01.05.2005 and also to pay the arrears of revised pensions as indicated above within a period of three (3) months with interest ordered. In default, the respondents are directed to pay the said entire arrears with 9% interest p.a. till it is fully paid.

18. In fine, the application is allowed as indicated above. There will no order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

13.02.2015
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Secretary
Ministry of Defence
New Delhi-110 011.
2. The Air Officer Commanding
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4. M/s. KSL Narain
& B.Ashok Kumar
Counsel for applicant.
5. Mr. Haja Mohideen Gisthi, SCGSC
For respondents.
6. OIC, Legal Cell,
Air Force, Avadi, Chennai.
7. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
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