

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 17 of 2022

Thursday, this the 25th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Santosh Govindrao Deshmukh (Ex-CHME) Resident of Sarvoday Swaroop Bldg. No.1, 401/402. 4th Floor, Near RBT High School, Kanchan Gaon, Khambalpada, Dombivli (East), District-Thane, Maharashtra, Pin Code-421201.

..... Applicant

Ld. Counsel for the : **Shri Santosh S. Singh and
Applicant Mr. Ashif Shaikh**

Versus

1. Union of India, Through The Secretary, ministry of Defence, DHQ, Po, New Delhi-110011.
2. The Chief of the Naval Staff, IHQ, Ministry of Defence.
3. The Commodore Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai-400038.
4. The Pension Disbursal Authority, Pension Adalat Officer, Draupadi Ghat, Allahabad-211014.

.....**Respondents**

Ld. Counsel for the : **Shri AJ Mishra,
Respondents. Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- 8.1 *Calculate the pension of the applicant based on the rank of CHME, the last rank held before retirement and in consonance with the principles of calculation that have been upheld in the case JWO Gopalkrishnan (Supra) in this regard.*
- 8.2 *Issue a fresh PPO for the restructured and revised pension of the Applicant in the rank of CHME with effect from date of his discharge and pay the arrears of pension.*
- 8.3 *That such other and further reliefs, as the nature and circumstances of this application may require, and the Hon’ble Tribunal may deem fit and proper to give effect to the aforesaid reliefs, be granted in favour of the applicant for dispensing justice.*

2. Briefly stated, the facts of the case are that the applicant was enrolled in Indian Navy as Boy on 30.06.1976 and he was discharged from service on 31.07.1992 on completion of 16 years, 1 month and 01 days of service. He was promoted from time to time and finally he was promoted to the rank of Chief

Petty Officer, Mechanical Engineering (CHME) on 21.05.1992. On retirement, he was granted service pension of POME rank vide PPO dated 22.07.1992 and his service as boy was not counted. He represented his case for grant of pension to the rank of CHME but the same was denied. Being aggrieved, applicant has filed instant O.A.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of CHME on 15.05.1992 and he served in the said rank for a period of 2 months and 15 days. He was sanctioned pension only in the rank of POME. As per Circular dated 09.02.2001, whereby the Ministry of Defence implemented the recommendations of 5th Central Pay Commission relating to pensionary benefits, it has been clarified that pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by individual and the revised pay scale connected thereto, even if the rank/ group was held for less than 10 months before retirement and hence, applicant is entitled for the pension to the rank of CHME. He submitted that various Tribunals have granted pension to those who retired before completions of 10 months of service in the last rank held. Reference is made to orders of this Tribunal

(Principal Bench) in OA 1166/2017 **JWO Pramod Kumar Singh & Ors. Vs. Union of India** and OA 882/2016 **JWO Ashok Kumar Tanwar & Ors. Vs. UOI**. The applicant has also referred to the order of the Tribunal (Regional Bench) Chennai in the matter of ***Thiagrajan Vs. Union of India*** in OA No. 93/2014 which waived off the ten months as stipulated in Para 123 of Pension Regulations for Air Force 1961 and opined that pension cannot be deprived to an individual to a rank for which he has already rendered his service and that the applicant had earned his pension in the rank of JWO already, and therefore, is entitled to be paid pension in the rank of JWO. Even if, for some reason, such a pension is found to be less, the applicant is entitled to receive the highest pension he earned already. The said statutory right for pension already earned by the applicant cannot be reduced even if an undertaking is executed by him for the receipt of any lower pension in the rank of JWO. He prayed that respondents be directed to grant pension to the rank of CHME from the date of discharge.

4. We have heard learned counsel for the parties and perused the record.

5. The question before us to decide is “whether the applicant is entitled pension of the rank of CHME which he held only for 2 months and 15 days.”

6. Though the respondents conceded that the requirement of holding the last rank of ten months before retirement has been dispensed with in keeping with Govt. of India circular dated 09.02.2001, however, they contend that they are correct in giving pension to the applicant in the lower rank as it is financially more beneficial.

7. We find that there are a catena of judgements of various benches of the Armed Forces Tribunal on this issue. Consequently, it is clearly established that the applicant is entitled to pension in the last rank held, even if he holds it for a duration less than ten months.

8. On the issue of pension amount so authorized, we find that the argument that a junior promoted to a senior rank (e.g. JWO, 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 by the Hon'ble Supreme Court in **D.S. Nakara Vs. Union of India** reported in 1983 (1) SCC 305. 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 less than his pension in his previous rank (junior rank).

9. On the exact method of calculation, we find that in a judgment of AFT Chennai in OA 62/2014 delivered on 30.02.2015 in the case of **JWO P. Gopalakrishnan Vs. Union of India & Others**, implication of Circular 430 dated 02.02.2009 has been explained. 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 430 have also been considered.

10. 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:

*“For appreciating the rival contentions,
we have gone through the Tables annexed*

with Circular 430 issued in pursuance of the policy letter 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”.

11. 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. Similarly, the respondents need to implement the calculation of revised pension for the applicant w.e.f. 01.01.2006 as per Govt. letter dated 11.11.2008 and Table 116 in Circular 430 was ordered by AFT Chennai in OA 612/2014, in the case of **JWO P. Gopalakrishnan** (*supra*).

12. In view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, we are of the view that arrears of enhanced pension may be extended to the applicant from three preceding years from the date of filing of the Original Application. The date of filing this Original Application is 17.02.2022.

13. Accordingly, the OA is **allowed**. Subject to verification, the respondents are directed as under :

(i) The applicant is already in receipt of service pension to the rank of Petty Officer. Respondents to calculate the pension of applicant based on the last rank held by him before retirement, and in consonance with the principles of calculation that have been upheld in the judgment of *JWO Gopalakrishnan (supra)* in this regard.

(ii) The applicant will be accordingly, issued a fresh Corrigendum PPO for the last rank held by him, within a period of four months from the date of this order and arrears of pension will be restricted from three years prior to filing of O.A. Interest of 8% will be levied in case this order is not complied with within three months.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 August, 2022

UKT/-