

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 120 of 2021

Wednesday, this the 22nd day of September, 2021

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

No. 657181K Ex JWO Bharat Prasad, S/O Shri Ram Priti Ram,
R/O Vill-Prithabi Bandh, PO-Ratsar, Distt-Ballia, UP, PIN-
277123.

.... Applicant

Ld. Counsel for the: **Shri VP Pandey**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,
101 South Block, New Delhi-110011.
2. Chief of the Air Staff, Air Head Quarter, New Delhi.
3. Officer-in-Charge, Records, Subroto Park, New Delhi-
110010.
4. Deputy CDA (AF) New Delhi.

... Respondents

Ld. Counsel for the **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Sr. Govt Standing Counsel

ORDER (Oral)

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

(a) To issue order or direction to respondents to grant service pension to the applicant to the rank of Junior Warrant Officer (JWO).

(b) To issue order or direction to the respondents to pay the arrears accrued on service pension from the date of retirement i.e. 28.02.2001 with an interest of 18%.

(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(d) Cost of the appeal be awarded to the applicant.

2. Brief facts of the case are that applicant was enrolled In the Indian Air Force (IAF) as an Airman on 27.02.1975 and has put unblemished service record of more than 26 years at the time of discharge from service i.e. 28.02.2001. While in service applicant was promoted to the rank of Junior Warrant Officer (JWO) on 01.02.2001 but was discharged from service w.e.f. 28.02.2001. He was denied pension equivalent to a JWO as he did not serve for 10 months in the last rank.

3. The present O.A. has been filed by applicant praying for revision of his pension in accordance with the last rank held by

him before retirement on the basis of Govt of India, Ministry of Defence Circular dated 09.02.2001, wherein it has been clarified that ten months continuous service in the last rank held is not required for grant of pension in such rank. Learned counsel for the applicant has relied upon order dated 09.08.2018 passed by AFT, Kochi Bench in O.A. No. 56 of 2018 in the case of ***Korath Cherian vs Union of India & Ors.*** The applicant has submitted that aforesaid judgment has waived off ten months service as stipulated in Para 123 of Pension Regulations for the Air Force, 1961 (Part-I) 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 has 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.

4. On the other hand, respondents while filing counter affidavit, have conceded grant of pension to applicant in the rank of JWO saying that the requirement of holding the last rank for ten months before retirement has been dispensed with

in keeping with Govt of India, Ministry of Defence Circular dated 09.02.2001.

5. We find that there are enormous judgements of various Benches of the Armed Forces Tribunals on this issue. Consequently the fact, that the applicant is entitled to pension in the last rank held by him, even if he has held it for a duration less than ten months, stands clearly established.

6. We have gone through the judgments cited by learned counsel for the applicant and came to a conclusion that the Tribunals have considered the scope of order dated 09.02.2001 issued by the Government of India, Ministry of Defence, governing the matter. Thus, in light of the aforesaid decisions as well as the said Government order, a detailed survey of the matter is not required in the case in hand. We find no reason to deviate from the findings and conclusions arrived at by the other Tribunals while allowing the claim of the applicants therein who were similarly placed like the applicant herein. We follow those decisions and the said Government order for allowing the relief of pension claimed in the Original Application.

7. Thus, 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, Ministry of Defence order dated 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 of India, Ministry of Defence letter dated 11.11.2008 and Table 116 in Circular 430 as ordered by AFT Chennai in O.A. No 612 of 2014, in the case of **JWO P. Gopalakrishnan** (*supra*).

8. Accordingly, the O.A. is **allowed**. Subject to verification, the respondents are directed as under:

(i) To calculate the pension of the applicant based on the last rank held by him before retirement, and in consonance with the principles of calculation that has been upheld in the judgment of **JWO Gopalakrishnan** (*supra*) in this regard.

(ii) Applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held within a period of three months and arrears paid accordingly. Default will invite interest @ 8% p.a.

9. No order as to costs.

10. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 22nd September, 2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)