

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 474 of 2020

Tuesday, this the 28th day of September, 2021

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

No. 601671-H Ex MWO Chaman Prakash,
 S/o Late Sri Dharajit
 R/o 143 B, Krishna Lok, Phase-1, Kanpur Road,
 Lucknow-226006 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Ashish Kumar Singh &**
Shri Pankaj Kumar Shukla, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
4. Jt CDA (AF), C/o AFCAO, Subroto Park, New Delhi – 110010.
5. PCDA (P) (Air Force), Draupadighat, Allahabad (UP)-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh,**
 Central Govt Counsel.

ORDER

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

“(A) To quash or set aside the Respondents letter dated 22.01.2019 (Annexure A-1 of OA).

(B) To issue order or directions to the respondents to grant service pension for the last rank held i.e. MWO to the

applicant with effect from 01.11.2003 (Date of discharge : 31.10.2003) with all consequential benefits in accordance with Judgment passed by the Hon'ble AFT (PB) New Delhi in case of OA 1038 of 2017, Ex JWO Krishna Moorthy K & Others vs. UOI & Others.

- (C) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.
- (D) Allow the instant OA with cost."

2. Briefly stated facts are that applicant was enrolled in Indian Air Force on 08.10.1968 and was discharged from service w.e.f. 31.10.2003 (AN) after completion of 35 years and 24 days of qualifying service. The applicant was sanctioned service pension in the rank of WO vide PPO No. 08/4/B/10602/2003. PPO in the last rank of MWO was notified vide PPO No. 08/14/Corr/03924/2004. The applicant was promoted to the rank of MWO w.e.f. 01.05.2003 and retained the rank till discharge date i.e. for a period of 6 months. The minimum period to earn service pension in the last rank held is 10 months, hence, as per the extant policies, applicant was granted pension for the rank of WO instated of MWO. The applicant made a representation dated 05.01.2019 for grant of service pension for the rank last held i.e. MWO quoting AFT (PB) New Delhi judgment and sent a reminder dated 15.04.2019 under RTI Act, 2005 asking disposal of his representation. The respondents vide their letter dated 31.05.2019 intimated that applicant's representation dated 05.01.2019 has been replied vide letter dated 22.01.2019 and he is not entitled to pension of MWO rank. Being aggrieved the applicant has filed the present Original Application.

3. It is submitted by learned counsel for the applicant that applicant was promoted to the rank of Master Warrant Officer (MWO) on 01.05.2003 and was discharged from service on 31.10.2003 and was granted service pension of Warrant Officer (WO) rank whereas the last rank held by him was MWO. He was issued with PPO No. 08/4/B/10602/2003 stating last rank held as WO but subsequently applicant was issued a Corrigendum PPO No. 08/14/Corr/03924/2004 stating the last rank held as MWO but rank for pension was mentioned as WO. In Jan. 2019, applicant came to know that similarly situated personnel have been granted service pension of the rank last held irrespective of time. The issue of holding the last rank of 10 months for receiving the pension of the rank last held is no longer res integra. He placed reliance on the judgment of AFT (PB) New Delhi judgment in OA 1038 of 2017, **Ex JWO Krishna Moorthy K & Others vs. UOI and Ors**, decided on 23.08.2017. The applicant made a representation dated 05.01.2019 for grant of service pension for the rank last held i.e. MWO quoting AFT (PB) New Delhi judgment and sent a reminder on 15.04.2019 under RTI Act, 2005 asking disposal of his representation. On 31.05.2019, respondents intimated that applicant's representation dated 05.01.2019 has been replied vide letter dated 22.01.2019. He pleaded that applicant's case is squarely covered with the judgment of AFT (PB) New Delhi and he should also be paid service pension of the last rank of MWO.

4. Per contra, learned counsel for the respondents submitted that applicant was discharged from service w.e.f. 31.10.2003 (AN) after completion of 35 years and 24 days of qualifying service. The

applicant was sanctioned service pension in the rank of WO vide PPO No. 08/4/B/10602/2003. Last rank held (MWO) was notified vide PPO No. 08/14/Corr/03924/2004. The applicant was promoted to the rank of MWO w.e.f. 01.05.2003 and retained the rank till discharge date i.e. for a period of 6 months. The minimum period to earn service pension in the last rank held is 10 months, hence, as per the extant policies, applicant was granted pension for the rank of WO instated of MWO which is in order.

5. Learned counsel for the respondents further submitted that as per Para 122 of Pension Regulations for the Air Force, 1961 (Part-1) and Govt. of India, Ministry of Defence letter dated 22.11.1983, applicant's pension 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 qualifying for pension. Further, in terms of para 123 of Pension Regulations for the Air Force, 1961 (Part-1), a competent authority may condone a deficiency of service in a particular rank not exceeding three months. As the applicant has held the rank of MWO for less than 10 months he was sanctioned service pension for the rank of WO as per extant policies at the time of discharge. He has not completed the requisite period of seven months in the last rank in order to make him eligible for condonation in last rank service, hence, he has rightly been granted service pension of WO rank. He pleaded for dismissal of OA.

6. We have heard learned counsel for the parties and perused the material on record.

7. 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. In AFT (PB) New Delhi judgment in **Ex JWO Krishna Moorthy K** (supra), the Tribunal has held in para 11 that applicant is entitled to service pension of the last rank held irrespective of lengths of service. Para 11 is quoted below :-

“11. Having regard to the fact that the present applicants had retired from service while they were in the rank of JWO, they are entitled to pension in the rank of JWO irrespective of the period for which they were in the rank, in view of the Government of India order dated 09.02.2001, and preceding AFT orders on this issue.”

8. We have come 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. 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. Thus, we find that the applicant is entitled to revised pension from the date of discharge in the last rank of MWO in accordance with Govt of India, Ministry of Defence order dated 09.02.2001.

9. Accordingly, Original Application 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 i.e. MWO in consonance with the principles of calculation that has been upheld in AFT (PB) judgment in **Ex JWO Krishna Moorthy K & Ors** (supra).

(ii) Applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held within a period of four months granting arrears from the date of discharge from service. Default will invite interest @ 8% p.a.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: Sept., 2021
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