

RESERVED
Court No. 1

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

O.A. No. 04 of 2018

Monday, this the 08th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ram Harsh Pal (No 287785K Ex JWO) S/o Late Sukkhu Ram Pal R/o House No 417, Virat Khand, Gomti Nagar, Lucknow-226010 (UP).

.... Applicant

Ld. Counsel for the: Shri R. Chandra, Advocate.
Applicant

Versus

1. Union of India, through, the Secretary Ministry of Defence, Government of India, New Delhi-11.
2. Chief of Air Staff, Air Headquarters, R.K. Puram Pin-936172 c/o 56 APO.
3. The Officer In-Charge Air Force Record Office Subroto Park, New Delhi-110010.
4. Dte of AV, Air HQs, Subroto Park, New Delhi-110010.
5. JCDA, Air Force, Subroto Park, New Delhi-110010.

....Respondents

Ld. Counsel for the: Shri Kaushik Chatterjee, Advocate.
Respondents.

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“(i) The Hon’ble Tribunal may be pleased to direct the respondents to grant service pension of the rank of JWO as he was discharged in JWO rank w.e.f. 01/01/2006.

(ii) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

2. As per the averments of the O.A. the applicant was enrolled in the Indian Air Force on 16.09.1970 and was finally discharged on 30.09.1991 after completion of 21 years and 15 days qualifying service. He was promoted to the rank of acting Junior Warrant Officer w.e.f. 01.06.1991. The said promotion was authorised vide occurrence report no. 03 of POR No. 2222 Sqdn/55/1991. He was sanctioned service pension w.e.f. 01.10.1991 for the rank of Sergeant. Thus, the claim of the applicant is that under the rules he is entitled to the pension of the last rank held by him. However, the same has been denied to the applicant. It transpires from the perusal of the counter affidavit that the applicant retained the said post only for a period of four months till his discharge on 30.09.1991.

3. In the O.A. the applicant in support of his claim has mentioned a judgment of Hon’ble Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir dated 29.04.2014 delivered in O.A. No. 404 of 2015 **Hardev Singh vs. Union of**

India and others. It has been replied in the counter affidavit that the said judgment was given in a particular case and the same is judgment *in rem* and therefore the applicant is not entitled for its benefit. Thus, the admitted fact position is that the applicant held the post of Junior Warrant Officer for the last four months prior to his discharge and the pension to the said rank has been refused to the applicant on the ground that the said post was held by him only for four months and not for a period of ten months or more as required under the rules.

4. Learned counsel for the applicant has placed reliance on the aforementioned judgment of Hon'ble Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir in O.A. No. 404 of 2015 **Hardev Singh vs. Union of India and others** decided on dated 29.04.2014. While considering the similar issue Hon'ble Regional Bench of the Tribunal decided as under:-

“3. As per the 4th Central Pay Commission the petitioner had to serve at least for 10 months in the higher rank to qualify for pension for that rank. This clause was further retained during the 5th Central Pay Commission as clarified by Government of India, MOD letter No. 1(2)/98/D (Pen/Sers), dated 14th July, 1998. The relevant paras are reproduced as under:

5. In accordance with the Government Instructions issued from time to time. Service pension of all pre-1986 PBOR was based on pay at the maximum of the scale of the rank last held during last ten months of his discharge plus half of maximum of classification pay, if any, drawn on the date of discharge. Ordinary family pension in case of PBOR is based on the pay last drawn by the deceased. Government has, inter alia accepted the recommendation of the Fifth Central Pay Commission to the effect that service pension of all the pre-1086

retirees may be brought on to post-01.01.1986 rate of pension determined under the Ministry of Defence letter No. 1 (5)/87/D)Pen/Ser/ dated 30.10.1987 as amended from time to time appropriate to rank, group and qualifying service, on which pension has earlier been sanctioned. Thereafter, for the purpose of consolidation of their pension as on 01.01.1986, they may be treated alike those who have retired on or after 01.01.1986.

6. Accordingly, pension of all PBOR who were discharged /invalided prior to 01.01.1986 and were in receipt of any type of pension mentioned in para 1 above as on 01.01.1996 will be ere-fixed at the same rate which was admissible to a PBOR discharged on or after 1.1.1986 for the same length of qualifying service, rank and group held during the last 10 months of his service. The pension so worked out shall be consolidated as on 1.1.1996. In accordance with provisions contained in para 4.1.1 of this Ministry's letter dated 24.11.1997 and shall be treated as basic pension for the purpose of grant of dearness relief from time to time.

4. This aspect was under review by the Govt. of India as evident vide its order dated 09.02.2001, relevant part of which reads as under:

“The matter has been reconsidered in consultation with o/o DGA. It is clarified that pension of all pre-96 retirees Armed Forces Personnel will be revised on the basis of the rank/Group last held by the individual and the revised pay scales connected thereto, even if the rank/group was held for less than 10 months before retirement”.

5. The entire concept of 10 months continuous service in the higher rank for qualifying for the higher pension was abolished in the Sixth Central Pay Commission which came into effect from 1.1.2006, This is clarified vide letter No. 17(4)/2008(2) /D (Pen/Policy) Govt. of India, MoD dated 12.11.2008. The relevant para 6.2 of Part-II thereof read as under:

6.2 Personnel below Officer Rank

In case of PBOR, linkage of full pension with 33 years of qualifying service is dispensed with from 1.1.2006. Service pension of PBOR will be calculated at 50% of emoluments last drawn or average of

reckonable emoluments drawn during last 10 months, whichever is more beneficial.”

6. Similar stipulation is spelt out in sub para (v) of para 3, 4, 5 & 6 of Ministry of Defence Letter dated 18.08.2010, which reads as under:-

(v) The service pension under these orders will be determined on the basis of the rank /group last held by the individual and the pre-revised /revised pay scales connected thereto, even if the rank/group was held for less than 10 months before discharge/invalidment.

(4) The service pension in respect of PBOR who have already got discharged/invalided out on or after 01.01.2006 and in whose case pensionary benefits have already been notified under the provisions contained in para 6.2 of this Ministry's letter dated 12.11.2008, the Pension Sanctioning Authorities concerned will recalculate pension in terms of these orders and will suo moto issue corrigendum PPOs if the recalculated pension in terms of these orders are found beneficial. Further implementation instructions to all concerned will be issued by PCDA(Pension) Allahabad on receipt of these orders.

5. These orders take effect from 1.1.2006.

6. This issues with the concurrence of Finance Division of this Ministry vide their UO No. 2518/Fin /Pen dated 16.08.2010.”

7. However, in year 2012 the concept of 10 months service in the last rank held was re-introduced by the Ministry of Defence during one of their reviews. We are of the opinion that reintroduction of this stipulation without corresponding orders is not sustainable and cannot deprive the petitioner of the benefit of this revised policy, especially in the light of series of judgments of Hon'ble the Supreme Court, including the celebrated judgment in **D.S. Nakara v. Union of India and others, AIR 1983 SC 130.**”

5. In view of the aforementioned decision of the Hon'ble Chandigarh Bench, which has attained finality by lapse of time became binding on this Co-ordinate Bench. Learned counsel for the respondents could not bring to our notice any law wherein any contrary view has been taken or argument of learned counsel for

the respondents has been withheld. So we are of the view that this O.A. deserves to be allowed on the same terms and grounds.

6. In the facts of that case, applicant was also discharged in the year 1991 and while dealing with the point of arrears the Hon'ble Regional Bench Chandigarh held that the applicant would be entitled for the calculation of pension w.e.f. 01.01.2006.

7. In view of the above, the O.A. is **allowed** and applicant is held entitled to the pension of Junior Warrant Officer, the rank last held by him w.e.f. 01.01.2006. The respondents are directed to calculate and release the benefit to the applicant within a period of four months from the date of receipt of this order. Delayed payment will accrue interest @ 9% per annum to the applicant from the date of order till the actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: October 08, 2018
JPT

(Justice SVS Rathore)
Member (J)