

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 1298 of 2023****Thursday, this the 4th day of July, 2024****Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Maj Gen Sanjay Singh, Member (A)**

No. 643461 WO Kripa Narayan Singh (Retd)
 S/o Late Ramadhar Singh
 R/o House No. 26B/A, Adarsh Colony, Alka Vihar,
 Bamrauli, Prayagraj-211012.

..... Applicant

Ld. Counsel for the Applicant: **Shri Raj Kumar Mishra, Ms. Upasna
 Mishra and Shri Pradeep Kumar
 Mishra, Advocates**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi – 110010.
4. Joint Controller of Defence Accounts (Air Force), 2nd Floor, AFCAO Building, Subroto Park, New Delhi – 10.
5. The Chief Manager CPPC, State Bank of India, Centralised Pension Processing Centre, SBI, 4 Katchehry Road, Prayagraj-211002.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
 Central Govt Standing 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:-

- “(I) To quash and set aside the Impugned PPO No. 08/14/B/06783/2002 which is against the Law settled on the subject; and
- (II) To direct the Respondent to calculate and revise the Applicant’s pension as per the Warrant Officer (WO), the last rank held by him before retirement, in consonance with the principle of calculation that have been upheld in the case of WO Gopalakrishnan (supra) in this regards; and
- (III) To direct the respondent to issue fresh PPO for the restructured and revised pension of the applicant in the rank of Warrant Officer (WO), w.e.f. date of retirement i.e. 01.03.2003 and pay the arrears of pension along with 18% interest per annum and other consequential benefits; and
- (IV) To grant such other relief appropriate to the fact and circumstances of the case as deemed fit, equitable and proper in the interest of justice.”

2. Briefly stated facts are that applicant was enrolled in Indian Air Force on 26.02.1974 and was discharged from service w.e.f. 28.02.2003 (AN) after completion of 29 years and 03 days of qualifying service. The applicant was sanctioned service pension in the rank of JWO vide PPO No. 08/14/B/06783/2002. Corrigendum PPO in the last rank of WO was notified vide PPO No. 08/14/B/Corr/11198/2003. The applicant was promoted to the rank of WO w.e.f. 01.11.2002 and retained the rank till discharge date i.e. for a period of 04 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 JWO instated of WO. The applicant sent a legal notice dated 20.12.2017 to the respondents to revise his pension as per post (Warrant Officer) last held by him keeping in view the law established which was replied by SAO (AF) vide letter dated 05.02.2018 clarifying that applicant is not eligible for basic pension for last rank held i.e. rank of Warrant Officer. Thereafter, applicant sent various representations dated 20.02.2019, 09.03.2020 and 11.11.2020 but all in vain. 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 Warrant Officer (WO) on 01.11.2002 and was discharged from service on 28.02.2003 and was granted service pension of Junior Warrant Officer (JWO) rank whereas the last rank held by him was WO. He was issued with PPO No. 08/14/B/06783/2002 stating last rank held as JWO but subsequently applicant was issued a Corrigendum PPO No. 08/14/B/Corr/11198/2003 stating the last rank held as WO but rank for pension was mentioned as JWO. In the year 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 and AFT (RB) Chennai judgment in OA No. 62 of 2014, **JWO P**

Gopalakrishnan vs. Union of India & Others, decided on 13.02.2015. The applicant sent a legal notice dated 20.12.2017 to the respondents which was replied by SAO (AF) vide letter dated 05.02.2018 clarifying that applicant is not eligible for basic pension for last rank held i.e. rank of Warrant Officer. There, applicant sent various representations dated 20.02.2019, 09.03.2020 and 11.11.2020 but all in vain.

4. Learned counsel for the applicant further submitted that judgment of AFT (RB) Chennai in **JWO P Gopalakrishnan** (supra) can be referred wherein complete import and implication of Circular 430 dated 02.02.2009, Pension Regulations for the Air Force, 1961, Part-1, Government of India letter dated 22.11.1983 has been explained and Govt. policy letter dated 07.06.1999, 09.02.2001 and 17.12.2008 have been considered. Most significantly, the recommendations of the 6th CPC accepted by the Govt. of India through its letter dated 12.11.2008 and Circular 430 have also been considered. Hence, he pleaded that applicant's case is squarely covered with the judgment of AFT (PB) New Delhi and AFT (RB) Chennai and therefore, applicant should also be paid service pension of the last rank of Warrant Officer.

5. Per contra, learned counsel for the respondents submitted that applicant was discharged from service w.e.f. 28.02.2003 (AN) after completion of 29 years and 03 days of qualifying service. The applicant was sanctioned service pension in the rank of JWO vide PPO No. 08/14/B/06783/2002. Corrigendum PPO in the last rank of

WO was notified vide PPO No. 08/14/B/Corr/11198/2003. The applicant was promoted to the rank of WO w.e.f. 01.11.2002 and retained the rank till discharge date i.e. for a period of 04 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 JWO instead of WO which is in order.

6. 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 WO for less than 10 months he was sanctioned service pension for the rank of JWO 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 JWO rank. Though, in para 3 of the counter affidavit, it is stated that, "As per PCDA (P) Allahabad Circular No. 568 petitioner is entitled for revised service pension in the last rank held, i.e. WO w.e.f. 01 January 2006".

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

8. 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 e 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.”

9. Similarly, AFT (RB) Chennai in OA No. 93 of 2014, **G. Thiagarajan vs. Union of India & Ors**, decided on 16.01.2015 has waived off 10 months service as stipulated in Para 123 of Pension Regulations for the Air Force, 1961 and opined that :-

“Pension cannot be deprived to an individual to the rank for which he has already rendered his service and that the applicant had earned his pension in the rank of WO already, and therefore, is entitled to be paid pension in the rank of WO. 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. That 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 WO”.

10. We also observe that respondents in Para 3 of their counter affidavit has mentioned that “As per PCDA (P) Allahabad Circular No. 568 petitioner is entitled for revised service pension in the last rank held, i.e. WO w.e.f. 01 January 2006”. Therefore, applicant seems entitled service pension in the last rank of Warrant Officer w.e.f. 01.01.2006.

11. 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 Warrant Officer in accordance with Govt of India, Ministry of Defence order dated 09.02.2001.

12. 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. Warrant Officer in consonance with the principles of calculation that has been upheld in AFT (PB) New Delhi judgment in **Ex JWO Krishna**

Moorthy K & Ors (supra) and AFT (RB) Chennai judgment in **G. Thiagarajan** (supra).

(ii) Applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held, i.e. Warrant Officer giving the benefits of OROP, 6th & 7th CPCs and PCDA (P) Circulars, duly revising the Basic Pension of the applicant w.e.f. 01.07.2009, 24.09.2012 and 01.07.2014 in terms of PCDA (P) Allahabad Circulars No. 430, 501 and 555 respectively.

(iii) Due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and others** (2007 (3) SLR 445), the arrears of service pension in the rank of Warrant Officer will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 30.10.2023.

(iv) To give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

13. No order as to costs.

14. Misc. Application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 4th July, 2024
SB

(Justice Anil Kumar)
Member (J)