(2020) 09 AFT CK 0003

In the Armed Forces Tribunal

Case No : Original Application No. 1152 Of 2020, Miscellaneous Application 1327 Of 2020

Ashok Kumar Yadav APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Citation : (2020) 09 AFT CK 0003

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : A.K. Trivedi, Ashok Chaitanya

Final Decision : Allowed

Judgement

M.A No. 1327 of 2020:

1. Keeping in view the averments made in the M.A and finding the same to be bona fide and in the light of the decision in Union of India and others v.

Tarsem Singh (2008 (8) SCC 648), we allow the insOnt M.A condoning the delay of 1,679 days in filing the O.A.

0.A No. 1152 of 2020:

2. The present 0.A has been filed by the applicant praying for revision of his pension in accordance with the last rank held by him before retirement

i.e. Havildar, on the basis of Government of India circular date 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. In this regard, reference is made to the orders of this Tribunal in Ex CHELP Ran veer

Singh Yadav v. Union of India and others (0.A No. 832 of 2020), etc. The applicant has also referred to the order of the Chennai Bench of this

Tribunal in the matter of Thiagrajan v. Union of India and others(0.A. N. 93 of 2014), which waived off the ten months stipulated in Para 123 of

Pension Regulations for Air Force 1961.

3. Though the learned counsel for the respondents concedes that the requirement of ten months' continuous service in the last rank held has been

dispensed with, keeping in view Government of India circular dated 09.02.2001, he contended that the respondents were justified in giving pension to

the applicant in the lower rank as it is financially more beneficial.

4. We find that there is a catena of judgments of various Benches of this Tribunal on this issue. Consequently, the fact that the applicant is entitled to

pension in the last rank held by him, even if he held it for duration of less than 10 months, stands clearly established.

5. On the issue of pension amount so authorized, we find that the argument that a junior promoted to a senior rank (e.g. Hay, SGT, JWO, MWO or

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 Honble Supreme Court in D.S. Nakara Vs. Union of Indth (1983 (1) SCC 1252. 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 a pension for

his previous and lower rank. Additionally, all future pay revisions due to new Pay Commission and five yearly OROP revision are primarily based on

two factors i.e. last rank held and years of service, hence reflection of a lower rank in PPO as compared to the actual higher rank (held for less than

10 months) is bound to reduce future upgradation and revision of pension.

6. On the exact method of calculation, we find that in a judgment of the Chennai Bench of this Tribunal in JWO P. Gopalalaishnan v. Union of India

and others(0.A. No. 62 of 2014 decided on 13.02.2015), the complete import and implication of the circular dated 02.02.2009, Regulations for the Air

Force Part I and the GolMoD letter dated 22.11.1983 had been explained. The Government policy letters dated 07.06.1999, 09.02.2001 and

17.12.2008 have been considered. Most significantly, the recommendations of the VIth CPC, accepted by Government of India through its letter dated

11.11.2008 and circular dated 02.02.2009 have also been considered. We find that the specific letter number being identical, in all probability, the date

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of Government of India communication is 12.11.2008 and not 11.11.2008.

7. In consideration of all these issues as well as the 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 Paragraph 14 of the order in the case of

/WO 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 letters

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 IWO in Table 116 of Circular 430 having 20 years of service and retired after

01.04.2004 would be Rs.4,711/- and not R$. 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 coriterred upon the JWO as per the VI Central Fay Commission recommendations as tabulated in

Table 116 of Circukr 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01.2006 would be Rs.

?,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 tbr payment of pension in the

last held rank on several occasions and it was not heeded The claim for pension is a statutory nght and the respondents ought to have

granted the entitled pension, admittedly, even without issuing any corrigendum in the ITO. This has been reiterated in various

communications of the Government. Therefore, the respondents are under the

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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.

We find that the respondents need to implement the calculation of pension for the applicant as mentioned above, as he is similarly placed to the

applicant in JWO F. Gopalakrishnan (supra).

8. Accordingly, the instant 0.A is allowed. Subject to verification, the respondents are directed as under:

(i) Calculate the pension of the applicant, based on the last held rank by him before retirement i.e. Havildar, and in consonance with the principles of

calculation that have been upheld in /WO Gopalakrishnan (supra) in this regard; and

(ii) The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him within three months and arrears paid accordingly,

failing which, it shall carry interest @ 6% per annum, till actual payment.

9. No order as to costs.

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