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**(2019) 09 AFT CK 0045**

**In the Armed Forces Tribunal**

**Case No : Original Application No. 819 Of 2018**

Chandra Shekhar Singh Tomar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision : 05-09-2019**

**Acts Referred:**

**Citation : (2019) 09 AFT CK 0045**

**Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)**

**Bench : Division Bench**

**Advocate : Arvind Patel**

**Final Decision : Allowed**

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## **Judgement**

1. Arguments heard. Vide separate order, OA stands disposed off.
2. The present O.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. Warrant Officer (WO) on the basis of the Government of India 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. Reference is made to orders of this Tribunal (Principal Bench) in IWO Pramod Kumar Singh and others v. Union of India and others (O.A. No. 1166 of 2017) and JWO Ashok Kumar Tanwar and others v. Union of India and others (O.A. No. 882 of 2016). The applicant has also referred to the order of the Tribunal (Regional Bench), Chennai in the matter of Thiagrajan Vs. Union of India and others (O.A. No. 93 of 2014) which waived off the ten months as stipulated in Para 123 of Pension Regulations for Air Force 1961 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 had

earned his pension in the rank of JWO already, and therefore, is entitled to be paid pension in the rank of \_IWO. 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 IWO"".

3. Though the respondents concede that the requirement of holding the last rank before retirement has been dispensed with in keeping with the

Government of India circular dated 09.02.2001, however, they contended that they are correct 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 the Armed Forces 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 a duration less than 10 months, stands clearly established.

5. On the issue of pension amount so authorised, we find that argument that a junior promoted to a senior rank (e.g. 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 the principles laid by the Hon'ble Supreme Court in D.S. Nakara Vs. Union of India and others (1983) 1 SCC 125. 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 less than his

pension in his previous rank (junior rank).

6. On the exact method of calculation, we find that in a judgment of the Tribunal, Regional Bench, Chennai in IWO P. Gopalakrishnan v. Union of

India and others (O.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; GOI MoD letter dated 22.11.1983 has 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 6tri CPC, accepted by Government of India through its letter dated

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

date 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

IWO 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

letter 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 Ned at Rs.3,6941-. 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 JWO in Table 116 of Circular 430 having 20 years of service and retired

after 01.04.2004 would be Rs,4,711/- and not Rs.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 conferred upon the JWO as per the VI Central Pay Commission recommendations as tabulated in Table

116 of Circular 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01,2006 would be

Rs.7,100/- 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 for payment of pension in the last

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

the entitled pension, admittedly. even without issuing any corrigendum in the PPO. This has been reiterated in various communications of

the Government. Therefore. the respondents are under the 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'.

8. 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 P. Gopalakrishnan (supra).

9. Accordingly, the instant O.A is allowed. 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. WO, and in consonance with the principles of

calculation that have been upheld in \_IWO Gopalakrishnan (supra) in this regard.

(ii) The applicant will be accordingly issued a fresh corrigendum PPO in the last rank held within a period of three months and arrears paid

accordingly, failing which, it shall carry interest @ 6% till payment.

10. No order as to costs.