

(2019) 10 AFT CK 0055

In the Armed Forces Tribunal

Case No : Original Application No. 1605 Of 2018, Miscellaneous Application No. 396 Of 2019

Jagat Mohan Sharma

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0055

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, Prabodh Kumar

Final Decision : Allowed

Judgement

MA 396/2019

1. For the reasons carved out in the application, delay in filing reply statement is condoned. Reply statement already filed shall form part of record.

MA stands disposed of.

OA 1605/2018

Arguments heard.

OA stands disposed of vide separate order of even date.

The instant 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.

Sergeant 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 in 714/0 Pramod Kumar Singh and others

v, Union of India and others(0.A. No. 1166 of 2017) and _IWO Ashok Kumar Tanwar and others v. Union of India and others (0.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(0.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 MO. 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 the argument that a junior promoted to a senior rank 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.5. Nakara Vs. Union of India and others (1983) 1 SCC 12.5 It is also not possible in rational

calculations to peg the pension of a PBOR who has held the higher rank of Sergeant for less than ten months to be computed less than his pension in

his previous rank (Corporal).

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 (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; 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 6th 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 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 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

130.1.2005 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 _IWO 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 PPD. 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 are of the view that the respondents shall 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. Sergeant and in consonance with the principles of

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

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

accordingly, failing which, it shall carry interest @60/o till payment.

10. No order as to costs.