(2020) 02 AFT CK 0022

In the Armed Forces Tribunal

Case No : Original Application No. 269 Of 2020, Miscellaneous Application No. 339 Of 2020

Lalit Ram APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0022

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

Bench : Division Bench

Advocate : Manoj Kr. Gupta, Satya Ranjan Swain

Final Decision : Allowed

Judgement

1. By virtue of this 0.A., the applicant claims revision of pension of the JVVO from 01.09.1989.

Heard. Admit.

Notice is accepted by Mr. Ashok Chaitanya. Advocate.

Learned counsel for the applicant submits that the case is squarely covered by the large number of judgments, which fact is not disputed by the

learned counsel for the respondents and it is submitted that subject to verification, appropriate orders may be passed.

By separate orders, OA stands disposed of.

MA 339/2020

For the reasons carved out in the O.A. the application is allowed and the delay in filing OA is hereby condoned. MA stands disposed off accordingly.

OA 269/2020

The present OA 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.

Junior Warrant Officer (JWO) on the basis of Govt. 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. In this regard, reference is made to orders of this Tribunal (Principal

Bench) in JWO Pramod Kumar Singh & Ors. Vs. Union of India (0.A. No. 1166 of 2017) and JWO Ashok Kumar Tanwar & Ors. Vs. Union of

India & Ors.(0.A. No. 882 of 2016). The applicant has also referred to the order of the Tribunal (Regional Bench) Chennai in the matter of

Thiaqrajan Vs. Union of India& Ors. (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 JWO. 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 JWO.-

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

Government of India Circular dated 09.02.2001, they, however, contended that they are correct in giving pension to the applicant in the lower rank as

it is financially more beneficial.

3. 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 duration of less than 10 months, stands clearly established.

4. On the issue of pension amount so authorized, we find that the 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 principles laid by the Hon'ble Supreme Court in D.S. Nakara Vs. Union of India[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 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.

5. On the exact method of calculation. we find that in a judgment of the Tribunal, Regional Bench, Chennai in JWO P. Gopalakrishnan Vs. Union of

India & Others(0.A. No. 62 of 2014 decided on 13.02.2015), the complete import and implication of Circular dated 02.02.2009, Regulations for the Air

Force Part I and the 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 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.

6. In consideration of all these issues as well as 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 para 14 of the order in the case of JWO P.

Gopalakrishnan (supra), which reads as under:

For appreciating the rival contentions, we have gone through the Tables annexed withCircular 430 issuedin pursuanceofthepolicy

lettersdated 11.11.2008bytheGovernmentof India. As perthe Sergeant rankwho hascompleted 20 years of service andretiredafter

01.04.2004wasfixedat Rs.3,694/-. Thesubmission ofthelearned Central Government Standing Counsel astothe pensionof Sergeantswho

retiredon 01.05.2005shallbe Rs.3,694/- isfound correct to that extent.However, when we go through the service pension payable to

aJWOinTable 116 of 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.â??

7. We find that the respondents need to implement the calculation of revised pension for the applicant w.e.f. 01.01.2006 as mentioned above, as he is

similarly placed as the applicant in JWO P. Gopalakrishnan (supra).

8. Accordingly, the instant OA is allowed. Subject to verification of records, the respondents are directed as under :

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

calculation that have been upheld in JWO 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% till actual payment.

9. No order as to costs.

