(2019) 12 AFT CK 0025

In the Armed Forces Tribunal

Case No : Original Application No. 1993 Of 2019, Miscellaneous Application No. 2923 Of 2019

R.A. Dixit — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Citation : (2019) 12 AFT CK 0025

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

Bench : Division Bench

Advocate : Ajit Kakkar, S.D. Windlesh

Final Decision : Allowed

Judgement

MA No. 2923 of 2019

1. Heard learned counsel for the parties on the point of delay.

2. 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

Vs. Tarsem Sing-h (2009(1) AISLJ 371), we allow the instant M.A and condone the delay of 6751 days in filing the O.A.

0.A No. 1993 of 2019:

3. 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. Master Warrant Officer (MWO) on the basis of the Government of India circular dated 9thi February, 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 Framod Kumar Singh and others Vs. Union of

India and others (0.A. No. 1166 of 2017) and ,IWO Ashok Kumar

Tan war and others Vs. 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 ofJ WO already, and therefore, is entitled to be paid pension in the rank

ofI 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. 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 ofJ WC)"".

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

Government of India circular dated 9th February, 2001, they, however, contended that they are correct in giving pension to the applicant in the lower

rank as it is financially more beneficial.

5. 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 ten months, stands clearly established.

6. On the issue of pension amount so authorised, 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 the principles laid by the Honble Supreme Court in D.S. 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 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 Â°ROI' 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.

7. On the exact method of calculation, we find that in a judgment of the Tribunal, Regional Bench, Chennai in JWO P. Gopalabishnan Vs. 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 2nd February, 2009,

Regulations for the Air Force Part I and the GoI MoD letter dated 22nd November, 1983 has been explained. The Government policy letters dated 7th

June, 1999, 9th February, 2001 and 17th December, 2008 have been considered. Most significantly, the recommendations of the 6th CPC, accepted by

the Government of India through its letter dated 11 th November, 2008 and the circular dated 2nd February, 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 12th November, 2008 and not 11th

November, 2008.

8. 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 F. 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 1?s.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 Ks. 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 theJWO 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

Â£. 100/- and the revised pension with effect from 01.0Z2009 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 ofp ension 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 FIV. 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.

9. 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 IWO F. Gopalakrishnan (supra).

10. Accordingly, the instant 0.A is allowed. Subject to verification of records, 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., MWO and in consonance with the principles of

calculation that have been upheld in JWO Gopalthrishnan (supra) in this regard; and

(ii) The applicant will accordingly be 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 at the rate of six per cent till actual payment.

11. No order as to costs.

