

(2019) 10 AFT CK 0064

In the Armed Forces Tribunal

Case No : Original Application No. 1936 Of 2018, Miscellaneous Application No. 2141 Of 2018

Udal Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0064

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

Bench : Division Bench

Advocate : V.S.Kadian, Arvind Patel

Final Decision : Allowed

Judgement

1. Counter affidavit has already been filed. Applicant does not want to file rejoinder.

Arguments heard.

Vide separate order .OA stands disposed off.

MA 2141/2018

Vide this application, applicant seeks condonation delay of 9735 days in filing the OA.

In view of the averments made in the application, of delay of 9735 days in filing the OA in condoned. Same is taken on the record. MA stands

disposed off.

OA1936/2018

Heard learned counsel for the parties.

2. 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 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.

3. Reference is made to orders of this Tribunal (Principal Bench) in OA 1166/2017 JWO Prarnod Kumar Singh & Ors. Vs. Union of India and OA

882/2016 JWO Ashok Kumar Tanwar & Ors. Vs. UOI. The applicant has also referred to the order of the Tribunal (Regional Bench) Chennai in the

matter of Thiagrajan Vs. Union of India in OA No. 93/2014 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 WO already, and therefore, is entitled to be paid pension in the rank of 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 of WO.

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

with Govt. of India circular dated 09.02.2001, however, they contend that they are correct in giving pension to the applicants in the lower rank as it is

financially more beneficial.

5 We find that there are 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 ten months, stands clearly established.

6. On the issue of pension amount so authorized, we find that the argument that a junior promoted to a senior rank (e.g.JWO) 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 reported in 1983 (1) SCC 30.5 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 less than his pension in his previous

rank (junior rank).

7. On the exact method of calculation, we find that in a judgment of AFT Chennai in OA 62/2014 delivered on 13.02.2015 in the case of JWO P.

Gopalakrishnan Vs. Union of India & Others, the complete import and implication of Circular 430 dated 02.02.2009 Regulations for the Air Force Part

I: GOI MoD letter dated 22.11.1983 has been explained. Government Policy letters dated 07.06.1999, 09.02.2001 and 17.12.2008 have been

considered. Most significantly, the recommendations of the 6 CPC accepted by Government of India through its letter dated 11.11.2008 and Circular

430 have also been considered. We find that the specific letter number being identical; in all probability the date of GOI communication is 12.11.2008

and not 11.11.2008.

8 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 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 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 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"".

9. We find that the applicant is entitled to revised pension from the date of discharge in the rank last held by him on that date in accordance with Govt.

of India (MoD) letters dated 07.06.1999 and 09.02.2001. Similarly, the respondents need to implement the calculation of revised pension for the

applicant w.e.f. 01.01.2006 as per Govt. letter dated 12.11.2008 and Table 116 in Circular 430 was ordered by AFT Chennai in OA 62/2014, in the

case of JWO P. Gopalakrishnan (supra).

10. Accordingly, the OA is allowed. Subject to verification, the respondents are directed as under:

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

that have been upheld in the judgment of JWO Gopalakrishnan (supra) in this regard.

(ii) Applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held within a period of four months and arrears paid accordingly,

failing which, he will be entitled to interest @ 8% per annum.

11. No order as to costs

12. O.A. is disposed of accordingly.