

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A NOS. 62 OF 2013, 74 OF 2013, 78 OF 2013 & 93 OF 2013

MONDAY, THE 12TH DAY OF AUGUST, 2013/21ST SRAVANA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:-

O.A.No.62 of 2013:

V.R.NAIR, AGED 49 YEARS, EX J.W.O, NO.680328 N,
S/O VASUDEVAN NAIR, "CHAITANYA", NEAR CSI CHURCH,
MYTHRI NAGAR, VALIYAVILA, THIRUMALA P.O.,
THIRUVANANTHAPURAM DISITRICT, KERALA – 695 006.

BY ADV. SRI. V.K.SATHYANATHAN

versus

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY IT'S SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.
2. THE AIR OFFICER COMMANDING,
AIR FORCE RECORD OFFICE,
SUBROTO PARK, NEW DELHI – 110 010.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
OFFICE OF THE PCDA(P), DRAUPADIGHAT,
ALLAHABAD, U.P – 211 014.

O.As.62,74,78 & 93/2013. : 2 :

4. THE ADALAT OFFICER,
OFFICE OF THE CONTROLLER OF DEFENCE ACCOUNTS,
NO.618, ANNASALAI, TEYNAMPET,
CHENNAI – 600 018.

BY ADV.SRI.TOJAN J.VATHIKULAM, CENTRAL GOVERNMENT COUNSEL

O.A.NO.74 OF 2013

APPLICANT:-

EX NO.682092 A, JWO RADHAKRISHNAN M.N. OF INDIAN AIRFORCE,
AGED 50 YEARS, S/O LATE SHRI.NARAYANAN NAIR,
EDASSARIL HOUSE, VALAMCHUZHY, PATHANAMTHITTA P.O.,
PATHANAMTHITTA DISTRICT, KERALA – 689645

BY ADV. SRI.T.R.JAGADEESH

versus

RESPONDENTS:-

1. UNION OF INDIA,
REPRESENTED BY IT'S SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI.
2. THE AIR OFFICER COMMANDING,
AIR FORCE RECORD OFFICE,
SUBROTO PARK, NEW DELHI – 10.
3. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
OFFICE OF THE PCDA(P), DRAUPADI GHAT,
ALLAHABAD, U.P.
4. DY.CDA (AF), SUBROTO PARK, NEW DELHI-110010.

BY ADV.SRI.TOJAN J.VATHIKULAM, CENTRAL GOVERNMENT COUNSEL

O.A.NO.78 OF 2013

APPLICANT:-

N.A.SREEKUMAR, AGED 50 YEARS,
EX J.W.O. NO.675937 N,
S/O LATE V.APPU VARIAR,
"NAVODAYA", PALAPPURAM P.O.,
OTTAPPALAM, PALAKKAD DISTRICT,
KERALA – 679 103.

BY ADV. SRI.V.K.SATHYANATHAN

versus

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY IT'S SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.
2. THE AIR OFFICER COMMANDING,
AIR FORCE RECORD OFFICE,
SUBROTO PARK, NEW DELHI – 110 010.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
OFFICE OF THE PCDA(P), DRAUPADIGHAT,
ALLAHABAD, U.P – 211 014.
4. THE CHIEF MANAGER,
STATE BANK OF INDIA,
CENTRALISED PENSION PROCESSING CENTRE (CPPC) CODE:4477,
GANAPATHY KOVIL ROAD, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA – 695 014.
5. THE CHIEF MANAGER, STATE BANK OF INDIA,
BRANCH OTTAPPALAM,
OTTAPPALAM, PALAKKAD DISTRICT, KERALA – 679 101.

BY ADV.SMT.E.V.MOLY, CENTRAL GOVERNMENT COUNSEL

O.As.62,74,78 & 93/2013. : 4 :

O.A.NO.93 OF 2013

APPLICANT:-

JOSE MATHEW, EX CHELP NO.148998 H OF INDIAN NAVY,
AGED 48 YEARS, S/O SHRI.MATHEW,
KALPAKASSERIL HOUSE, KAKKENCHAL,
CHERUPUZHA P.O., KANNUR – 670511.

BY ADVS. ABRAHAM THOMAS & T.R.JAGADEESH

versus

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY IT'S SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.
2. THE CHIEF OF NAVAL STAFF, NAVAL HQS,
NEW DELHI-110011.
3. THE COMMODORE,
BEREAU OF SAILORS, CHEETAH CAMP,
MANKHURD, MUMBAI – 400088.
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE P.C.D.A(P),
DRAUPADI GHAT, ALLAHABAD, U.P-211014.

BY ADV.TOJAN J.VATHIKULAM, CENTRAL GOVERNMENT COUNSEL

ORDER

Shri Kant Tripathi, Member (J):

1. Heard Mr.V.K.Sathyanathan and Mr.T.R.Jagadeesh for the applicants and Mr.Tojan J.Vathikulam and Mrs.E.V.Moly for the respondents, and perused the record.

2. By these Original Applications, the applicants have sought for re-fixation of their pension according to Government Letter No. B/39013/AG/PS-4/(a & c)131/A/D (Pen/sers) dated 9th February 2001, hereinafter referred to as the Letter dated 09.02.2001, therefore, with the consent of the learned counsel for the parties, all the matters were heard together today and are being disposed of by this common order.

3. In none of the Original Applications, respondents filed any reply statement despite the opportunity given to them. So the matter is being disposed of on the basis of the interpretation of the aforesaid Government letter dated 9th

February, 2001 whose benefit is being claimed by the applicants in all the matters.

4. In O.A.No.62 of 2013, applicant V.R.Nair No.680328N joined the Indian Air Force on 19th May 1982 and was discharged from service on completion of his terms of engagement on 31st May 2002. At the time of the discharge, he was in the rank of Junior Warrant Officer but no pension of the rank of JWO was granted to him on the ground that he had rendered only 06 months service as JWO, so, he was granted the pension of the rank of Sergeant.

5. In O.A.No.74 of 2013, applicant Radhakrishnan MN, No.682092A joined the Indian Air Force on 27th November 1982 and was discharged from service on completion of his terms of engagement on 30th November 2002. At the time of the discharge, he was in the rank of JWO, but no pension of the rank of JWO was granted to him on the ground

that he had rendered only 06 months service as JWO, so, he was granted the pension of the rank of Sergeant.

6. The applicant, in O.A.No.78 of 2013, N.A.Sreekumar No.675937N, joined the Air Force on 17th August 1982 and retired with effect from 31st August 2002 from the rank of JWO, but he was not sanctioned the pension of the rank of JWO as he had rendered only one month service in that rank. The respondents, however, sanctioned him the pension of the rank of Sergeant only. It is also significant to mention that the applicant was paid pension of the rank of JWO with effect from July 2009, upto April 2013. But all of a sudden, the respondents decided to stop payment of the pension of the rank of JWO and proceeded to make recovery of the pension paid to him with effect from July 2009.

7. The applicant in O.A.No.93 of 2013 Jose Mathew, No. 148998H was discharged from the Indian Navy on 31st

October 1998 after completing 15 years 09 months and 24 days service. At the time of the discharge he was in the rank of Chief Petty Officer but no pension of the rank of CPO was granted to him on the ground that he had rendered only 06 months service as CPO, so, he was granted the pension of the rank of Petty Officer.

9. The learned counsel for the applicants submitted that the benefits of the Government letter dated 9th February 2001 were also available to pre-1996 retirees. The pension was to be fixed according to the rank/group last held by the individual as the previous provision of holding the last rank/group for 10 months had expressly been withdrawn by that letter.

10. Counsel for the respondents on the other hand submitted that the benefit of the aforesaid Government letter dated 9.2.2001 was not available to the applicants as they were pre-1996 retirees. They could get the pension of

the rank of JWO/CPO only when they had at least served seven months in that rank.

11. We do not agree with the submissions made on behalf of the respondents that the aforesaid benefit was available to post 1.1.1996 retirees only. In this connection, it may be mentioned that the Government of India, Ministry of Defence Letter No.1(1)/99/D (Pen/Services) dated 6.6.1999, had provided that with effect from 1.1.1996 pension of all Armed Forces personnel, irrespective of their date of retirement, shall not be less than 50% of the minimum of the revised scale of pay. But the P.C.D.A.(P) has not been granting the benefit to those who had not rendered 10 months service in the rank before the date of retirement. Therefore, the Government reconsidered the matter and extended the benefit irrespective of length of service of the aforesaid ten months, by the Government Letter dated 9.2.2001, which may be reproduced as follows:

"I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen/Sers) dated 7-6-99 as amended wherein the government has decided that w.e.f. 1-1-96 pension of all armed forces pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1-1-96. PCDA (P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However there is no such stipulation on the government order under reference.

The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years, other criteria to earn pension will continue to apply."

12. The ambit and scope of the aforesaid Government

Letter was examined by this Bench in O.A.No.135 of 2010 and 73 of 2011 and the Principal Bench in TA. No.339 of 2010 and extended the benefit to retired Junior Warrant Officers who had not rendered the requisite length of service of seven months in the rank of Junior Warrant Officer before the retirement. The applicants are, therefore, entitled to pension of the rank of Junior Warrant Officer or Chief Petty Officer as the case may be, with effect from the date of their discharge. They could not be denied the pension of the said rank only on the ground that they had not rendered at least 07 months service in that rank. More so, the recovery being made from the applicant in O.A.No.78 of 2013 is apparently erroneous and liable to be quashed.

13. In view of the aforesaid, the Original Applications are allowed. The respondents are directed to re-fix the pension of the applicants in accordance with the Government letter No. B/39013/AG/PS-4/(a & c)131/A/D (Pen/sers) dated 9th February 2001 and pay the entire arrears within

four months from today. The respondents are further directed to stop the recovery initiated against the applicant in O.A.No.78 of 2013 and refund the entire amount already recovered within four months. If the due amount is not paid to the applicants within the time fixed herein before, the unpaid amount will carry a simple interest at the rate of 8% per annum to be paid by the respondents to the applicants.

14. There will be no order as to costs.

15. Issue free copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

16. After delivering the order, the learned counsel for the respondents submitted that the leave to appeal to the Supreme Court may be granted to the respondents, but he could not point out as to what point of law of general public importance is involved in the matter.

17. In our view, the order has been rendered on the

basis of the factual aspects of the matter, therefore, no point of law of general public importance is involved for decision of the Apex Court.

18. In view of the aforesaid, the leave prayed for is refused.

Sd/-

LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

an.

(true copy)

Prl.Pvt.Secretary