

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

13.

OA 3577/2023 with MA 4837/2023

JWO Ram Prasad Pandey (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Tatsat Shukla & Mr. Dhiraj
Kumar, Advocates

For Respondents

:

Mr. S. R. Swain, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

O R D E R
17.11.2023

The instant 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., JWO on the basis of the Government of India circular dated 9th 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.

2. However, taking note of the order dated 25th October, 2023 passed by the respondents vide Annexure A-1, wherein, the claim of the applicant has been rejected only on the ground that the applicant has held the post only for 6 months, we allow the OA. In our considered view, the order rejecting the claim of the applicant is without application of mind and without taking note of the law laid down in the matter. It has been clearly held that if an officer or a person holds last rank even

for a period of 01 day, he is entitled for the last rank pension and hundreds of applications on similar line have been allowed.

3. That being so, it is surprising that the officers' concerned have passed such an order. This may be taken note of by the respondents and in case such an action is repeated, we will take strict action against the officers and the department.

4. 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 and Ors.* (OA No.62 of 2014 decided on 13th February, 2015), the complete import and implication of the circular dated 2nd February, 2009, Regulations for the Air Force Part I; 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 Government of India through its letter dated 11th 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.

5. 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 *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 letters dated 11.11.2008 by the Government of India. As per the Circular 430 in Table 116, we find the revision 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.”

6. Accordingly, the instant OA 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., JWO 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, subject to verification, in the last rank of JWO held within a period of three months and arrears paid accordingly, failing which, it shall carry interest at the rate of six per cent till payment.

7. No order as to costs.

8. A copy of this order be provided DASTI to learned counsel for both the parties.

[RAJENDRA MENON]
CHAIRPERSON

[P. M. HARIZ]
MEMBER (A)

/jyoti/