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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-23968-2024

Reserved on: 25.11.2024

Pronounced on: 20.01.2025

UNION OF INDIA AND ORS.

.....Petitioners

Versus

EX JWO ROSHAN LAL YADAV AND ANR.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Ms. Bhavna Datta, Advocate
for the petitioners.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-Union of India, prays for the setting aside of the order dated 16.03.2023 (Annexure P-3), as passed by the learned Armed Forces Tribunal concerned.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Air Force on 23.06.1982 and was discharged from service on 30.06.2000 after completion of 20 years and 08 days of qualifying service. At the time of discharge, respondent No. 1 was in the rank of Junior Warrant Officer (JWO), whereas, he was granted pension for the rank of Sergeant.

3. It has been averred in the writ petition that respondent

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retained in the said rank till the date of discharge date i.e. for a period of 03 months. The minimum period of qualifying service to earn service pension in the last held rank is 10 months. Therefore, as per the extant policies, respondent No. 1 was lawfully granted pension for the rank of Sgt.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order. The said O.A., became disposed of vide order dated 16.03.2023 (Annexure P-3). The operative part of the said order is extracted hereinafter.

“2. Learned counsel for the applicant contended that as per the policy of Government of India, One Rank One Pension (for short OROP) with effect from July, 2014, the applicant was entitled to the pension in the rank of JWO and not in the rank of Sergeant.

3. The Union of India, has not disputed the facts regarding the period of employment of the applicant. The present controversy is not disputed in anyway, because after implementation of OROP with effect from July 2014, the applicant is entitled to the pension of the rank of JWO, the rank which was held by him at the time of retirement.

4. Accordingly, we dispose of the present application and direct the Union of India to pass appropriate order within a period of four months from the date of receipt of certified copy of this order by learned Senior Panel Counsel/OIC Legal Cell, failing which the applicant shall be entitled to receive the due amount along with interest of @ 8 % per annum till its realisation...”

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5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioner.

6. The learned counsel for the petitioner while referring to **para 122 of Pension Regulations for the Air Force, 1961 (Part-1)** and Govt. of India Ministry of Defence **letter dated 22.11.1983**, has submitted that an individual's pension is assessed in the lowest acting paid rank or substantive rank and lowest group held by him during the last ten months of his service qualifying for pension.

7. Further, in terms of **Para 123 of Pension Regulations for the Air Force, 1961 (Part – 1)**, the competent authority may condone a deficiency of service in a particular rank but not exceeding three months.

8. Respondent No. 1 held the rank of JWO for less than 10 months, wherebys he was as per the policies in force, thus at the time of his discharge, was sanctioned service pension against the rank of Sgt. The reason for the supra pension becoming sanctioned to the present respondent ensued from his not completing the requisite length of qualifying service against the rank of JWO.

9. Moreover, the Tribunal ought to had restricted the grant of arrears to only three years in view of the law laid down by the Apex

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Court in case titled as **UOI and Ors. Vs. Tarsem Singh**, to which **C.A. No. 5151-5152 of 2008** became assigned.

Inferences of this Court.

10. Apparently, respondent No. 1, did evidently, at the time of his superannuation hold the rank of JWO but for a period less than ten months (i.e. for a period of three months). However, yet the competent authority becomes endowed with a discretion to condone the said deficiency appertaining to the rendition of qualifying service but the period of condonation is not required to be exceeding three months. Emphatically, when the requisite period of qualifying service for his earning pension in the rank of JWO was deficient by about seven months, therefore, in view of the pension Regulations (supra) the said deficiency though was not condonable.

11. However, the issue as involved in the instant case has been in depth dealt with by the Armed Forces Tribunal (Principal Bench) New Delhi in its verdict in case **TA 339/2010 (WP (Civil) No. 567/2002 of Delhi High Court)** titled as **Ex. JWO Bharat Singh Khatana Vs. Union of India & Ors.**, relevant paragraphs whereof are extracted hereinafter, besides the said verdict became upheld by the Hon'ble Supreme Court in its verdict made on 08.03.2016 in case titled as **Union of India and Others Vs. Ex JWO Bharat Singh Khatana**, to which **Civil Appeal No. 7366-7367-2011** became assigned.

4. In the present case the petitioner joined Indian Air Force in Technical Group-I as Airman on 01.10.1980 and continued till 30.09.2000 when he retired after completing the regular

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engagement from the post of Junior Warrant Officer (JWO). Petitioner was promoted from time to time and finally promoted to JWO w.e.f. 01.04.2000 and he was retired from service on 30.09.2000 having served in the said rank of JWO for a period of six months.

5. According to the provisions of the Armed Forces Rules, the incumbent has to serve at least 10 months on the last rank for full pension of that post but he was not given the pension of the last rank held by him i.e. JWO. Hence, petitioner aggrieved by this filed the present petition before the Hon'ble Delhi High Court which has been transferred to this Tribunal after formation of Armed Forces Tribunal and prayed that his pension may be given on the basis of last rank held by him. **In this connection, petitioner has referred to a Notification dated 09.02.2001 whereby the Government of India, Ministry of Defence has issued a Circular implementing the Government decision on the recommendations of Fifth Pay Commission relating to pensionary benefits in respect of commissioned officers and personnel below officers ranks and in that it has been clarified that all Armed Forces pensioners irrespective of their date of retirement shall not get less than 50% of the minimum revised scale on pay introduced w.e.f. 01.01.1996.** Since this was not being given by the PCDA, Allahabad and that matter came before the Government and the Government had clarified as under-

"It is clarified that 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 conditions to earn pension will continue to apply"

In view of this clarification, we do not find any reason as to why petitioner should not be given pension of last rank held by him for a period of six months Therefore, condition of 10 months has now been waived by the Government. Consequently, we direct that petitioner's pension should be determined in the light of the

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aforesaid Circular and he may be given the pension 50% of the last post held by him as JWO. His pension should be worked out and arrears shall be paid to the petitioner with 12 % interest.

12. The above expostulation of law which has been upheld by the Hon'ble Apex Court, makes it pointedly clear, that where the rendition of qualifying service by the concerned, is less than 10 months before the superannuation taking place, whereupon, the discretion to condone the same becoming amenable to become exercised by the respondent concerned. Therefore, since the present respondent rendered service against the rank of JWO for a term less than 10 months, yet in terms of the expostulations of law (supra), the petitioner-Department become enjoined to condone the supra deficiency in the rendition of qualifying service of the present respondent.

13. Moreover therebys, in view of the policy/circular (supra), an indefeasible right became vested in respondent No. 1 to seek endowment qua him of the discretion (supra) vested in the authority to grant him the benefits thereof. Conspicuously when the reason for not favourably bestowing the said discretion vis-a-vis the present respondent No. 1, thus could be anchored only when on facts similar to the present respondent, thus a similar declining order being made vis-a-vis the other claimants. Consequently, though therebys, thus the present respondent could not either claim parity with the other defence personnel, qua whom the discretion became well exercised besides would also become debarred to claim that he was unfairly and arbitrarily treated besides became discriminated.

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14. Since the above material is not on record, therebys, the non exercising of the supra discretion by the authority, whereby, the deficit in rendition of qualifying service by the present respondent against the rank of JWO, but could be overcome, therebys, there is but an untenable refusal on the part of the Army Authorities, to exercise the said discretion. Even otherwise since the supra expostulations of law, makes the same to be applicable even to the present facts, inasmuch as, in alignment therewith when there is permissibility to condone deficiency in rendition of qualifying service upto a period of 10 months as has happened in the instant case. Therefore, therebys too, the refusal to exercise the said discretion in favour of respondent No. 1, does fall foul, of the supra expostulations of law. In consequence, the deficiency in the rendition of qualifying service, thus is required to be condoned by the petitioner-Department.

15. Moreover, since the supra expostulations of law conferred an indefeasible right vis-a-vis respondent no. 1, besides also become a recurring and continuous cause of action, therebys, the expostulations of law as occur in the verdict rendered by the Apex Court, in case titled as **Union of India and Ors. Vs Tarsem Singh**, to which **C.A. No.5151-5152 of 2008** became assigned, whereby, the arrears have to be restricted to three years, thus do not apply to the instant case.

Final Order of this Court.

16. In aftermath, for all the reasons (supra), this Court finds no merit in the writ petition and the same is dismissed.

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17. The impugned order, as passed by the learned Tribunal
concerned, is maintained and affirmed.
18. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

20.01.2025
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No