

**RESERVED****'A.F.R.'**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**COURT NO 2****O.A. No. 51 of 2014****Wednesday, this the 04<sup>th</sup> Day of March 2015****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**Liladhar (JC-690955K Ex Subedar Major), aged about 62 years,  
son of Late Sri Amba Dutt Joshi, resident of Vijay Nagar, Sec ‘A’,  
Malak Road, Neelmatha, Lucknow-226002 - Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, (Army), DHQ PO, New Delhi-110011
3. Adjutant General, Additional Directorate General, Discipline & Vigilance (DV-3), Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-110011.
4. General Officer Commanding-in-Chief, Central Command, Lucknow.
5. Army Medical Corps Centre & School, Lucknow, through its Commandant.
6. Army Medical Corps Records, Lucknow, through its Officer-in-Charge.

....Respondents

**Ld. Counsel appeared for the Applicant****- Shri Yashpal Singh,  
Advocate****Ld. Counsel appeared for the respondents****- Smt Deepti Prasad Bajpai  
Senior Central Government  
Counsel**

**ORDER**

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

1. This Original Application No 51 of 2014 has been filed by the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, claiming for the following reliefs:

*(a) Issuing/passing of an order or direction to the Respondents to pay arrears of provisional pension to the Applicant from 01.04.2006 to 13.12.2007 alongwith interest at the prevailing rate up to the date of actual payment.*

*(b) Issuing/passing of an order or direction to the Respondents to pay arrears of difference in salary for the period from 01.01.2006 to 31.03.2006 as a consequence of implementation of the recommendations of the 6th Pay Commission alongwith interest at the prevailing rate up to the date of actual payment.*

*(c) Issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(d) Allowing this application with cost.*

2. In brief, the facts of the case are that the Applicant was enrolled in the Army in Army Medical Corps on 27 April 1974 and was discharged from service with effect from 31 March 2006 (Afternoon) in the rank of Subedar Major. During his tenure as Junior Commissioned Officer Quarter Master (JCO QM) clothing of Army Medical Corps Centre and School, a case of irregularity in accounting of clothing items was detected following an audit

report in 2003. The matter was investigated by a Staff Court of Inquiry and the Applicant was found guilty. When the disciplinary proceedings were under process, the Applicant completed his terms of engagement in the rank of Subedar Major and was discharged from service on 31.03.2006 (Afternoon), but was attached to Administrative Battalion, Army Medical Corps Centre & School, Lucknow under the provisions of Section 123 of Army Act, 1950 for impending disciplinary action. He was tried by General Court Martial and awarded sentence of 10 years rigorous imprisonment and dismissal from service. However, the confirming authority reduced the sentence to 5 years from 10 years on 13 Dec 2007. The Applicant requested the authorities to pay arrears of provisional pension from 01 Apr 2006 to 13 Dec 2007 (date of attachment for trial till the date of confirmation of sentence) and also arrears of difference in salary for the period from 01 Jan 2006 to 31 March 2006 (while in service) commensurate to recommendations of Sixth Pay Commission alongwith interests, but it was denied to him. Being aggrieved, the Applicant filed this Original Application.

3. Heard Shri Yashpal Singh, Ld. Counsel for the Applicant and Smt Deepti Prasad Bajpai, Ld. Senior Central Government Counsel at length and perused the relevant documents available on record.

4. Ld. Counsel for the Applicant submitted that the Applicant was enrolled in the Army in Army Medical Corps on 27 April 1974. He was promoted to the rank of Subedar Major on 01 Aug 2002. During the period between May 2001 to Jul 2002, the Applicant

was performing the duties of JCO QM clothing of Army Medical Corps Centre & School, Lucknow. During this period, certain discrepancies in the clothing ledger were noticed by the Audit Authorities which was reported on 01.07.2003. A Staff Court of Inquiry was ordered to investigate the matter and after finalization of the Court of Inquiry, General Officer Commanding in Chief, Central Command ordered for disciplinary action against the Applicant on 23.09.2005. The tentative charge sheet was issued to the Applicant on 17.11.2005. In the meantime, the Applicant completed his terms of engagement in the rank of Subedar Major and was discharged from service on 31.03.2006 (Afternoon) and was attached to Administrative Battalion, Army Medical Corps Centre & School, Lucknow under the provisions of Section 123 of Army Act, 1950 for impending disciplinary action. The Applicant was tried by General Court Martial. The trial concluded on 15.6.2007 and the Applicant was awarded sentence of 10 years rigorous imprisonment and dismissal from service. The finding and sentence awarded by the General Court Martial was confirmed vide order dated 13 December, 2007 with reduction of rigorous imprisonment to 5 years rigorous imprisonment from 10 years rigorous imprisonment.

5. Ld. Counsel for the Applicant submitted that the Applicant had retired from Army service on 31 Mar 2006 (Afternoon) in the rank of Subedar Major. He was authorized provisional pension from 01 April 2006 to 13 Dec 2007 (date of attachment for disciplinary trial till the date of confirmation of punishment), but the same was denied to him. He further submitted that

recommendations of Sixth Pay Commission were implemented with effect from 01 Jan 2006. On this date the Applicant was in service in the rank of Subedar Major but was not given the difference of increased salary from 01 Jan 2006 to 31 March 2006 (the date of implementation of Sixth pay Commission till the date of retirement).

6. Ld. Counsel for the Applicant submitted that according to Paragraph 3-B of the Pension Regulations for the Army, 1961 (Part-I), a service personnel (including a Commissioned Officer) against whom any departmental or judicial proceedings are pending or instituted after retirement in respect of an event which took place not more than 4 years before such institution, may on his retirement or compulsory retirement or otherwise, be authorized a payment of provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension. Payment of provisional pension may be authorized during the period commencing from the date of retirement up to and including the date on which, upon conclusion of the departmental or judicial proceedings, final orders are passed by the Competent Authority. Payment of provisional pension as mentioned shall be adjusted against the final retirement benefits that may be sanctioned to such service personnel upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional

pension or where final pension is reduced or withheld either permanently or for a specified period.

7. Ld. Counsel for the Applicant further submitted that the Applicant has not been paid the arrears of difference in salary for the period from 01 Jan 2006 to 31 March 2006 as a consequence of implementation of the recommendations of the Sixth Pay Commission without any reason. He submitted that the Applicant is entitled for payment of arrears of provisional pension from 01 Apr 2006 to 13 Dec 2007 and arrears of difference in salary for the period from 01 Jan 2006 to 31 March 2006 as a consequence of implementation of the recommendations of the Sixth Pay Commission with interest. He further submitted that the action of the respondents is wholly illegal, arbitrary, unjust, unreasonable and is not sustainable in the eyes of law.

8. On the other hand Ld. Counsel for the Respondents submitted that the Applicant was enrolled in the Army on 27 April 1974 and from time to time he was promoted upto the rank of Subedar Major. A case of accounting irregularity of clothing items between May 2001 to Jul 2002 was detected following an audit report on 01 Jul 2003. During that period the applicant was JCO QM of Army Medical Corps Centre & School, Lucknow. The matter was investigated by a Staff Court of Inquiry and the Applicant was found guilty. He was tried by a General Court Martial on 15 June 2007 and was sentenced to suffer rigorous imprisonment for ten years and to be dismissed from service. The General Officer Commanding-in-Chief, Central Command

while confirming the sentence remitted it to five years rigorous imprisonment from ten years rigorous imprisonment on 13 December 2007.

9. Ld. Counsel for the Respondents submitted that Para 113 (a) of Pension Regulation 1961, Part-I, stipulates that “An Applicant who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service” Also as per Section 2, Para 41 of Pension Regulations for the Army 2008 (Part I), an Applicant who is dismissed under the provisions of Army Act 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. The Applicant was already transferred to pension establishment with effect from 01 April 2006 under Table 13(3),1(i) (a) of Army Rule 1954 but the dismissal from service awarded by the General Court Martial debarred him from all types of pensionary benefits in respect of all his previous service. Para 51 of Pay and Allowances Regulations for Junior Commissioned Officers and Other Ranks and Non-Combatant stipulates that “a person, subject to the Army Act, 1950, will forfeit his pay and allowances (including expatriation allowance) for every day (as defined in Section 92 of that Act) of, desertion, absence without leave, absence as a prisoner of war, imprisonment awarded by a criminal court, or imprisonment or field punishment awarded by a Court-Martial, or an officer exercising authority under section 80 of the Army Act, 1950, confinement on a charge for an offence of which he is afterwards convicted by a criminal court or court martial, or a

charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 80 of the Army Act, 1950.

10. Ld. Counsel for the Respondents submitted that due to policy constraints only, the Applicant was neither given arrears of pay of Sixth Pay Commission from 01 Jan 2006 to 31 March 2006 nor the provisional pension from 01 April 2006 to 13 Dec 2007. He submitted that the O.A. be dismissed being devoid of merit and lack of substance.

11. We have heard arguments of both the Ld. Counsels at length and perused the documents available on record.

12. In the instant case the Applicant was enrolled in the Army on 27 April 1974 and was discharged from service with effect from 31 March 2006 (Afternoon) on completion of age of retirement under Table 13(3), 1 (i) (a) of Army Rule-1954 in the rank of Subedar Major. During his tenure as JCO QM clothing between May 2001 to Jul 2002, certain discrepancies were noticed in the clothing ledger which was reported by the Audit Authorities on 01.07.2003. A Staff Court of Inquiry found the Applicant guilty and he was tried by a General Court Martial. The trial concluded on 15.06.2007 and the Applicant was awarded sentence of 10 years rigorous imprisonment and dismissal from service, later the sentence was reduced to 5 years rigorous imprisonment and dismissal from service by the competent/confirming authority on 13 Dec 2007. The prayer of Applicant is that he should be paid the arrears of difference in salary for the period from 01 Jan 2006



to 31 March 2006 (while in service) as per recommendation of Sixth Pay Commission alongwith interest and also arrears of provisional pension from 01 Apr 2006 to 13 Dec 2007 (the date of attachment for trial till the date of confirmation of sentence) alongwith interest.

13. Relevant portion of Pension Regulations for the Army, 1961 (Part I), Pay & Allowances Regulations for Junior Commissioned Officers and Other Ranks and Non-Combatant and Chapter XII, Para 153 of The Army Act, 1950 are reproduced below :-

(a) **Pension Regulations for the Army, 1961 (Part -I)**

**Chapter I, Para 3-B**

***“Grant of Provisional Pension***

**3-B.** (a) (i) *A service personnel (including a Commissioned Officer) against whom any departmental or judicial proceedings are pending or instituted after retirement in respect of an event which took place not more than 4 years before such institution, may on his retirement on attaining the age of compulsory retirement or otherwise, be authorized a payment of provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.*

*(ii) The provisional pension may be authorized during the period commencing from the date of retirement up to and including the date on which upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.*

*(iii) & (iv) x*

*(b) Payment of provisional pension as mentioned in sub clause (a) (i) above shall be adjusted against the final retirement benefits that may be sanctioned to such service*

*personnel upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or where final pension is reduced or withheld either permanently or for a specified period.”*

**Chapter III, Section I, Para 113 (a) & (b)**

**“Individual dismissed or discharged under the Army Act**

113. (a) *An individual who is dismissed under the provisions of the Army Act, is ineligible for p[ension or gratuity in respect of all previous service.*

(b) *An individual who is discharged under the provisions of Army Act and the rules made thereunder remains eligible for pension or gratuity under these Regulations.”*

(b) **Pension Regulations for the Army, 2008 (Part-I)**

*Section 2, Sub Section – I*

**“INDIVIDUAL DISMISSED/REMOVED OR DISCHARGED UNDER THE ARMY ACT 1950**

41. (a) *An individual who is dismissed under the provisions of Army Act 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner.*

(b) *An individual who is compulsorily retired/discharged or removed on grounds other than misconduct or discharge under the provisions of Army Act 1950 and the rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will suo-moto apply to cases of dismissal/removal converted into discharge subsequently.*

(c) *All appeals to the competent authority in this regard will be preferred within two years of the date of dismissal/removal.”*

(c) **Pay and Allowances Regulations for Junior Commissioned Officers and Other Ranks and Non Combatants**

**“FOREFEITURE OF PAY AND ALLOWANCES**

51. *A person, subject to the Army Act, 1950, will forfeit his pay and allowances (including expatriation allowance) for every day (as defined in Section 92 of that Act) of:-*

- (a) *desertion,*
- (b) *absence without leave,*
- (c) *absence as a prisoner of war*
- (d) *The period between. . . . .shall be applied.*
- (e) *imprisonment awarded by a criminal court, or imprisonment or field punishment awarded by a Court-Martial, or an officer exercising authority under section 80 of the Army Act, 1950,*
- (f) *confinement on a charge for an offence of which he is afterwards convicted by a criminal court or court martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 80 of the Army Act, 1950.”*
- (g) *The period between dismissal, removal, discharge, release or retirement carried out in the prescribed manner by the competent authority and re-instatement on its being cancelled by the competent authority; and*
- (h) *Sickness in hospital certified by the Medical Officer attending on him to have been caused by an offence under the Army Act 1950, committed by him.”*

(d) **Chapter XII, Para 153 of The Army Act, 1950.**

***“CONFIRMATION AND REVISION***

***153. Finding and sentence not valid, unless confirmed.*** - *No finding or sentence of a General, District or Summary General Court Martial shall be valid except so far as it may be confirmed as provided by this Act.”*

14. In the instant case, the Applicant retired from Army service on 31 March 2006 (Afternoon) and was attached to Administrative Battalion, Army Medical Corps Centre and School, Lucknow for trial by a General Court Martial. The trial was concluded and sentence of 10 years rigorous imprisonment and dismissal from service was awarded to the Applicant on 15 Jun 2007 which was approved by the Competent/Confirming Authority on 13 December, 2007. Pension Regulations for the Army 1961 (Part I), Chapter I, Para 3-B clearly mentions that a service personnel against whom any departmental or judicial proceedings are pending or instituted after retirement in respect of an event which took place not more than 4 years before such institution, may on his retirement on attaining the age of compulsory retirement or otherwise, be authorized a payment of provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension. The provisional pension may be authorized during the period commencing from the date of

retirement up to and including the date on which upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority. In view of the above, as the Applicant retired from Army Service on 31.03.2006 (Afternoon), he is entitled for provisional pension from 01 April 2006 to 13 December 2007, since the sentence was approved by the Competent/Confirming Authority on 13 Dec 2007.

15. As regards entitlement and payment of arrears of increased salary for the period from 01 Jan 2006 to 31 March 2006, commensurate to recommendations of Sixth Pay Commission, the Applicant had already been paid salary for this period, and during this period, if there is any increase in his salary based on recommendations of Sixth Pay Commission, he is entitled for the same.

16. In view of the above we are of the considered view that since the Applicant retired from Army Service on 31 March, 2006 (Afternoon), he is entitled for the Provisional Pension for the period from 01 April, 2006 to 13 December, 2007 since the sentence awarded by the General Court Martial was approved by the Competent/Confirming Authority on 13 Dec 2007 and arrears of difference in salary for the period from 01 Jan 2006 (the date of implementation of the recommendations of Sixth Pay Commission) to 31 March 2006 (the date on which the Applicant retired from Army Service) as a consequence of implementation of the recommendation of Sixth Pay Commission with interest @ 8% per annum.

17. Thus in the result, the Original Application succeeds and is allowed. The Applicant is entitled for provisional pension for the period from 01 April, 2006 to 13 December, 2007 and arrears of difference in salary for the period from 01 January 2006 to 31 March, 2006 as a consequence of implementation of the recommendations of Sixth Pay Commission. The Respondents are directed to pay arrears of aforesaid provisional pension and arrears of difference of salary along with interest @ 8% per annum till the date of payment. The Respondents are further directed to comply the order within three months from the date of production of a certified copy of this order.

18. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

**Date : .03. 2015**

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