

A.F.R.
Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No. 41 of 2011

Wednesday this the 25th day of May, 2016

Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Col. V.K. Bajpai, aged about 54 years, son of
Late Sri B.K. Bajpai, presently resident of 37/3,
Nehru Enclave, Lucknow Cantt., Lucknow

..... Petitioner

By Legal Practitioner Shri A.K. Tripathi, Advocate

Versus

1. Union of India, through its
Ministry of Defence, New Delhi.
2. Chief of Army Staff, New Delhi.
3. General Officer, Commanding-in-Chief,
Central Command, Army Headquarters, Lucknow.
4. Additional Director General, Territorial Army,
Army General Staff Branch, Army Headquarters,
'L' Block Church Road, New Delhi.

..... Respondents

By Legal Practitioner Dr. Shailendra Sharma Atal, Learned
Senior Counsel for the Central Government

JUDGMENT

1. Initially, the petitioner had filed writ petition No.537 (S/B) of 2004 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, which after constitution of the Armed Forces Tribunal has been transferred to this Bench of the Tribunal and registered as T.A. No. 41 of 2011. The petitioner has claimed the reliefs as under:-

“(iii-a) to issue a writ, order or direction in the nature of Certiorari thereby quashing the order dated 27.05.2004 as is contained in Annexure No.6 to the writ petition by which the petitioner has been disembodied w.e.f. 31.05.2004 from the post of Deputy Commander under Rule 33 of the Territorial Army Regulations, 1948.

(iii-b) To direct the opposite parties to pay salary, pension with weightage and post retiral dues to the petitioner from the date of his retirement, with interest at the rate of 20% till actual payment.

(iv) Issue any other order or direction deemed just and proper in the circumstances of the case;

(v) Award cost of the petition to the petitioner.”

2. The factual matrix of the case is that the petitioner was commissioned in the Territorial Army (T.A.) on 21.05.1973. He was promoted to the rank of Lt Col in 1994 and to the rank of Col in 1997. On attaining the age of 54 years, he was superannuated from service in 2004 and as per record, he rendered over 18 years of embodied service and he has not been granted pension and other retiral benefits. Aggrieved, the petitioner filed writ petition No. No.537 (S/B) of 2004 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, which

after transfer has come before us as Transferred Application.

3. Heard Shri A.K. Tripathi and Shri A.K. Mishra, Learned Counsel for the petitioner, Dr. Shailendra Sharma Atal, Learned Counsel for the respondents assisted by Col Kamal Singh, Departmental Representative and TA 42505X Lt Col Hemant Gambhir, Nodal officer, Legal cases from T.A. Directorate, Delhi, and perused the record.

4. Learned Counsel for the petitioner submitted that the T.A. Officers and Army officers are treated at par in payment of pension with weightage as per policy which has been confirmed in the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi passed in **Original Application No. 165 of 2010, Maj. S.D. Singh vs. Union of India and others**. He further submitted that the case of the petitioner is squarely covered by the aforesaid case as well as a large number of judgments given by the Principal Bench of Armed Forces Tribunal in the case of retired T. A. Officers, who were similarly placed as that of the petitioner and they have been granted pension and retiral benefits, as such the petitioner is also entitled to the said benefits under late entrant clause.

5. **Per contra**, the Learned Counsel for the respondents submitted that the petitioner was granted leave-cum-disembodiment w.e.f. 01.06.2004, which implies that he was on leave from 01.06.2004 and was entitled to pay and allowances as applicable to an individual on leave. On completion of the leave period, he was on disembodiment w.e.f. 01.07.2004 31.07.2004, i.e. his date of retirement.

Since no pay and allowances are admissible during disembodiment, he was not entitled for salary for the said period.

6. Learned standing counsel initially defended the decision taken by the respondents for non grant of pension and pensionary benefits to the petitioner, keeping in view various policy letters issued by the government on the subject in issue, but subsequently, on being asked to specify his view keeping in view the decisions of the Armed Forces Tribunal in similarly placed cases as per submission of the learned counsel for the petitioner, learned counsel for the respondents submitted that approximately 17 retired T.A. officers, who were similarly placed as the petitioner, had filed cases before the Armed forces Tribunal seeking service pension under Late Entrant Clause. Judgments in all cases were pronounced in their favour. Civil appeals, filed only in six cases before Hon'ble The Apex Court against the judgments delivered by Armed Forces Tribunal, were dismissed on the ground that no substantial questions of law of general public importance were involved for consideration and the prayer for leave to appeal was accordingly declined. Learned counsel for the respondents agreed that the case in hand is covered by the judgments of Principal Bench.

7. The Government Order, which has relevancy with the controversy involved in the case in hand, is the Order dated 30th October, 1987 for implementation of the recommendations of the Fourth Central Pay Commission, the order reads as under:

*"No. 1(5)/87 D (Pension/Services)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi dated the 30th October 1987*

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Sub: Implementation of the Government decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces officers and personnel below officer rank retiring or dying in harness on or after 01.01.1986.

Sir,

I am directed to refer to the Government decisions on the recommendations of the Fourth Central Pay Commission as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare Resolution No.2/13/87-PIC dated 18th March, 1987 and to convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the Commissioned Officers (including MNS and Territorial Army Officers) and personnel below officer rank (including NCs (E) of the three Services, Defence Security Corps and the Territorial Army) (hereinafter collectively referred to as Armed Forces personnel)

1.2 The provisions of the pension regulations of the three services and various service instructions/ Government orders, which are not affected by the provisions of this letter, will remain unchanged.

Part-1 Date of effect and Definitions

2.1 The provisions of this letter shall apply to the Armed Forces personnel who were in services as on 01.01.1986 or joined/join service thereafter.

Definitions

3. Reckonable Emoluments:

4. Average emoluments:

5. Qualifying Service

(a) The term 'Qualifying Service' (QS) shall mean:-----

(table)

(b) Weightage for the purpose of calculation of pension of commissioned officers will be given below:----- (table)

Notes : (1) There will be no weightage for officers and personnel below officer rank who retire prematurely for permanent absorption in public sector undertakings and autonomous bodies.

(2) There will be no weightage for officers and personnel below officer rank of the Territorial Army.

(3) The above weightage shall not be reckoned for determining the minimum qualifying service specified for admissibility of Retiring/Service Pension i.e. 20 years for service officers (15 years for late entrants), 15 years for personnel below officer rank and 20 years for NCs(E).

(4) Full pre-commissioned service rendered under the Central Government whether in a civil Deptt. or in the Armed Forces, shall be taken into account for working out the qualifying service for earning pensionary benefits subject to fulfilment of other conditions. This will also be counted for determining the minimum qualifying service indicated in Note 3 above for earning Retiring/Service Pension.

(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.

Part-II Retiring/Service pension/gratuity, invalid pension/ gratuity, special pension/gratuity, ordinary family pension, retirement/death gratuity.

6. Retiring/Service pension

6.1 OFFICERS

(a) The minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension shall continue to be 20 years (15 years in the case of late entrants).

(b) Retiring pension in respect of the Commissioned Officers of the three services, including MNS and TA officers, shall be calculated at 50% of the average of emoluments reckonable for pension as defined in paras 3 and 4 above. The amount so determined shall be subject to a maximum of Rs.4,500/- per month and shall be the retiring pension for 33 years of reckonable qualifying service as defined in para 5 above; for lesser years of reckonable qualifying service, this amount shall be proportionately reduced.

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30. Pension regulation of the three services will be amended in due course.

31. This issue with concurrence of the Finance Division of the Ministry vide their u.o. no. 286-Pension of 1987.

32. Hindi version will follow.

*Yours faithfully
 Addl Secy to the Govt of India"*

8. Another relevant Government order dated 3rd February, 1998 was issued for implementation of the recommendations of the Fifth Central Pay Commission. Relevant portion of order dated 03rd February, 1998 reads as under :-

*“No. 1(6) 98 D (Pension/Services)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya*

New Delhi dated the 3rd Feb 1998

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

SUB: IMPLEMENTATION OF THE GOVERNMENT DECISIONS ON THE RECOMMENDATIONS OF THE FIFTH CENTRAL PAY COMMISSION REGARDING PENSIONARY BENEFITS FRO THE ARMED FORCES OFFICERS AND PERSONNEL BELOW OFFICER RANK (PBOR) RETIRING OR DYING IN HARNESS ON OR AFTER 01.01.1996.

Sir,

.....
5(2) In case of TA personnel aggregate of qualifying embodied service shall count for service pension. Aggregate qualifying embodied service may be continuous or rendered in broken spells. For calculating the total embodied service, the breaks in embodied service due to disembodiment will be treated as condoned but the period of breaks itself will not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, five per cent cut will be imposed on the pension of those JCOs/OR who have completed 15 years or more of aggregate embodied service but have not completed 20 years of aggregate embodied service.

.....

5(b) Notes: (3) The above weightage will not be reckoned for determining the minimum qualifying service specified for admissibility of Service Pension i.e.

20 years for service officers (15 years for late entrants) and 15 years for PBOR and 20 years for NCs(E).

6.1 (a) The minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will be 20 years. In the case of late entrants (i.e. an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service qualifying for pension but whose total service is less than 20 years, the minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will continue to be 15 years.”

9. It may be relevant to reproduce Regulation 292 of Pension Regulations for the Army for Territorial Army and same is reproduced as under:-

“The grant of pensionary awards to members of the territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of regulations in this chapter.”

10. The afore-quoted orders and the Regulation make it explicitly clear that persons from the TA will also be governed by the necessary pensionary Regulations which are applicable to Army. The Government orders dated 30th October, 1987 for implementation of Fourth Central Pay Commission and 3rd February, 1998 for implementation of Fifth Central Pay Commission adequately indicates that persons working in the TA will be governed by the Indian Army Pensionary Regulations for the purposes of working out their pensions.

11. Keeping in view the above mentioned details and the case of the applicant, we refer to the judgment of Principal Bench of the Armed Forces Tribunal passed in **T.A. No.46 of 2010, Maj S. D. Singh vs. Union of India and others decided on 19.02.2010**, wherein it was held that the T.A. personnel should have been kept at par with the army personnel as all the rules and regulations were applicable to them also. But since the same was not followed, litigation started and after considering the matter, the Principal Bench passed order that they must be treated at par with the army personnel in view of various orders placed on record. Finally the order was passed, which reads as under:

“After going through the files we record our great displeasure the way in which the case has been dealt and total non-application of mind and this is the complete derogation of the policy decision of the Government. Despite the fact that the Government has already decided on 30th October, 1987 and 3rd February, 1998 still there is a doubt lurking in the mind of CGDA (pension) and so consultation with the Department of Personnel did not stick to that and wade away by the observations of CDDA (Pension). At least Ministry should have themselves examined orders issued by them on 30th October, 1987 and 3rd February, 1998. Therefore, we are of the opinion that the order passed by the Government dated 10.01.2003 is set aside and respondents are directed to work out the arrears of pension of petitioner and release the same and pay the same with interest @ 12% p.a.”

12. Following the decision in case of **Maj. S.D. Singh** (supra) a number of other cases involving similar

controversy have been decided by the Principal Bench holding that the personnel of the Territorial Army for the purposes of pension shall be treated at par with Army officer.

13. In the instant case, submission of the learned counsel for the respondents is that the T.A. officers, who were similarly placed as the applicant, had filed cases before the Armed Forces Tribunal, Principal Bench seeking service pension and in all such cases, judgment was pronounced in their favour. Civil appeals, filed only in six cases before Hon'ble The Apex Court against the judgments delivered by Armed Forces Tribunal, were dismissed on the ground that no substantial questions of law of general public importance were involved for consideration and the prayer for leave to appeal was accordingly declined. In the court during the course of hearing, learned counsel for the respondents assisted by Col Kamal Singh, Departmental Representative and TA 42505X Lt Col Hemant Gambhir, Nodal officer, Legal cases from T.A. Directorate, Delhi, agreed that the case of the applicant is covered by the aforesaid judgments and keeping in view the ratio of the these judgments, the applicant is entitled to the pension and pensionary benefits.

14. Having given our anxious consideration to the facts and circumstances of the case in hand and going through the judgments referred to above rendered by Principal Bench of the Armed Forces Tribunal, we find that the question of grant of pension and pensionary benefits to the T.A. Officers is no longer **res integra**, and therefore, we are of the view that the petitioner has been able to make out a case for grant of the pension which has also been

conceded by the Learned Counsel for the respondents keeping in view of judgment and order of Principal Bench (supra).

15. Accordingly, in view of the above, the Transferred Application No.41 of 2011 is partly allowed. The respondents are directed to pay pension and the post retiral dues to the petitioner from the due date as applicable to him, within four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the time as stipulated above, the amount accrued to the applicant would start earning interest at the rate of 9% from due date till the date of actual payment.

16. There shall be no order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

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Dated : May 2016