

AFR
Reserved
Court No.2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Transferred Application No. 66 of 2013

Thursday, this the 23rd day of November 2017

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

1. Pitambar Dutt Uniyal son of late Puroshottum Dutt Uniyal, resident of village Talli, Post Office Jolly Grant Bhaniyawala Dehradun.
2. Dilbahadur Gurung son of Shoorveer Gurung, resident of village Lacchiwala, Post Office Doiwala, district Dehradun

.....Petitioners

Ld. Counsel for : **Shri R. Chandra, Advocate**
the Petitioners

Versus

1. Union of India through Secretary, Defence, New Delhi.
2. Director of T.A., T.A. Directorate, Adjutant's General Branch, Sena Bhavan, "L" Block, New Delhi.
3. Record Officer Garhwal Rifles Regimental Center, Lansedowne, Uttarkhand.
5. 127 Inf (TA) Ecological Garhwal Rifles, Kurushetra Marg, Dehradun, Uttrakhand.

.....Respondents

Ld. Counsel for the : **Shri Sunil Sharma, Central**
Respondents **Govt Counsel**

ORDER**“Per Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. Being aggrieved with non-payment of pension for services rendered in 127, Territorial Army (Ecological), the petitioners approached the High Court of Uttarakhand at Nainital by filing Writ Petition No. 678 of 2009 which has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as Transferred Application No. 66 of 2013.

2. By means of the T.A. the petitioners have made the following prayers:

“(a) Issue a writ order or direction in the nature of mandamus directing the respondents to grant the pension to the petitioners as per the service done by petitioners more than 15 years in 127 Inf (TA) Ecological Garhwal Rifles Kurushetra Marg, Dehradun, Uttarakhand.

(b) Issue any other order or direction which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

(c) Award cost of the petition to the Petitioner”

3. Brief facts of the case are that both the petitioner No. 1 and petitioner No. 2 had joined the Indian Army and after serving for more than 15 years as pensionable service, were discharged from Indian Army and were subsequently enrolled in the 127 Territorial Army (Ecological) and ultimately were discharged from there. Both the petitioners are in receipt of service pension from the Indian Army. However, they have not been granted pension for their service rendered in the Territorial Army (Ecological).

4. Pleadings on record are that as per certificate given, the petitioners were entitled for pension. Copy of one such certificate

has been placed on record as **Annexure-1** to the T.A. Since pension was not granted to the petitioners for the term of engagement in the 127, Territorial Army (Ecological), as such, the petitioners made representations before the authority concerned, but no action was taken by the concerned authorities. A copy of one such representation has been filed as **Annexure-2** to the T.A.

5. It is further pleaded by the petitioners that several persons have been granted second pension after putting in more than 15 years of service in the 127, Territorial Army (Ecological), but the petitioners were denied second pension, as such they again preferred representation before the authority concerned but to no avail. Copy of the representation dated 09.01.2008 moved by the petitioners has been filed as **Annexure-7** to the T.A.

6. Submission of learned counsel for the petitioners is that the petitioners are entitled for second pension for services rendered by them in 127, Territorial Army (Ecological) but they have been discriminated in the matter of payment of second pension for services rendered by them.

7. The respondents have filed counter affidavit and have categorically denied the right of the petitioners to get second pension for services rendered by them in 127 Territorial Army (Ecological). Learned counsel for the respondents submitted that ex-servicemen are employed in the Territorial Army (Ecological) Task Force Units only on contractual basis and as per existing policy, they are not entitled for second pension for service rendered in Territorial Army (Ecological) Task Force Units. It is submitted by learned counsel for the respondents that as per policy in vogue, pension is applicable

only to those employees of the Territorial Army (Ecological) Task Force Units who are not drawing any kind of pension and have completed 15 years qualifying embodied service for pension. Submission of learned counsel for the respondents is that both the petitioners are in receipt of service pension for the services rendered by them in the Indian Army before joining the Territorial Army (Ecological) Task Force Unit. Learned counsel for the respondents placed reliance on Army Letter of Additional Director General of Territorial Army dated 15.10.2003 (Annexure-5 to the counter affidavit) which provides that as per orders, there is no pension permissible to servicemen who are in receipt of pension for service in the Indian Army.

8. We have heard Shri R. Chandra, learned counsel for the petitioners and Shri Sunil Sharma Sharma, learned counsel for the respondents and perused the record.

9. Letter dated 12.11.1982 (**Annexure SA-1** to the supplementary affidavit) relates to terms and conditions for enrolment of ex-servicemen in Territorial Army (Ecology) Para-3 of said letter provides for pay and allowances. It provides that as per TA Regulations 1948, all ex-servicemen drawing pension will continue to draw full pension and in addition be entitled to pay and allowance at the lowest rate of the rank they are engaged. Para-5 of aforesaid letter provides for term and conditions of engagement. Para-12 makes a specific provision that personnel re-enrolled and drawing pension will not be entitled to any enhanced pensionary benefits. Para-3, Para-5 and Para-12 of said letter for convenience sake are reproduced as under:

“3. Pay and allowance : As per TA Regulations 1948 all ex-servicemen drawing pension will continue to draw their full pension and in addition be entitled to their pay and allowances at the lowest rate of the rank they are engaged in. In addition all other allowance and benefits such as free ration, CILQ, DA/ADA etc would be applicable as per regular Army.”

“5. Terms and conditions : As per TA Regulations 1948 they will be engaged for a period of 7 years in the first instance. However, the period of engagement is extendable by 2 years at a time upto a maximum of 15 years of service for OR and 18 years in case of NCOs. In all cases enrolment beyond the age of 50 years will not be extended. The Task Force for which the re-enrolment is to be made will be for a continuous embodied service of 5 years.”

“12. The personnel re-enrolled and drawing pension will not be entitled to any enhanced pensionary benefits. In case of ex-servicemen not in receipt of pension, would be entitled to gratuity after 5 years embodied service or 10 years of engagement at the rate of one months pay for each completed year of aggregated service subject to maximum of Rs 15,000/- or 15 months of pay, whichever is less.”

(Emphasis supplied)

10. The policy with regard to non-entitlement of second pension to persons enrolled in the Territorial Army (Ecological) continued as is evident from letter of Additional Director General, Territorial Army, General Staff Branch vide letter dated 27.06.2006. Para-2 of said letter being relevant is reproduced as under:

“2. Based on contents of above references, inference drawn by this Directorate with regards to applicability of pension to following category of TA personnel serving in ECOLOGICAL (TA) units is as under:

(a) Ex-Servicemen/Pension holders per Army Service-

In addition to pay and alces rendered will continue to draw pension earned from Regular Army. They will not be entitled to draw any additional pension for the service rendered in TA Ecological Units (as clarified vide para 3 of your letter under ref at para 1(a) above with reference to para 187 of TA Regulations.

(b) ESM/Non pension holders- They will be eligible for pension on completion of 15 yrs embodied

Service (including Service rendered in Reg Army). This is the procedure existing for all TA units as per provisions of TA note to para 174(of TA Regs, 1948 (1976 Edition) for other ranks in TA and GOI, Mod letter of 1985 (refer para 1(b) & (d) above.).”

11. Letter dated 31.03.2008 of the Government of India, Ministry of Defence also debars second pension entitlement to Territorial Army (Ecological) personnel. Sub-para (v) of para-(d) of letter dated 31.03.2008, being relevant, is reproduced as under:

“(d) Pay and Allowances. ...

(v). The individuals will not be entitled to any pensionary benefits for the service rendered in the Ecological Task Force of Territorial Army.”

12. It is admitted that petitioners are in receipt of service pension for services rendered by them in the Indian Army before enrolment in the Territorial Army (Ecological). As per the policy, they are not entitled to second pension for services rendered in the Territorial Army (Ecological). Second pension is applicable to such employees re-enrolled in the Territorial Army (Ecological), who are not drawing pension against pensionable service rendered by them in the Indian Army and have completed 15 years of qualifying (embodied) service for pension.

13. So far submission of learned counsel for the petitioners that several persons have been granted second pension for the service rendered by them in Territorial Army (Ecological), in addition to pension payable against pensionable service in the Indian Army, is concerned, the respondents have averred in para-10 of the counter affidavit that pension payment order in respect of Naik Gabbar Singh (mentioned in para-10 of the TA) has been cancelled and in the

case of rest of persons, facts are being brought to the notice of pension payment authority for cancellation of their pension payment orders and to make recovery of irregular pension drawn by them.

14. It is trite law that benefits extended to some person(s) in an irregular or illegal manner cannot be claimed on the plea of equality as enshrined in Article 14 of the Constitution (vide **Gursharan Singh & ors vs. NDMC and ors**, [1996 (2) SCC 459] The doctrine of discrimination is founded upon existence of an enforceable right. The Division Bench of Allahabad High Court in the case of **Shripal Vaish vs. U.P. Power Corporation Ltd.**, 92009) 4 UPLBEC 3267 held that if a person is not entitled to payment in view of a particular provision, he cannot claim parity that under similar circumstances payment is being made to others. The Division Bench relied upon a decision of the Hon'ble Apex Court in **State of Bihar vs. Kameshwar Prasad Singh**, AIR 2000 SC 2306. In **Kameshwar Prasad Singh's** case it was held:

“The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.”

15. Adverting to the facts of the present case, as observed by us in the preceding paragraphs, the policy is clear that Army personnel drawing service pension of service rendered by them in Indian Army are not entitled to second pension for the service rendered by them upon enrolment in the Territorial Army (Ecological), Even if some persons are illegally or irregularly being paid second pension, it

would not entitle the petitioners to claim the same benefit on the ground of infringement of Article 14 of the Constitution.

16. The result of our observations made above is that since admittedly the petitioners are drawing pension for the service rendered in Indian Army, as such, they are not entitled for grant of second pension for services rendered by them in the Territorial Army (Ecological). The T.A. lacks merits and deserves to be dismissed.

17. It is accordingly dismissed.

18. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

November 2017
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