

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
COURT NO. 2

**O.A. No. 26 of 2015**

**Thursday, this the 21<sup>st</sup> day of July, 2016**

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative  
Member”**

No. 7237682-Y Ex- Naik Satyapal Singh S/O Sri Lakhi  
Ram R/O - Village - Bafar, P.O./P.S. - Jani, Tehsil &  
District - Meerut (U.P.) ..... **Applicant**

Versus

1. Union of India through the Secretary, Ministry of  
Defence, New Delhi
2. Principal Controller of Defence Accounts  
(Pension), Allahabad
3. Defence Pension Distribution Officer, Meerut Cantt,  
Meerut
4. Manager, SBI, Meerut Cantt

.....**Respondents**

**Ld. Counsel appeared for the Applicant - Shri Sudhir Kumar Singh  
Advocate**

**Ld. Counsel appeared for th Respondents - Shri Adesh Kumar Gupta  
Central Government  
Add. Standing Counsel**

**ORDER (ORAL)**

1. Present Application has been preferred by the Applicant under section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved with the stoppage of pension on account of conviction and sentences passed by the Sessions Court.
2. We have heard Shri Sudhir Kumar Singh learned counsel for the Applicant and Shri Adesh Kumar Gupta, learned counsel appearing for the respondents duly assisted by OIC Legal Cell.
3. The factual matrix of the case is that the Applicant retired from the Indian Army while holding the post of Naik on 01.01.1998. After his retirement, he was sanctioned pension in accordance with Pension Regulations which was paid regularly. However, the payment of pension was stopped in Oct 2006 without serving show cause notice. The reason behind stoppage of pension was that the Applicant was convicted in a pending Criminal case under section 302 I.P.C and was incarcerated in jail from 15.02.2006. However, he was released on bail by the High Court vide order dated 30.05.2013 in Criminal Appeal No 1652 of 2006.
4. The crux of submission made by learned counsel for the Applicant is that once he has been enlarged on

bail by the High Court in pending Criminal Appeal, he shall be entitled for restoration of pension in accordance With Para 82 (b) of the Pension Regulations for the Army 1961 (Part II).

5. **Per contra**, learned counsel for the respondents submits that the Applicant has merely been enlarged on bail and has not been acquitted of the charges in pending Criminal Appeal and by this reckoning, he is not entitled for resumption of pension in view of Para 82 (b) and (d) of the Pension Regulations for the Army 1961 (Part II).

6. Learned counsel for the Applicant rebutted the contention and invited attention to the final order and judgment of the Armed Forces Tribunal at Chandigarh rendered in **OA no 159 of 2013 decided on 10.09.2013 Chandra Singh vs Union of India**, a copy of which has been annexed to the rejoinder affidavit. The relevant portion of the judgment is reproduced below for ready reference.

“ It is again surprising that in spite of letter and legal notice from the petitioner, the respondents, instead of restoring the pension of the petitioner, have tried to justify the stoppage of pension on the ground that the outcome of the exercise at the end of the respondents would be the suspension of the pension of the petitioner as he has yet not been acquitted by the Court. We

deplore and depreciate this attitude of the respondents. Instead of doing justice to the petitioner they are adamant to add insult to the injury.

Learned counsel for the respondents has taken shelter of the provisions of Para 82 (d) of the Pension Regulations for the Army, 1961 (Part II) to argue that as per this provision if a pensioner is convicted and sentenced for a criminal offence by the Court below and then is acquitted by the Higher Court the pension withheld shall be restored. We may mention here that this Para 82(d) has been submitted by the respondents as Annexure R-3 but the whole of the regulation 82 has not been reproduced for some ulterior motive. Clauses (a) and (b) of the said regulation 82 which have been concealed by the respondents are very material and we reproduce them as under:

*"82(a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended from the date of his imprisonment and the case will be reported to the Controller of Defence Accounts (Pension), Allahabad for the orders of the competent authority. **In case, where a pensioner is kept in police or jail custody as an under-trial prisoner and is eventually sentenced to a term of imprisonment for a criminal offence, the suspension of pension shall take effect from the date of imprisonment only.***

*82(b) Restoration of Pension withheld – A pension withheld in whole or in part may be*

*restored in full or in part by the competent authority in consultation with the State Government or Administration concerned in political cases and with the Controller of Defence Accounts (Pensions) and the civil authorities, if necessary, in other cases. **In the case of a pensioner undergoing imprisonment, any action under this Regulation shall only be taken on his application after release but in no case, shall pension be sanctioned for the period of imprisonment in jail for a serious crime.***

*Learned counsel for the respondents tried to argue that it is only upon the acquittal of the petitioner that his pension can be restored.*

*Although the petition is entitled to be allowed simply on the ground that neither show cause notice was issued to the petitioner nor order in writing was passed by the competent authority for the suspension of the pension of the petitioner yet a conjoint reading of Para 82(a) and 82(b) makes it abundantly clear that the pension during the period of imprisonment will not be payable. However, the pension may be restored after the release of the pensioner from custody. The word used in the Regulation is 'Release' and not 'Acquittal'. These are two entirely different words having different meanings. One cannot be equated with other. If the word 'Release' is equated with the word 'Acquittal' then it would mean that if the hearing in the appeal does not take place for 20 years, the petitioner will not get*

*the pension for 20 years till his acquittal. That cannot be the intention of the framers of the Regulations. Word 'Release' has consciously been used in Para 82(b) which means if a person is released on bail, his pension should be restored. Para 82(d) deals with a different situation which we need not elaborate in this case.*

*In view of the entire discussion we are satisfied that the pension of the petitioner has wrongly been withheld and is liable to be restored.*

*Looking at the gross negligence and stubborn attitude of the respondents we also intend to impose cost.*

*The petition is allowed with cost of Rs. 10,000/- to be paid by the respondents No. 1 to 3. The action stopping the pension of the petitioner is set aside. The pension of the petitioner be restored with effect from 01.09.2009. The petitioner will be paid the arrears with interest at the rate of 8% per annum with effect from 01.09.2009 till the arrears are paid.*

*The respondents are at liberty to take further action, if any, as per the Rules."*

7. Keeping in view the aforesaid final order of Armed Forces Tribunal Chandigarh, the question with regard to payment of pension during pendency of the Criminal Appeal seems to be no more res integra. The Tribunal has decided that the word 'Release' used in Para 82 (b) of the

Regulations has been consciously used which means if a person is released on any ground whether on bail or after due acquittal in a criminal case on bail, his pension should be restored. The Bench further held that Para 82(d) deals with a different situation which we need not elaborate in this case. The interpretation given by the Armed Forces Tribunal Chandigarh does not seem to have been modified or annulled by any higher forum and therefore, it has the binding effect. In the circumstances we have no option except to allow the present Application. Admittedly, Applicant has been granted bail in a pending Criminal Appeal and in pursuance of the order passed by the High Court, he has been released from Jail. Since he is not incarcerated in jail at the moment and released on bail, he seems to be entitled for restoration of pension in view of law settled by the Chandigarh Bench. Otherwise also, the law is bad since pension has been stopped without serving show cause notice or without providing opportunity of hearing to the Applicant.

8. Accordingly, the O.A is allowed. Any decision or order passed with regard to stoppage of pension is set aside. The respondents shall

restore the payment of pension to the Applicant with immediate effect with effect from the date he has been released from Jail in pursuance of the order of bail granted by the High Court. The Applicant shall be entitled to payment of interest at the rate of 8% with effect from the date of release which is Nov 1, 2013 alongwith arrears of pension. The Applicant shall also be entitled for payment of cost which we quantify at Rs 10,000/- which shall be paid to the Applicant through cheque expeditiously within three months.

9. Let the order be complied with not later than three months from today accordingly.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**MH/-**