

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 461 of 2012**Thursday, this the 4th day of Aug 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex Naib Subedar Lallan Mishra (JC-266894-L) of 297 Field Regiment, C/o 56 APO son of late Kedar Nath Mishra, resident of house No 213/A/6 Ganga Vihar Colony, Gayasuddinpur, Transport Nagar, District-Allahbad (UP).

...Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**
applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Director General Artillery Directorate, Integrated Headquarter of the Ministry of Defence (Army), Sena Bhawan, New Delhi-110011
3. Record Office, Artillery Records, Nasik Road Camp, PIN-422102. APS Pin-908802, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.
5. Commanding Officer, 297 Field Regiment, c/o 56 APO.

.....Respond

Ld. Counsel for the : **Shri Adesh Kumar Gupta,**
Respondents **Central Govt Counsel, assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the stoppage of regular pension on account of conviction in a criminal case under section 302 of the Indian Penal Code in pursuance of Pension Regulations for Army-1961.
2. We have heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri Adesh Kumar Gupta, Ld. Counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell and perused the records.
3. Admittedly the applicant was enrolled in the Regiment of Artillery on 02.11.1982 and he was attested as Sepoy (Gunner) on 30.11.1983. Later he was promoted to the rank of Naib Subedar in the year 2004. The applicant was discharged from service on 30.11.2008 on completion of 26 years of service. However he was not being paid pension, hence he submitted various representations collectively filed as **Annexure A-3** to the O.A. From the material on record it appears that instead of paying regular pension, the applicant has been paid provisional pension on account of criminal case under section 302 of the Indian Penal Code.
4. Solitary arguments advanced by Ld. Counsel for the applicant is that though Army Regulation for the Army-1961 (in

short, Army Regulations) provides stoppage of regular pension but while doing so the condition precedence is to serve a show cause notice. Attention has been invited to para 4 of the Pension Regulations. Para 3-B of the Pension Regulations provides for payment of provisional pension during conclusion of criminal trial or departmental proceedings. For convenience sake para 3-B of the Pension Regulations is reproduced as under :-

“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 upto the date of retirement or if he was under suspension on the date of retirement upto 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 upto and including the date on which, upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.

(iii) No gratuity (including retirement gratuity) shall be authorized until the conclusion of such proceedings and issue of final orders thereon.

(iv) No commutation of the 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.”

5. It is not disputed that under para 3-B (supra) in the event of pendency of criminal trial, the applicant shall be entitled only for grant of provisional pension, which admittedly was paid to the applicant. It is also not disputed that the applicant was convicted under section 302 of Indian Penal Code and sentenced to life imprisonment by the Sessions Judge, Balia. Against his conviction and sentence the applicant preferred a criminal appeal in the High Court and has been enlarged on bail by the High Court.

6. The moot question for consideration is whether the applicant was entitled to be served prior notice while denying regular pension in terms of Pension Regulations (supra). A plain reading of para 4 of the Pension Regulations (supra) shows that by an order in writing the pension may be withheld or withdrawn or a part thereof, whether permanently or a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave mis-conduct. The framers of the Regulations have used the word 'or' which is disjunctive in

nature and deals with two situations; first is, 'conviction of a serious crime' and second, 'found guilty of grave mis-conduct'.

7. A reading of sub para (2) of para 4 of the Pension Regulations shows that where a pensioner is convicted of a serious crime by a Court of Law, or is found guilty of grave mis-conduct, action under sub para (1) of para 4 of the Pension Regulations shall be taken in the light of the judgment of the Court relating to such conviction. Sub para (3) of para 4 (supra) provides that in cases falling under sub para (2) as well as other cases where the competent authority consider that the pensioner is prima facie guilty of grave mis-conduct, the competent authority before passing an order under sub para 1 shall serve upon the pensioner a notice specifying the action proposed to be taken against and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days as may be allowed by the competent authority, such representation as he may wish to make against the proposal.

8. As we have observed above para 4 (1) of the Pension Regulations deals with two situations; 'conviction in serious crime' or 'in case found guilty of grave mis-conduct'. Sub para (3) of para 4 of the Pension Regulations provides for service upon the pensioner a notice only in case of grave mis-conduct and not on conviction in a serious crime. In case argument of

Ld. Counsel for the applicant is accepted, it shall amount to amalgamation of two situations into one which seems to be not the intention of the framers of the Pension Regulations (supra). Sub para (3) envisages to serve notice only in the event of 'grave mis-conduct' and not in the event of 'conviction in a serious crime'. Accordingly argument advanced by Ld. Counsel for the applicant seems to be mis-conceived. No notice is required in case a person is convicted in a serious crime.

9. 'Crime' has been defined in Explanation (a) which means a crime or offence under the Indian Penal Code or Official Secret Act or any other law for the time being in force in the country for which the maximum punishment prescribed under the law is imprisonment for a period three years or more with or without a fine.

10. In the present case, admittedly the applicant faced trial for offence under section 302 of the Indian Penal Code and was convicted and sentenced for life imprisonment which is a serious crime under Explanation (a) (supra). Grave mis-conduct has also been defined in sub para (b) which includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information such as mentioned in section 5 of the Official Secret Act, 1923 (19 of 1923). Thus the framer of the Pension Regulation have treated 'serious crime' and 'grave mis-conduct'

as to distinct situation as explained in Explanation (a) and (b) (supra). While interpreting statutory provision in case the language is clear and unambiguous, in such situation it is not open to the Court, authority or the Tribunal to interpret it otherwise by reading down or supply of *causus omisus*.

11. In the case of ***Padmasundara Rao vs. State of T.N.***, AIR 2002 SC 1334, a Constitution Bench of Hon'ble Supreme Court observed that *causus omisus* cannot be supplied by the Court except in the case of clear necessity. In ***Union of India vs. Rajiv Kumar***, 2003 (6) SCC 516 it has been held that ordinarily *causus omisus* should not be supplied by judicial interpretative process. Court cannot read anything into a statutory provision or re-write a provision which is plain and unambiguous. The same principle have been re-iterated in the cases of ***Vermareddy Kumaraswamy Reddy and another vs. State of A.P.*** 2006 (2) SCC 670, ***Delhi Financial Corporation and Ors. vs. Rajeev Anand and ors*** (2004) 11 SCC 625,; ***Nalinakhya Bysacik vs. Shyam Sunder Haldar***, AIR 1953 SC 148, ***Dental Council of India vs. Hari Prakash*** 2001 (8) SCC 61.

12. Thus in the circumstances of the present case, from a plain reading of para 3 (B) and 4 of the Pension Regulations it is evident that stoppage of pension deals with two different situations, i.e. 'serious crime' and 'found guilty of grave mis-

conduct'. Only for grave mis-conduct a provision has been (supra) to serve a show cause notice.

13. In view of the above arguments advanced by Ld. Counsel for the applicant are not sustainable and deserve outright rejection.

14. One other argument advanced by Ld. Counsel for the applicant is that no action has been taken under para 423 of the Regulations 1977 by dismissing or discharging the applicant on account of involvement in crime under section 302 of Indian Penal Code. The provision contained in para 423 of Regulations 1977 is an enabling provision and it is for the authorities to take action or not during pendency of criminal case. In case the authorities decide not to take action and permit an employee to retire from service and consider his case for payment of provisional pension (supra) in accordance with Pension Regulations, it does not vitiate subsequent action taken by the authorities for grant of provisional pension. An enabling provision is not necessary to be invoked unless authorities feel to take action for any illegality or impropriety committed by the employee.

15. Further attention has been invited by Ld. Counsel for the respondents with regard to Govt of India letter dated 20.07.1974 (**Annexure CA-2 to the counter affidavit**) which

clarifies right of the Govt to pay only provisional pension in the event of involvement in a serious crime.

16. No other ground has been raised or pleaded by Ld. Counsel for the applicant.

17. In view of our observations made hereinabove, the O.A. is devoid of merit and hereby **rejected**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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