

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 497 of 2018**

Monday, this the 9th day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14218374-Y Nk (T/S) Mistar Singh (Retd.), S/o Shri (Late) Lal Singh, R/o Village : Pathara, Post : Gada Kasda, District : Etawah (UP)-206121.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh**, Advocate
and **Shri Ashish Kumar Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. O IC Records, The Records Signals, PIN : 908770, C/o 56 APO.
4. PCDA (Pension) (Army), Draupadi Ghat, Allahabad (UP)-211014.
5. Treasury Officer, Treasury Office, Civil Lines, Etawah (UP)-206001.

.....**Respondents**

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

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- A. *To quash the impugned orders dated 29 Apr 2017 (A-1 of instant OA), 29 Dec 2010 (A-2 of instant OA) and 18 May 2011 (A-3 of instant OA) wherein claim of the applicant has been denied for restoration of service pension and disability element wef Dec 2006 to Mar 2010.*
- B. *To issue suitable orders or directions to the Respondents for restoration of service pension and disability element for the period from Dec 2006 to Mar 2010 along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- C. *To issue suitable orders or directions to the Respondents to grant of rounding off benefit of his disability element from 20% to 50% for life with effect from 01.01.1996 (date of implementation of V CPC) in terms of Govt of India letter dated 31 Jan 2001 along with Hon’ble Apex court Judgment (Uol & Others Vs Ram Avtar) Along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- D. *Any other relief including cost of applicaton as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 29.04.1972 and was discharged on 30.04.1987 in Low Medical

Category BEE (Permanent) after rendering 15 years and 02 days of service on fulfilling the conditions of his enrolment under Rule 13 (3) Item III(i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 30.03.1987 assessed his disability '**COMPOUND FRACTURE BOTH BONES RT LEG LOWER FOURTH SHAFTS**' @ 20% for two years and opined the disability to be attributable to military service and connected with service due to injury sustained on duty. Accordingly, the disability pension was granted by the Principal Controller of Defence Accounts @20% for two years from 01.05.1987 to 29.03.1989 vide P.P.O. dated 25.08.1987. Thereafter, the applicant was in receipt of disability element of disability pension time to time from the period 1983 to till life based on the assessment made by the Re-Survey Medical Boards held from time to time. The applicant was involved in Criminal Case and convicted for Life Imprisonment vide judgment dated 10.07.2003/11.07.2003 passed by the Additional District & Sessions Judge, Etawah (UP) in Session Trial Suit No. 26 of 2001 under Sections 147, 148, 149, 302, 307 and 336 of IPC 1860, against which the applicant had filed Criminal Appeal No. 3925 of 2003 before the Hon'ble High Court of Judicature at Allahabad. The Hon'ble High Court allowed the said Appeal vide judgment dated 12.03.2010 giving benefit of doubt to the applicant. The Service Pension and Disability Pension of the applicant was discontinued with effect from 01.12.2006 by Pension Disbursing

Authority due to involvement of the applicant in Criminal Case. After release from Central Jail on 24.03.2010, the applicant had approached the Principal Controller of Defence Accounts (Pension), Allahabad for restoration of Service/Disability Pension. Accordingly, Service Pension and Disability Pension have been restored in favour of the applicant with effect from 24.03.2010 vide Principal Controller of Defence Accounts (Pension), Allahabad letter dated 09.05.2011/18.05.2011. The applicant's claim for restoration of service pension and disability element of disability pension for the period he was in Jail (custody) was rejected vide letters dated 29.12.2010, 18.05.2011 and 29.04.2017. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that as per Para 101 (d) and (e) of Pension Regulations for the Army, 2008 (Part II, 1961 Edition), the applicant is entitled for restoration of his service pension and disability element of disability pension with effect from 12.03.2010, since he has been acquitted by the Hon'ble High Court vide its Order dated 12.03.2010. He further pleaded that the applicant is also entitled for benefit of rounding off from @20% for life to @50% for life in terms of Government of India order dated 31.01.2001 and 19.01.2010 and also in terms of Hon'ble Apex Court Judgment in Ram Avatar's case with effect from the date of implementation of V CPC i.e. 01.01.1996.

4. On the other hand, Ld. Counsel for the respondents raised preliminary objection saying that Original Application is not maintainable due to multiple joinder of reliefs claimed. Submission of Ld. Counsel for the respondents is that in the instant Original Application the applicant has prayed for restoration of service pension and disability element of disability pension as well as its rounding off which are not permissible in law. He further contended that the applicant is not entitled to restoration of service pension and disability element of disability pension for the period he was in Jail (Custody) as per Para 101 of Pension Regulations for the Army, Part II (2008). He further contended that since the applicant was discharged in the year 1987 as such he is not entitled for rounding off of disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the records and we find that the questions which need to be answered are of three folds:-

- (a) Whether the instant Original Application is maintainable?
- (b) Whether the applicant is entitled for service pension and disability element of disability pension for the period he was in Jail (Custody) i.e. from December, 2006 to March, 2010?

- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. It is admitted that the service pension and disability element of disability pension have been restored by the respondents from the date applicant was released from Jail on 24.03.2010. The instant Original Application has been filed for restoration of service pension and disability element of disability pension and rounding off of disability element. We are of the considered view that all reliefs having arisen from a single cause of action i.e. pensionary benefits as such the objection raised by the Ld. Counsel for the respondents are not tenable in the eyes of law. As such, Original Application is held maintainable.

7. The provisions for suspension, dis-continuance or withholding in whole or in part of pension and gratuity (including retirement/death gratuity) under various circumstances – Defence personnel have been provided in Para 101 of Pension Regulations for the Army, Part I (2008) which reads as under :-

SUSPENSION, DIS-CONTINUANCE OR WITH-HOLDING IN WHOLE OR IN PART OF PENSION AND GRATUITY (INCLUDING RETIREMENT/DEATH GRATUITY) UNDER VARIOUS CIRCUMSTANCES – DEFENCE PERSONNEL

101. If a pensioner is convicted of a crime by court of law or guilty of grave misconduct, the following procedure shall be followed:

(a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended by the Pension Disbursing Authority from the date of his imprisonment and the case reported to the Principal

Controller of Defence Accounts (Pensions) for obtaining the order of the competent authority. In a 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.

(b) crime or offence of serious nature:

The competent authority shall decide in consultation with the Principal Controller of Defence Accounts (Pensions) and if necessary, with civil authorities also, whether the offence is a serious one and if so, he shall order the removal of the pensioner's name from pension list, from the date of his imprisonment. Pension thereupon shall cease to be payable from that date.

(c) crime or offence not of serious nature:

If the competent authority decides that the offence is not so serious as to justify the removal of the pensioner's name from the pension list, it shall not be removed; the payment of arrears of pension due from the date of last payment before imprisonment shall be made on release from prison.

Note:- Serious crime or offence would mean a crime or offence under the Indian Penal Code or Official Secrets Act. 1923 (19 of 1923) 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 of three years or more, with or without fine.

(d) If a pensioner is sentenced to imprisonment for a criminal offence by a lower court but is acquitted, on appeal, by a higher court, the pension withheld shall be restored.

(e) If a pensioner is in imprisonment for debt, pension shall continue to be paid.

(f) If a pensioner is guilty of grave misconduct not falling under the preceding clauses, it shall at once be reported to the competent authority who may, if he considers it justifiable, order the suspension of his pension from a date to be specified. The competent authority shall subsequently investigate the case in consultation with the Principal Controller of Defence Accounts (Pensions) and if necessary the civil authorities,

(i) either authorise the withholding of pension in whole or in part from a date to be specified by him not earlier than the date of original suspension; or

(ii) authorise continuance in full.

Note: The expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act. 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

(g) If a pensioner is convicted by a foreign court (including Nepal) or is imprisoned in a jail outside India for a serious crime, his case shall be referred to the Government of India through the Principal Controller of Defence accounts (Pensions) for a decision on the question of reduction/forfeiture or restoration of pension.

(h) Where a pensioner is convicted of serious crime by a court of law, action to withhold or withdraw gratuity and pension or a part thereof shall be taken by the competent authority in the light of the judgment of the court and other provisions of this chapter.

8. From bare perusal of Para 101 (d) of Pension Regulation for the Army, Part I (2008) it is clear that if a pensioner is sentenced to imprisonment for a criminal offence by a lower court but is acquitted, on appeal, by a higher court, the pension withheld shall be restored. In the instant case the applicant was sentenced to imprisonment for a criminal offence by a lower court i.e. Additional District and Sessions Judge, Etawah in Session Trial No. 26 of 2001, but has been acquitted, on appeal (Criminal Appeal No. 3925 of 2003), by the Hon'ble High Court of Judicature at Allahabad, as such the applicant is entitled for restoration of the

service pension as well as disability element of disability pension for the period he was in Jail (Custody).

9. The applicant is in receipt of disability element of disability pension @20% for life.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. *We have heard Learned Counsel for the parties to the lis.*

6. *We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that

benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 497 of 2018** deserves to be allowed, hence **allowed**. The impugned orders dated 29.04.2017, 29.12.2010 and 18.05.2011, annexed as Annexure Nos. 1-, A-2 and A-3 with Original Application, are set aside. The applicant is held entitled for restoration of service pension and disability element of disability pension with effect from 01.12.2006 to 23.03.2010 (for the period he was in Jail). The respondents are directed to restore the applicant's service pension and disability element of disability pension with effect from 01.12.2006 to 23.03.2010 and pay the arrears accordingly.

14. The applicant is also held entitled to the benefit of rounding off of disability element of disability pension from 20% for life to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 02.04.2018.

15. The respondents are directed to give effect to this order within a period of four months from the date applicant submits

mandatory documents along with certified copy of this order. Defaults will invite interest @ 9% per annum from the due date till actual payment. Default will invite interest @ 8% per annum till the actual payment

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 09 August, 2021

AKD/-