

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

Court No.1

Original Application No. 305 of 2019

Thursday, this the 14th day of July, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Rajesh Teotia, Son of Late Sri Hakam Singh, R/o Vill &
PO- Rahamapur Syawali, Distt- Bulandsahar (U.P.)

..... **Applicant**

Ld. Counsel for the : **Shri KK Misra, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Headquarter of Ministry of Defence (Army), DHQ PO, New Delhi.
3. Officer In Charge, Records, Rajputana Rifles, Delhi Cantt.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad, U.P.

..... **Respondents**

Ld. Counsel for the Respondents. : **Shri Anurag Mishra,**
Central Govt. Counsel.

ORDER

“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.

(i). To quash para 502 of GOI, MOD letter No PC10(1)2009-D(Pen/Pol) dated 8.3.10, para 5 of GOI, MOD letter No 1(13)2012-D(Pen/Pol) dt 17.1.13, and para 4.1 of GOI, MOD letter No 12(1)2014-D(Pen/Pol) Part-II dt 3.02.16, with regard to Reservist only. (Annexure A-3, A-5 and A-7 respectively to the O.A.)

(ii) To quash para 4.3 of CDA (P) Allahabad circular No 430 dt 10.03.2010, para 4.2 of circular No 501 dt 17.1.13, with regard to reservist only and para 4.2 of circular No 555 dt 4.2.16. (Annexure A-4, A-6 and A-8 respectively to the O.A.)

(iii) To direct the respondents to grant service pension to the applicant equivalent to those who had rendered regular service of 15 years as Sepoy in the Army wef 01 July 2009, the date from which the new2 policy was made effective.

(iv) To direct the respondents to pay the arrears of pension from the date of its entitlement with interest as applicable.

(v) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.

(vi) Cost of the case may be awarded in favour of the applicant.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 19.03.1956. The applicant served various units as per tenure schedule for a period of 15 years, including regular service as well as reservist. He was discharged from service as a reservist on 20.05.1971 being surplus to the authorized strength. During service applicant participated in 1965 INDO PAK war. He was granted pension w.e.f. 21.05.1971 which was revised from time to time. Applicant represented his case for grant of service pension equivalent to regular Sepoy which was rejected on the ground that as per Govt of India policy, applicant is not entitled service pension equivalent to regular Sepoy. Applicant has filed this O.A. to quash

para 5.2 of Govt of India, Min of Def letter dated 08.03.2010, para 5 of GOI, MOD letter dt 17.1.13 and para 4.1 of GOI, MOD letter dated 03.02.16, para 4.3 of Circular No. 430 dated 10.03.2010, para 4.2 of Circular No. 501 dated 17.01.2013 and para 4.2 of Circular No. 555 with regard to non applicability of revision of pension in respect of reservists, and for grant of service pension equivalent to those who have rendered regular service of 15 years as Sepoy w.e.f. 01.07.2009, i.e. the date from which the new policy was made effective along with interest as applicable.

3. Learned counsel for the applicant pleaded that applicant had rendered 15 years service in the Army and as per policy in vogue during that period the Army personnel who were declared surplus to the authorised strength and were discharged as reservist were recalled for service and were employed for the duration of service so as to enable them to complete 15 years of colour service in the Army. His further submission is that this was done with a view to make them eligible for the service pension of a Sepoy. The applicant also served as a Sepoy for 15 years and accordingly, after his discharge

from service as a reservist he was granted pension equivalent to other regular Sepoys who rendered 15 years of service. He further submitted that consequent to issue of Govt of India, Min of Def letter dated 08.03.2010, basic pension of regular Sepoys was increased from Rs 3500/- to 4603/- p.m. w.e.f. 01.07.2009 but enhancement of pension was not granted to reservist pensioners which is clear discrimination between two classes. His further submission is that though basic pension was enhanced for regular Sepoys by issuing three subsequent Circulars but this enhancement was not made applicable to reservist Sepoys which is discriminatory and arbitrary. Learned counsel for the applicant pleaded that relevant paras of Govt policy/ Circular preventing applicant for grant of pension equivalent to regular Sepoy be quashed and applicant be granted pension equivalent to regular Sepoy.

4. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service under item 13 3 III (i) of Army Rules 1954 with effect from 21.05.1971 after rendering 9 years, 120 days

of colour service and 5 years, 308 days of reserve service (total service 15 years and 63 days). As per para 3 of Special Army Instruction (SAI) 2/S/54, an individual who is transferred to the reserve before earning a service pension, will be eligible, on satisfactory completion of prescribed combined colour and reserve qualifying service, for a reservist pension or a gratuity in lieu thereof irrespective of his pay group and category. He further submitted that since applicant had fulfilled the conditions prescribed by SAI, therefore, he opted for reservist pension and as such he was granted reservist pension w.e.f. 21.05.1971. His other submission is that applicant's pension was revised from time to time as per orders of the Govt of India and it was revised to the minimum rate of pension @ Rs 3500/- p.m. w.e.f. 01.01.2006 in terms of policy letter dated 11.11.2008 and therefore, Corr PPO No was issued to applicant and thereafter, further revisions were made and Corr PPOs were issued but as per Circular No. 501 of 17.01.2013 these provisions were not made applicable to reservist pensioners. On the basis of Govt of India, Min of Def letter dated 03.02.2016, One Rank and One Pension (OROP) was made applicable vide Circular No. 555 of 04.02.2016 but this was also not made

applicable to reservist pensioners/pensioners in receipt of Ex-gratia payments. Pension of reservist have not been revised by the Govt of India, Min of Def. However, as per recommendations of 7th CPC i.e. minimum pension has been fixed to Rs. 9,000/- per month and PCDA (P) Allahabad has issued Circular No 570 dated 31 October, 2016 to this effect. Learned counsel for the respondents submitted that since Govt of India, Min of Def letters and Circulars issued are not made applicable to reservist pensioners, they are not entitled to pension equivalent to regular pensioners. These circulars have been issued by statutory authority, hence cannot be quashed. He pleaded for dismissal of O.A. statutory

5. We have heard learned counsel for the parties and perused the Govt of India, Min of Def letters and Circulars issued on the subject.

6. Applicant, who is in receipt of reservist pension, is claiming that he should be granted service pension equivalent to regular pensioners who retired after completion of 15 years of active service. Admittedly, the reservist pensioners are those persons who have not done qualifying service for pension but who were kept under

reserve for varying periods. Computing the period of active service and the period retained as reservist, the Central Government formulated a scheme by which they were entitled for pension at 2/3rd of the minimum pension entitled to a Sepoy who retires with minimum qualifying service for earning pension. The entitlement is on the basis of the period of active service and the period spent as reservist, a total of not less than 15 years. On the basis of recommendations of various Pay Commissions appointed by the Central Government, revisions were made for regular pensioners, but the *ibid* orders were made inapplicable for reservist pensioners.

7. We have noticed that Regulation 155 of the Pension Regulation for the Army, 1961 (Revised Edition) provides that reservist pensioners would be eligible for 2/3rd of the lowest pension admissible to a Sepoy. In practice, till 2009, on consequent pay revisions, the pension admissible to the reservists stood less than 2/3rd and accordingly, revision was granted. However, after 2009, the minimum pension prescribed for reservists was always more than 2/3rd of the lowest pension due to a retired Sepoy. As per the 5th, 6th and the 7th Central Pay

Commissions, the revision affected on the pension of reservists worked out to more than 2/3rd of the lowest pension drawn by a superannuated Sepoy. In the 7th Pay Commission, pension due to the reservists was enhanced from Rs. 3,500/- to Rs. 9,000/- which is more than the 2/3rd of the minimum pension of a Sepoy.

8. After implementation of OROP to defence pensioners Circular No. 555 of 04.02.2016 was issued. We find that benefits of aforesaid provisions were not made applicable to some categories including reservist pensioners as per para 4, which for convenience sake is reproduced as under:-

“4. NON-APPLICABILITY

4.1 The provisions of this circular do not apply to UK/HKSRA/ KCIOs pensioners, Pakistan and Burma Army Pensioners.

4.2 These orders do not apply to Reservist Pensioners.

4.3 These orders also do not apply to Pensioners in receipt of Ex-Gratia payments.”

9. From the aforesaid we find that benefits of OROP were not made applicable to reservist pensioners, therefore, we do not find any reason to interfere with the Govt rulings especially when the reservists cannot claim

any parity with those who had rendered 15 years colour service for earning service pension. Admittedly, reservists pensioners are the persons who did not have the minimum qualifying service of pension but were permitted pension at the rate of 2/3rd of the lowest pension only because they were allowed reservist pension coupled with the period of colour and reserve service totaling 15 years. In the period when they were placed in reserve, there was no ban on them from getting other employment also. Taking all the above points into consideration, we are of the opinion that the benefit granted to the reservists is a matter of policy which cannot be tinkered with by this Tribunal especially when the statutory regulations provide for a specific rate of pension to the reservists, above which they are now being paid, in practice. Any policy issued by the Govt cannot be quashed until and unless it is against principles of natural justice. The policies/ circulars referred by the applicant have been made by statutory body authorized to do so and have been framed considering all relevant points as well as they are not against the principles of natural justice, hence these cannot be quashed.

10. Thus, keeping in view the aforesaid findings, we are of the view that applicant being a reservist pensioner is not entitled service pension equivalent to a regular Sepoy.

11. The O.A. being devoid of merit is accordingly, **dismissed.**

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 14 July, 2022

Ukt/-