

RESERVED
Court No.3
 (Sl. No.26)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 534 of 2022

Tuesday, this the 01st day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Ex Sub Rajendra Bahadur, Army No JC479045, S/o Shri Kanhaiya Bax Singh, R/o Singh Niwas, Vidya Nagar, Lucknow (UP)-226002.

.....Applicant

Ld. Counsel for : **Shri Vijay Kumar Pandey**, Advocate
 Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. OIC Records, Records DSC, PIN-901277, C/o 56 APO.
3. The CRO, DSC Records, Kannur, Kerala-670013.
4. OIC PAO (OR), DSC Records, Mill Road, Burnacherry, PO-Kannur (Kerala)-670013.
5. OIC Pen NE Group, DSC Records, Mill Road, Kannur, Kerala-670013.
6. The Commandant, DSC Centre Cannanore, Kerala, PIN-90127, C/o 56 APO.
7. Director DSC, Headquarters Central Command, PIN-900450, C/o 56 APO.
8. PCDA (P), Draupadighat, Allahabad (UP)-211014.

...Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**, Advocate
 Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has sought the following reliefs:-

(a) This Hon'ble Tribunal may kindly be pleased to direct the opp parties to grant the revised/enhanced rate of salary and allowances as per the 7th Central Pay Commission with all consequential benefits including terminal benefits w.e.f. 01.01.2016 to 30.06.2017, and, thereafter on the basis of the same fix the service pension and, provide the interest on the aforesaid delayed amount i.e. salary, service pension, children education allowance, ration allowance, luggage allowance, leave encashment of 166 days, SRGRTY of 8.5 years, Tfr grant and bonus, to the applicant, with compound interest @ 18% p.a. from due date to till the date of actual and final payment of the amount, in the interest of justice.

(b) This Hon'ble Tribunal may kindly be awarded the cost Rs 20,20,000/- (Rs Twenty Lac and twenty thousand only) to the applicant against the opposite parties.

(c) This Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

2. Brief facts of the case are that applicant was initially enrolled in the Rajput Regiment of the Indian Army on 27.10.1979 and he was discharged from service on 31.10.2007 (AN) after completion of terms of engagement for which he was granted service pension w.e.f. 01.11.2007 vide PPO No. S/034104/2007 (Army). He was re-enrolled in Defence Security Corps (DSC) on 22.12.2008 in the rank of Naib Subedar and opted not to count his former service with DSC. After attaining the age of superannuation he was discharged from DSC on 30.06.2017 (AN) having put in 08 years, 06 months and 10 days service. He was granted service

gratuity amounting to Rs 3,96,653/-. Applicant has filed this O.A. for grant of difference of arrears accruing on implementation of 7th CPC.

3. Learned counsel for the applicant submitted that after implementation of 7th CPC applicant being retired on 30.06.2017 was eligible for grant of revised rate of pay and allowances w.e.f. 01.01.2016 as he was in service when the 7th pay commission was made effective. It was further submitted that after implementation of 7th CPC arrears with respect to leave encashment, service gratuity, transfer grant and bonus have not been paid. He submitted that in regard to this several communications were made by the applicant but when the aforesaid arrears were not received, this O.A. has been filed.

4. On the other hand, respondents have submitted that applicant being in receipt of service pension from Army was re-enrolled in DSC on 22.12.2008 in the rank of Naib Subedar and he opted not to count his former service with DSC. It was further submitted that he was discharged from DSC service w.e.f. 30.06.2017 (AN) on attaining the age of superannuation i.e. 57 years under the provisions of Rule 13 (3) I (i) (a) of Army Rules, 1954 after rendering 08 years, 06 months and 10 days qualifying service for which he was granted service gratuity amounting to Rs 3,96,653/-.

5. Learned counsel for the respondents further submitted that after implementation of 7th CPC applicant's pay was revised and arrears of basic pay were credited in salary for the month of May, 2017 (Annexure-1 to counter affidavit). It was further submitted that allowances were made applicable w.e.f. 01.07.2017 vide letter dated 18.09.2017 and applicant

being retired on 30.06.2017, therefore applicant is not entitled to receive arrears related to allowances as he was not in service on 01.07.2017. It was further submitted that since applicant has not rendered pensionable service, question does not arise to revise his service pension. He pleaded for dismissal of O.A. submitting that O.A. has no merit.

6. Heard Shri Vijay Kumar Pandey, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the record.

7. It is not disputed that applicant being in receipt of service pension was re-enrolled in DSC on 22.12.2008 and was discharged from service w.e.f. 30.06.2017 on attaining the age of superannuation. It is also not disputed that applicant did not opt to count his former service with DSC. After discharge from service he was granted service gratuity amounting to Rs 3,96,653/-. The applicant has not rendered mandatory 15 years qualifying service for grant of second service pension, hence he was not granted service pension for the services rendered in DSC. Therefore, revision of his service pension in terms of 7th CPC does not arise as pleaded by the applicant.

8. With regard to allowances, we find that 7th CPC was made applicable w.e.f. 01.01.2016 but allowances were made applicable w.e.f. 01.07.2017. Accordingly, his pay was revised w.e.f. 01.01.2016 and arrear amounting to Rs 1,15,546/- was paid to him in the month of May, 2017 (Annexure R-1). Applicant's main contention is that he has not been paid arrears with respect to revised allowances after implementation of 7th CPC. In this regard we find that Govt of India, MoD (Army) has

revised arrears vide letter dated 18.09.2017 which were made applicable w.e.f. 01.07.2017 but since the applicant was not in service on 01.07.2017 he is not entitled to arrears of allowances. For convenience sake, extract of Para 6 of aforesaid Govt letter is reproduced as under:-

“6. The revised rates of the above allowances/concessions will be effective from 1st July 2017.”

9. On 14.05.2019 applicant submitted representation to Chief Record Officer, DSC Records with copy to Officer-in-Charge, PAO (OR) DSC Kannur, Kerala stating that leave encashment, service gratuity, transfer grant and bonus were not paid to him as per revised rate. For convenience sake, extract of his application dated 14.05.2019 is reproduced as under:-

<i>Particulars</i>	<i>Paid by PAO (OR) as per 6th CPC (BP+GP+MSP+125% DA) (14140+4600+2000+25925)=46665/-</i>	<i>Dues as per 7th CPC (BP+MSP+4%DA) (49000+5200+2168) =56368/-</i>	<i>Difference</i>
<i>Lve encashment 166 days</i>	<i>2,58,213/-</i>	<i>3,11,903/-</i>	<i>53,690/-</i>
<i>SRGRTY 8.5 yrs</i>	<i>3,96,653/-</i>	<i>4,79,128/-</i>	<i>82,475/-</i>
<i>Tfr Grant</i>	<i>20,740/-</i>	<i>54,200/-</i>	<i>33,460/-</i>
<i>Bonus</i>	<i>-</i>	<i>7,000/-</i>	<i>7,000/-</i>
<i>Total dues</i>	<i>6,75,606/-</i>	<i>8,52,231/-</i>	<i>1,76,625/-</i>

10. In response to his RTI application dated 30.07.2021 the respondents vide letter dated 24.08.2021 informed that amount of Rs 31,824/- has already been credited to his bank account on 20.06.2019. For convenience sake, copy of letter dated 20.06.2019 is reproduced as under:-

“1. Reference your RTI application dated 30 Jul 2021.

2. It is intimated that a sum of Rs 31,824/- (Rupees thirty one thousand eight hundred and twenty four only) on account of arrears as per 7th CPC has already been credited to your acct No 20044227830 on 20 Jun 2019 through NEFT by PAO (OR), DSC.”

11. The record shows that applicant's pay seems to have been revised after implementation of 7th CPC and arrear amounting to Rs 31,824/- was credited to his ledger account in the month of May, 2017 but the breakdown of this amount has not been shown.

12. During the course of hearing we were informed that applicant's dues have been paid but breakdown of arrear has not been provided by the respondents which the respondents are directed to provide within a period of three months from today. Applicant is not entitled to bonus as he did not complete six months continuous service in the calendar year in which he retired from service.

13. With the aforesaid observation, O.A. is disposed off.

14. No order as to costs.

15. Pending Miscellaneous Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 01.08.2023

rathore

(Justice Anil Kumar)
Member (J)