

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 601 of 2018**Friday, this the 8<sup>th</sup> day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 1462939-H, Rank-Ex Nk (TS), Dhruvajit Singh  
S/o Uma Shankar Singh  
R/o Vill & Post – Gahmar, Tehsil – Zamania  
District – Ghazipur, U.P.

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. The Officer-In-Charge, Record Officer, BEG Records, Roorkee U.P.
4. PCDA (Pension), Draupadi Ghat, Allahabad.
5. The Branch Manager, Union Bank of India, AT & Post – Gahmar, District – Ghazipur, PIN-232327, U.P.
6. The Chief Manager, Union Bank of India, Centralized Pension Processing Centre, Government Business Division, PBOD, 12<sup>th</sup> Floor, Union Bank Bhavan, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai – 400021.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh**,  
Central Govt Counsel.**ORDER****“Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being

aggrieved with the stoppage of pension consequent of conviction and sentences passed for the following reliefs:-

- “A. To issue/pass an order or directions to set aside/quash the order dated 16.05.2018 passed by respondent no.-4.
- B. To issue/pass an order or directions to the respondents to grant service pension from the date of stoppage of his pension i.e. January 2017 alongwith 12% interest on arrear.
- C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs.”

2. We have heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Ms. Anju Singh, learned counsel for the respondents duly assisted by Departmental Representative.

3. The factual matrix of the case is that applicant was enrolled in the Army on 26.05.1979 and discharged from service with effect from 31.05.1996 on completion of terms of engagements after rendering 17 years of service. The applicant was granted service pension with effect from 01.06.1996 vide PPO No. S/010087/1996 dated 04.03.1996. After retirement, an FIR No. 136 of 2013 was registered at Police Station Gahmar (Ghazipur) against the applicant alongwith his four sons under Sections 147, 149, 302, 307, 323, 504 & 506 of the Indian Penal Code, Section 7 of the Criminal Law Amendment Act and also under Section 3/25 of the Arms Act, 1959. For the above mentioned offences applicant was tried under Sessions Trial No. 256 of 2013 by the Sessions Court/Gangster Court, Ghazipur. The applicant and his sons were convicted and sentenced to Life Imprisonment by the Court vide order dated 26.09.2016, on account

of which applicant's pension was stopped since December, 2016 by the Bank without serving any show cause notice. The reason behind stoppage of pension was that the applicant was convicted in a Criminal case under Section 302 I.P.C and was incarcerated in jail from September 2016. However, he was released on bail by the Hon'ble High Court of Judicature at Allahabad vide order dated 13.09.2017 in Bail Application No. 320190 of 2016. The operative portion of the order reads :-

*"Without expressing any opinion on the merits of the case and considering the facts and circumstances of the case, period of detention as well as the sentence awarded to the appellants, we are of the opinion that the applicants/appellants Santosh Singh, Rakesh Singh, Akhilesh Singh and Bimlesh Singh are not entitled to be released on bail ONLY APPLICANT DHRUVJEET SINGH IS ENTITLED TO BE RELEASED ON BAIL."*

4. The crux of submission made by learned counsel for the applicant is that once the applicant has been enlarged on bail by the Hon'ble High Court in pending Criminal Appeal, he shall be entitled to restoration of pension in accordance With Para 82 (a) & (b) of the Pension Regulations for the Army, 1961.

5. **Per contra**, learned counsel for the respondents submits that the applicant has merely been enlarged on bail, he 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) of the Pension Regulations for the Army, Part-I (2008). Therefore, pension withheld shall be restored only after applicant's acquittal.

6. Learned counsel for the applicant submitted that the applicant's case is covered with the various judgments mentioned below :-

(a) O.A. No. 26 of 2015, Satyapal Singh vs. Union of India & Others, decided on 21.07.2016 by the AFT, Regional Bench, Lucknow.

(b) O.A. No. 205 of 2012, Ex Hav Ran Bahadur Gurung Vs. Union of India & others, decided on 03.02.2015 by the AFT, Regional Bench, Lucknow.

(c) 1971(2) Supreme Court Cases 330, Deokinandan Prasad Vs the State of Bihar & Others.

(d) O.A. No. 145 of 2013 Satendra Singh Pal vs. Union of India & others, decided on 19.01.2018 by the AFT, Regional Bench, Lucknow.

7. Learned counsel for the Applicant rebutted the above contentions and invited our attention to the final order and judgment of the Armed Forces Tribunal, (Regional Bench) Lucknow in **O.A. No. 26 of 2015, Satyapal Singh vs. Union of India & Others**, decided on 21.07.2016 and Armed Forces Tribunal (Regional Bench), Chandigarh rendered in **O.A. No.159 of 2013** and AFT Regional Bench, Chandigarh in **Chandra Singh vs. Union of India**, decided on 10.09.2013. The relevant portion of the judgment of AFT, Chandigarh in the case of **Chandra Singh** (Supra) 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.”

8. Keeping in view the aforesaid observations made by the Armed Forces Tribunal, Regional Bench, Chandigarh, the question with regard to payment of pension during pendency of 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, his pension should be restored. The Bench further held that Para 82(d) deals with a different situation which we need not to 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 Hon'ble 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.

9. 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 Hon'ble 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 13.11.2017 alongwith arrears of pension.

10. Let necessary exercise be done in compliance with this order by the respondents within a period of three months from today.

11. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: January, 2021

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