

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 74 of 2018**

Tuesday, this the 04th day of January, 2022

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

No. 2947887 Ex Sepoy/Reservist Karan Singh, S/o Late Sri Nathu Singh, R/o Vill & Po-Parauli, Distt-Bulandshahar (UP).

..... Applicant

Learned counsel for the : **Shri KK Misra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Records, Rajput Regiment, Fatehgarh.
4. PCDA (Pension), Allahabad.

.....Respondents

Learned counsel for the : **Shri GS Sikarwar**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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 para 5.2 of GOI, MoD letter No. PC10(1) 2009-D (Pen/Pol) dated 08.03.10, 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. 3.2.16, with regard to Reservist only. (Annexure A-3,A-5 and A-7 respectively to the OA).*
- (b) *To quash para 4.3. of CDA (P) Allahabad circular No. 430 dt.10.03.2010, para 4.2. of circular No. 501 dt 17.01.2013, 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 OA).*
- (c) *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 w.e.f. 01 July 2009, the date from which the new policy was made effective.*
- (d) *To direct the respondents to pay the arrears of pension from the date of its entitlement with interest as applicable.*
- (e) *Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.*
- (f) *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 No. 2947887 Ex Sepoy/Reservist Karan Singh was enrolled in the Indian Army (The Rajput Regiment) on 25.10.1958. He was discharged from service on 15.11.1973 on completion of colour and reservist service on fulfilling the conditions of his enrolment under Rule 13 (3) III (i) of the Army Rules, 1954. The applicant is in receipt of reservist pension w.e.f. 16.11.1973 vide PPO No S/1729/74 dated

01.02.1974. The above pension was revised from time to time and corrigendum PPOs were issued accordingly. Applicant has filed this O.A. to quash para 5.2 of Govt of India, Min of Def letter dated 08.03.2010, 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 has rendered 15 years service in the Army and as per policy in vogue during this 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.

4. On the other hand, learned counsel for the respondents submitted that in accordance with 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. 16.11.1973. His other submission is that applicant's pension was revised from time to time as per orders of the Govt of India, Min of Defence and it was finally 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 was issued. His further submission is that 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 lump-sum. He further submitted that applicant has rendered only 07 years and 86 days qualifying service, therefore he is not entitled to service pension equivalent to a regular Sepoy who put in 15 years of qualifying service. He pleaded for dismissal of O.A.

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 persons who have active service not qualifying 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 $2/3^{\text{rd}}$ 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 in regular pension as also in reservist pension. But the instant orders are not applicable to the 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 $2/3^{\text{rd}}$ 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 $2/3^{\text{rd}}$ and accordingly, revision was granted. However, after 2009, the minimum pension prescribed for reservists was always more than $2/3^{\text{rd}}$ of the lowest pension due to a retired Sepoy. As per the 5th, 6th and the 7th Central Pay Commissions, the revision effected on the pension of reservists worked out to more than $2/3^{\text{rd}}$ 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 $2/3^{\text{rd}}$ 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 since 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 minimum qualifying service of 15 years to earn pension. Admittedly, they are 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 due to a duly retired Sepoy only because they were allowed reservist pension coupled with the period of colour and reserve service totalling 15 years. Further, in the period when they were placed in reserve, there was no ban on them from getting other employment also. Thus, taking all the above 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.

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

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

12. No order as to costs.

13. Miscellaneous applications, pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 04.01.2022
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