

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 322 of 2016

Tuesday this 24th day of April, 2018Hon'ble Mr. Justice S.V.S. Rathore, Member (J)Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Smt Manjula Tripathi,
 Wife of Colonel Late Hari Shanker Tripathi,
 R/o 479 Civil Lines, Unnao,
 P.S. Kotwali District Unnao (U.P.).

..... **Applicant**

By Legal Practitioner: Col (Retd) Rakesh Johri, Advocate
 Learned Counsel for the Applicant.

Versus

1. Union of India through Secretary,
 Ministry of Defence,
 New Delhi.
2. Principal Controller of Defence Accounts (Pension),
 Draupadi Ghat, Allahabad.

..... **Respondents**

By Legal Practitioner: Dr Shailendra Sharma Atal, learned counsel
 for the respondents, assisted by Maj Salen
 Xaxa, OIC, Legal Cell.

ORDER (Oral)

1. Initially this Original Application was decided by the Division Bench of this Tribunal. Since there was difference of opinion between the two Hon'ble Members, therefore, the matter was referred to the Armed Forces Tribunal, Principal Bench, New Delhi and the Hon'ble Chairperson vide his order dated 17th January 2018 has entrusted this matter to the 3rd Member.
2. In brief, the facts of this case are, that the applicant joined the Indian Army (Bihar Regiment) on 30.06.1963. The original applicant Colonel

Hari Shanker Tripathi (Retd) died before judgment could be pronounced and thereafter his wife Smt Manjula Tripathi was substituted on 25.01.2018. After rendering 27 years of service in Army, the husband of the applicant Colonel Hari Shanker Tripathi retired on 30th June 1990. The claim of the applicant was that the husband of the applicant was entitled to the benefit of six years of qualifying service as per Regulation 5 of the Pension Regulation 1961 and, therefore, he was entitled to the weightage of qualifying service to the maximum 33 years of qualifying service. He was granted the benefit of said qualifying service and his pension was fixed accordingly. After Fifth Central Pay Commission (in short 'CPC'), his pension was enhanced to Rs.8550/- with 33 years of service (including weightage of six years given to him at the time of retirement). The pension was further revised in pursuance of Sixth CPC vide Ministry of Defence letter dated 11.11.2008 and it was fixed at Rs.27,795/-. The claim of the applicant is that this weightage of qualifying service was never abolished or withdrawn in respect of officer, who retired before 01.01.2006 and, therefore, the recommendation of the Sixth CPC could not have been given effect retrospectively. The claim of the applicant is that even after implementation of the OROP, the husband of the applicant was entitled to the benefit of the qualifying service of six years, as granted by the Government of India, because the same has not been withdrawn and, therefore, his pension should have been fixed calculating his qualifying service of 33 years. Annexure A-2 to the O.A. which was Circular No.557 was also challenged and Hon'ble Mr Justice D.P.Singh, Member (J) has allowed the O.A. directing the respondents to grant weightage, while implementing OROP and set aside the aforementioned circular to the extent it relates to the OROP and all the orders and instructions issued to withdraw the weightage granted to the husband of the applicant while calculating his pension under OROP. Apart from it, a special cost of Rs.Two Lacs was also imposed on the respondents. Hon'ble Administrative Member has dismissed the O.A. Since there was difference of opinion, therefore, following questions were framed and the matter has been referred to the 3rd Member for giving opinion :

- (I) *Whether weightage granted to the applicant at the time of superannuation in 1990 may be withdrawn while implementing OROP*

under the provisions contained in letter dated 03.09.2015 of Government of India, as contained in Annexure No.6 to the counter affidavit, with special reference to Clause-4 of said letter ?

- (II) *Whether respondents have right to reduce the pension, directly or indirectly or by withdrawal of weightage while implementing OROP, under the Scheme of OROP, keeping in view various letters issued by the Ministry of Defence from time to time ?*
- (III) *Whether conclusions drawn and findings recorded by one of us (Justice D.P. Singh, Member 'J ') in Paras- 49, 50 and 51 of the judgment/ order constitutionally and statutorily are not sustainable ?*
- (IV) *Whether the applicant, who is around 80 years of age and physically handicapped, because of commission and omission of PCDA (P) Allahabad, suffered mental pain and agony, apart from financial crunch, has been forced to enter into litigation and hence is entitled to a compensatory cost of Rs. 2,00,000/- (rupees two lacs) in view of law laid down by Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 and other subsequent judgments, as referred to in Para-50 of the present judgment?*

3. The claim of the applicant is that the policy, whereby the benefit of qualifying service was granted to the husband of the applicant, was never withdrawn. Therefore, he was entitled to the benefit of the same even after implementation of OROP and the decision given by the Hon'ble Judicial Member was in accordance with law.

4. The Hon'ble 3rd Member after hearing both the parties at length, vide order dated 17th April 2018, has replied the aforementioned points as under:

(I) "Yes". The said weightage may be withdrawn by the same Authority in view of provision of Section 21 of the General Clauses Act, 1897.

(II) In reply to Question no.2, it is pertinent to mention that at no point of time, the pension of the applicant was reduced. On the contrary, it was enhanced substantially after implementation of the OROP. It was not the pension which was reduced, but it was only the benefit of qualifying service, which was withdrawn. The said qualifying service was only for the purpose of fixation of pension and not for any other purposes. In no case pension can be fixed more than 50% of the last pay drawn.

(III) Keeping in view the provision of Section 21 of the General Clauses Act, 1897 and the intention of the Legislature for the purpose of

enforcement of the qualifying service of six years, I respectfully do not agree with the view expressed by the Hon'ble Member (Judicial).

(IV) The husband of the applicant was not entitled to any cost of litigation, keeping in view the findings given on the aforesaid issues.

5. Now the matter has come up for hearing before us. At this juncture, we would like to quote Section 28 of the Armed Forces Tribunal Act, 2007, which reads as under :

“Section 28 in the Armed Forces Tribunal Act, 2007

28 Decision to be by majority. —If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.”

6. Keeping in view Section 28 of the Armed Forces Tribunal Act, 2007, now the case has to be decided in view of majority view. Since the opinion of the 3rd Member conforms with the opinion given by Hon'ble Member (A) and 3rd Member and Hon'ble Member (A) were of the view that the husband of the applicant was not entitled to the benefit of six years' qualifying service for the purpose of calculation of the pension, even after implementation of the scheme of OROP. Therefore, in view of the opinion expressed by the 3rd Member, this O.A. deserves to be dismissed in view of the majority opinion.

7. Accordingly, this O.A. is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: April 24th, 2018.
PKG