

Court No. 1

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

Review Application No. 82 of 2018

Along with
Misc. Application No. 2028 of 2018
(Application for condonation of delay)

Friday, this the 24th day of May, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

1. Union of India, Ministry of Defence, through its Secretary, New Delhi.
2. Director General of Ordnance Service, Master General of Ordnance Bench (OS-8B) IHQ of MoD (Army) New Delhi.
3. Additional Director General, Personnel Service AG's Branch, Army Head Quarter, IHQ of Mod (Army) DHQ PO New Delhi – 110011.
4. O.I.C. Records, AOC Records Secunderabad-900453, c/o 56 APO.
5. P.C.D.A (Pension) Draupadi Ghat, Allahabad.

.....Applicants

Ld. Counsel for the: **Shri Namit Sharma,**
Applicants-Respondents Addl Central Government Counsel.

Versus

Satendra Singh Pal, son of late Pati Pal, resident of Bewar Road, Bholepur, near Mosque Nale-Ke-Pas, Post Bholepur, District Farrukhabad, U.P.

.....Respondent

Counsel for the Respondent-Applicant : **Shri Bachchan Singh,**
Advocate.

ORDER (ORAL)

1. This is an application under Rule 18 of the Armed Forces Tribunal Procedural Rules, 2008 for review of order dated 19.01.2018 passed by the Tribunal in O.A. No 145 of 2013 *Satendra Singh Pal vs. Union of India and others*.

2. As per office report, the application for review has been filed with delay of 08 months and 29 days. Learned counsel for the Union of India submitted that the issue involved in the present Review Application is purely legal and the law as announced by the judgment of the Tribunal under review is against the decisions of Hon'ble Apex Court, as such, the delay in moving the Review Application may be condoned and the Review Application may be heard and disposed of on merits. Learned counsel for the applicant has no objection to it. Accordingly, we condone the delay and proceed to hear and dispose of the Review Application on merits.

3. A co-ordinate Bench of this Tribunal while disposing of O.A. 145 of 2013 *Satendra Singh Pal vs. Union of India and others* vide order dated 19.01.2018 has observed as under in the operative portion:-

“Accordingly, the OA is allowed. The provisions of Paras 7, 8 and 9 of the Pension Regulations for the Army, Part-I (2008) as well as the impugned Para 74 of the Pension Regulations for the Army 1961 Part-II being ultra vires to the Constitution as well as Army Act and Rules framed thereunder to the extent they confer power on the respondents to deprive a retired army personnel of service

benefits including pension on account of an offence which has no nexus with the service element of the Army, are set aside. We direct the respondents to pay full regular pension to the applicant from the date of his discharge with all consequential benefits.

We further direct the respondents that non-statutory rules, regulations or instructions be amended properly keeping in view the observations made in the body of the present judgment/order expeditiously, say, within a period of six months.”

4. It is submitted on behalf of the Review Applicants that the Tribunal has passed the impugned order without adverting to due procedure and certain paragraphs of the Pension Regulations for the Army Part-I, 2008 (for short, Pension Regulations) have been held to be *ultra vires* mainly on the ground that the same have not been enacted by the Parliament.

5. The question which crops up for our consideration is whether the said judgment suffers from any error apparent on the face of the record? The Review Applicants have placed reliance on our judgment dated 24.05.2019 passed in O.A No. 11 of 2017: ***Raj Kumar Verma vs. Union of India and others*** wherein the validity of the order under review was considered and the Bench held that that the view taken by the co-ordinate Bench of this Tribunal in O.A. 145 of 2013 ***Satendra Singh Pal vs. Union of India and others*** decided on 19.01.2018 is per incuriam in view of pronouncements of Hon'ble Apex Court in the cases of ***Maj (Retd) Hari Chand Pahwa vs. Union of India and another*** reported in 1995 Supp (1) SCC 221, and Appeal (Civil) No. 7805 of 1997 ***Union of India and anr vs. PO Yadav*** decided on 16.10.2001. At this stage, we would like to quote the relevant

observations of their Lordships of Hon'ble Apex Court in said decisions on the basis of which this Tribunal has held that the judgment under review was per incuriam.

6. In the case of *Hari Chand Pahwa* (supra), Hon'ble the Apex Court while considering this aspect of the matter, in para-5, has observed thus:-

“5. We do not agree with the second contention advanced by the learned counsel. The provisions of Regulation 16 (a) are clear. Even if assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the appellant under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds. A show-cause notice was issued to the appellant. His reply was considered and thereafter the President passed the order forfeiting the pension and death-cum-retirement gratuity. We see no infirmity in the order. The appeal is, therefore, dismissed. No costs.

7. In Appeal (Civil) No. 7805 of 1997 *Union of India and anr vs. PO Yadav* the argument advanced by the Union of India was that though the Army Pension Regulations are not statutory in character and may not have statutory force, but they are not contrary to any statutory provisions under the Act or the Rules. Hon'ble the Apex Court held as under:-

“It is the case of the appellants that before passing orders forfeiting pension either under Army Pension Regulation 16(a) or Navy Pension Regulation 15(2), show cause notices were issued to the respondents; replies received from the respondents and all the relevant factors appearing from the records were considered. According to them, the orders passed in their discretion by the President or the Central Government, as the case may be, having regard to all aspects, are justified and sustainable. We have perused copies of the notings of the Ministry of Defence and

the orders made pursuant thereto. From the said records, we find that there has been application of mind and having regard to the serious nature of charges already narrated above and keeping in view the relevant circumstances including the punishments imposed on proved charges, the impugned orders appear to have been passed forfeiting pension. The said orders passed forfeiting pension are not merely based on the fact that the appellants were punished by Court Martial, as assumed by the High Court. Moreover, by issuing show-cause notices giving opportunity to the respondents to explain the circumstances and their hardship before passing the impugned order, the principles of natural justice were also complied. In the given circumstances when the impugned orders forfeiting pension were passed in the discretion of the authorities exercising the power available under the Regulations, we cannot find fault with them. Thus, the orders passed are neither arbitrary nor unreasonable. In this view, we do not find any error or infirmity or illegality in passing the said orders.”

8. Thus, Hon’ble the Apex Court held that the Pension Regulations when they provide for grant of pension, certain restrictions may also be imposed which are not contrary to the specific Rules or enactments. It is admitted fact that on the basis of Pension Regulations, entire Army personnel are receiving different types of pensions and admittedly the entire Pension Regulations have not been enacted by the Parliament and, therefore, to hold that certain paragraphs of the same are *ultra vires* would not be in consonance with the pronouncements of Hon’ble Apex Court, quoted above.

9. The law is settled on the point that when there are two contrary judgments on a particular point by two coequal Benches, then it is for the Court to decide which of two is better and to follow the decision which is more accurate and better in point of law, whether it be earlier or later. In ***R. Rama Subbarayalu vs Rengammal***, AIR 1962 Mad 350 (FB), it was held, to quote:-

“Where the conflict is between two decisions pronounced by a Bench consisting of same number of judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow the decision which seems to be more correct, whether such decision be the later or the earlier one.”

10. Hon’ble Madhya Pradesh High Court in *Smt Kalabai Choubey and others vs. Rajabhadur Yadav and another*, AIE 2002 MP 8 and Hon’ble Rajasthan High Court in *Rajasthan High Court in Jaipur vs. M/s Himalaya Paper (Machinery) Pvt. Ltd. New Delhi*, AIR 1990 Raj 120 have also taken similar views, conferring option to choose from the conflicting ratios, the one which the Court considers to be better in point of law.

11. Since the view expressed by the order under review was contrary to the judgments of Hon’ble Apex in the cases referred to above and without considering the decisions of Hon’ble Apex Court on the point, therefore, we are of the view that there is an error apparent on the face of record and the Review Application deserves to be allowed. Under Article 141 of the Constitution of India, law declared by Hon’ble Apex Court is the law of the land and having binding force, has to be followed by all Courts.

12. In view of this, the Review Application is **allowed**. The impugned order under review is modified to the extent that directions whereby the provisions of Paras 7, 8 and 9 of the Pension Regulations for the Army, Part-I (2008) as well as the impugned Para 74 of the Pension Regulations for the Army 1961 Part-II were declared *ultra vires* to the Constitution shall not be deemed to be *ultra vires* and shall

continue to be part of the Pension Regulations for the Army, Part-I, 2008.

13. It is clarified that in the interest of justice, the benefits granted to applicant in O.A. No 145 of 2013: *Satendra Singh Pal vs. Union of India and others* shall not be withdrawn. However, we make it clear that the judgment in O.A. 145 of 2013: *Satendra Singh Pal vs. Union of India and others* shall not be treated as precedent for other similarly situated persons.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: 24.05.2019
anb