

**Reserved
Court No. 1**

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

Original Application No. 111 of 2017

Friday, this the 24th day of May, 2019

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

Ex Subedar (JC No. 380593F) Raj Kumar Verma, son of late Rattan Singh, resident of 142, Anandvan Colony, Post Office Aurangabad, Tehsil & District Mathura, 281006.

.....Applicant

Ld. Counsel for the applicant: **Shri R. Chandra, Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer-in-Charge, Signals Records, PIN 901124, c/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

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

ORDER.

“Per Hon'ble Mr Justice SVS Rathore, (Member-J)”

1. The applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) Issue/pass an order or direction of appropriate nature to the respondents to grant to deserved and entitled pension and pensionary benefits w.e.f. 01.09.2015 with interest and adequate compensation.

(b) To issue/pass an order or direction of appropriate nature to the respondents to take stern and exemplary action against the erring officials involved in the ground of pension to the applicant. It may also be ascertained as to why applicant has not been served any formal order denying the pension and pensionary benefits as per Article 300A of Constitution of India and other provisions on the subject.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. Shorn of unnecessary details, the facts of the case are that the applicant was enrolled in the Army (Corps of Signals) on 28.08.1985. Corps of EME on 22.11.1978. In the year 2006, an FIR was lodged by one Girraj Singh against the applicant and under Sections 307 IPC read with Section 34 IPC and 504 IPC at police station Baldeo, district Mathura. While the applicant was serving with Headquarters, 1 Signal Training Centre, Jabalpur he proceeded on 36 days leave. During continuance of leave period, judgment dated 29.11.2014 was delivered by Additional Sessions Judge, Court No. 7 Mathura in Sessions Trial No. 983 of 2008 arising out of said FIR. The applicant was convicted and sentenced under Section 307 IPC read with Section 34 IPC to 06 years’ RI with fine of 5000/- and under Section 504 IPC to one year’s RI and fine of Rs. 500/-. In default of payment of fine, the applicant was further sentenced to undergo 06 months simple imprisonment. The applicant was taken in custody and was sent to jail. Subsequently, the applicant was released on bail by Hon’ble High Court, Allahabad on 24.04.2015. Applicant preferred Criminal Appeal No. 4728 of 2014 in the Hon’ble High Court which admittedly

is still pending. The applicant on being released on bail rejoined his Unit. On legal advice, the respondents did not dismiss the applicant from service and allowed him to continue in service on the condition that in case he is found guilty in the Appeal preferred by him, he will forfeit his pensionary benefits. Accordingly, on completion of his term of service, he was discharged from service on 31.08.2015. Provisional pension was sanctioned to the applicant which he in receipt of. Aggrieved by non-grant of full pension and other pensionary benefits, the applicant sent a legal notice to the respondents claiming full pension and other pensionary benefits. Since no tangible response was made by the respondents, the applicant has preferred the instant O.A.

3. Learned counsel for the applicant argued that that under Article 300A of the Constitution of India, Pension Regulations for the Army 1961 and other provisions on the subject, the applicant who has superannuated in service, is entitled to full pension and other pensionary benefits. It is argued that no action was taken against the applicant under Para 423 of the Regulations for the Army 1987 and on legal advice no action to dismiss or discharge the applicant because of the criminal case was initiated and he was permitted to complete his term of 30 years of service, the applicant is entitled to earn pension and other pensionary benefits. Learned counsel for the applicant placed explicit reliance on a decision of a co-ordinate Bench of this Tribunal rendered in O.A. No. 145 of 2013: *Satendra Singh Pal vs. Union of India and ors*, decided on 19.01.2018 and has argued that

since provisions of Para 7, 8 and 9 of the Pension Regulations for the Army, Part-I (2008) as well as Para-74 of the Pension Regulations for the Army, 1961, Part-II have been declared *ultra vires* to the Constitution as well as Army Act, 1950 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, have been set aside, as such, the applicant is entitled to full pension and all other consequential pensionary benefits.

4. In rebuttal, learned counsel for the respondents argued that the claim for final settlement of accounts with respect to the applicant was taken up with the respective authorities. The PAO (OR) Corps of Signal vide letter dated 14.03.2016 has observed that the confinement period undergone by the applicant in jail on conviction by the Additional Sessions Judge, Mathura is required to be regularized by way of obtaining Government sanction from the competent authority in terms of letter dated 24.02.1956 for audit purpose and for processing the claim of the applicant and till such formality is completed, no sanction can be granted for payment of pension to the applicant.

5. The co-ordinate Bench of this Tribunal in O.A. No.145of 2013: ***Satendra Singh Pal vs. Union of India & ors***, relied upon by learned counsel for the applicant has passed the following order:-

56. Keeping in view the pleadings on record and our findings as recorded above, we come to the conclusion that 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 are ultra vires to the Constitution 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.

ORDER

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.”

6. Thus, on the ground that the Pension Regulations (supra) are not statutory rules, some provisions of the Pension Regulations have been held to be *ultra vires*. On this point, we have considered the legal position as declared by Hon’ble the Apex Court in the case of ***Maj (Retd) Hari Chand Pahwa vs. Union of India and another***, reported in 1995 Supp (1) SCC 221. In the case of ***Hari Chand Pahwa*** (supra), Hon’ble the Apex Court had the occasion to consider this aspect involved in the present case and their Lordships, in para-5, have 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*** decided on 16.10.2001 similar issue was considered by their Lordships of Hon'ble Apex Court. In said case, it was argued before Hon'ble Apex Court on behalf of Union of India that though the Army Pension Regulations are not statutory in character, pensionary benefits are provided for and payable under them; these very Regulations provide for forfeiting pension in given situations; in other words, the Regulations which provide for grant of pension also provide for taking it away on justifiable grounds; further these Regulations may not have statutory force but they are not contrary to any statutory provisions under the Act or the Rules. Upon consideration of these submissions, their Lordships of Hon'ble Supreme 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 (surpa) when provide for grant of pension, certain restrictions may also be imposed which are not contrary to the specific Rules or enactments.

9. In O.A. NO. 145 of 2013: **Satendra Singh Pal** which reliance has been placed by learned counsel for the applicant, the facts were entirely different. In that case, the applicant was convicted for an offence under Section 306 IPC and was sentenced to 07 years’ RI, but in appeal his sentence was reduced to 03 years only and thereafter he served out the sentence. In the case in hand, the applicant has been convicted under Section 307 IPC read with Section 34 IPC and Section 504 IPC and has been sentenced to 06 years’ RI with fine of Rs. 5000/- and 01 year’s RI with fine of Rs. 500/- respectively. Admittedly, the appeal preferred by the applicant is pending. Thus, applicant’s conviction is still in force and has not been stayed by a competent Court. In the Constitution of India, where an employee has been convicted for an offence, different provisions have been provided under Article 311, which read as under:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or the State.-

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a

reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

- (a) *where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) *where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) *where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry*

(3) *If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”*

(underlined by us)

10. Since in the decision rendered by a co-ordinate Bench of this Tribunal in O.A. No. 145 of 2013: ***Satendra Singh Pal*** (supra), on which learned counsel for the applicant has placed reliance, is per incuriam and the decisions of Hon’ble Apex Court rendered in the cases of ***Maj (Retd) Hari Chand Pahwa*** and ***Union of India and anr vs. PO Yadav*** (supra) have nowhere been considered, therefore, the decision of the co-ordinate Bench loses its binding force. Even the applicant in the present case admittedly is receiving provisional pension under the same Pension Regulations and at the same time is

placing reliance on a decision of this Tribunal in which certain part of the Pension Regulations has been held to be *ultra vires*. The Pension Regulations may not have statutory force, but it could not be denied by the learned counsel for the applicant that the entire Armed Force personnel are receiving different types of pensions under the same Regulations. Since there is contrary view expressed by Hon'ble Apex Court, therefore, the decision rendered by a co-ordinate Bench in O.A. No. 145 of 2013: *Satendra Singh Pal* (supra) loses its binding force and the law enunciated by Hon'ble Apex Court, which is the law of the land, would prevail.

11. In view of our observations made in the foregoing paragraphs, we find no merit in the O.A. The applicant is not entitled to the benefit of judgment rendered by the co-ordinate Bench in O.A. No. 145 of 2013: *Satendra Singh Pal* vs. *Union of India and others*.

12. The O.A. is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: May , 2019
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