

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.1**

**O.A. No. 652 of 2020**

**Ex Sep Lalan Ji Mishra**  
By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>29.11.2021</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>1. Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.</p> <p>2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-</p> <p style="padding-left: 40px;">“(I) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 12/07/2018 (Annexure No. A-1) and order dated 08/09/2018 (Annexure No A-2).</p> <p style="padding-left: 40px;">(II) The Hon'ble Tribunal may be pleased to direct the respondents to clarify the date of granting MSP and basic of service pension before granting MSP and after granting MSP to the applicant.</p> <p style="padding-left: 40px;">(III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”</p> <p>3. The factual matrix on record is that the applicant was enrolled in the Army on 16.04.1986 and was discharged from service w.e.f. 30.11.2001 (AN) on being placed in permanent low medical category under Army Rule 13 (3) III (v) and 2(A). The applicant has submitted may petitions to the respondents for grant of MSP w.e.f. 01.01.2006 but it was replied by the respondents that he is not entitled MSP which is applicable from 01.01.2006 to those who were in service. Being aggrieved, the applicant has filed present original application.</p> <p>4. Learned counsel for the applicant submitted that applicant was discharged from service on 30.11.2001 but he has not been granted MSP. The</p>

applicant submitted many petitions on 10.05.2018, 18.06.2018 and 11.07.2018 but it was replied by the respondents that applicant was discharged from service in the year 2001, hence, he is not entitled MSP which is applicable from 01.01.2006 to those who were in service. He further submitted that respondents have not given any solid reply regarding MSP and date of applicability from which he was granted MSP. He pleaded that benefit of MSP w.e.f. 01.01.2006 be given to the applicant in the light of the Hon'ble Apex Court judgment in ***KJS Buttar vs. Union of India and Anr.*** (2011) AIR SCW 2132.

5. Learned counsel for the respondents submitted that Military Service Pay (MSP) has been introduced under the recommendations of 6<sup>th</sup> CPC and provisions of Special Army Instruction (SAI) 1/S/2008 dated 11.10.2008 came into force w.e.f 01.09.2006. Para 2 of SAI 1/S/2008 reads as "***the provisions of VI CPC are applicable to those personnel who were on effective strength of Army, DSC, APS and TA, if embodied, as on 1<sup>st</sup> day of January 2006 or who join the service thereafter***". Para 5 of SAI 1/S/2008 reads as "***Military Service Pay shall be extended to all PBOR in the Army at the rate of Rs. 2000/- pm. It being a new element will be admissible from 1<sup>st</sup> September 2006. It will count as pay for all purposes, except for calculation of annual increments***". In the instant case, since the applicant was discharged from service w.e.f. 30.11.2001, the provisions of VI CPC as envisaged in SAI 1/S/2008 are not applicable to the applicant, as such, he is not entitled for MSP.

6. Learned counsel for the respondents further submitted that with regards to revision of pension as per VI CPC, service pension of the applicant in the rank of Sepoy for qualifying service 15.5 years has been correctly revised as per Govt. policies and PCDA (P) Allahabad Circulars issued from time to time. After implementation of OROP, the basic pension of the applicant has been fixed at Rs. 6665/- as per PCDA (P) Circular No. 555 dated 04.02.2016 and the pension of the applicant was correctly revised as per 7<sup>th</sup> CPC w.e.f. 01.01.2016 vide PPO No. 188200105711-0199 @ Rs. 17,130/- (Rs. 6665 x 2.57 = Rs. 17,129/-), rounded off to Rs. 17,130/- which is more beneficial to the applicant

as compared to the Notional revision i.e. Basic Pay + MSP + Class Pay (24500 + 5200 + 300 = 30000/2 = 15000/-). The said fact has already been communicated to the applicant vide EME Records letter dated 12.07.2018. Hence, as per Note 4 of the PPO, the applicant has been granted Rs. 17,130/- as service pension which is including MSP as the same is more beneficial to him.

7. Learned counsel for the respondents also submitted that since MSP has been introduced under 6<sup>th</sup> CPC and is applicable w.e.f 01.01.2006 to those who were in service or joined thereafter, the applicant is not entitled MSP being pre-2006 retiree. However, he has been granted MSP as per 7<sup>th</sup> CPC and it is included in pension. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and have perused the record.

9. We find that MSP has been introduced under 6<sup>th</sup> CPC and was applicable w.e.f 01.01.2006 to those who were in service or joined thereafter. The applicant was discharged from service on 30.11.2001, therefore, he is not entitled MSP being pre-2006 retiree. However, he has been granted MSP as per recommendations of 7<sup>th</sup> CPC and it is included in pension giving benefit of OROP which has been clarified by PCDA (P) Allahabad also giving breakdown of pension in which Rs. 5200/- are included on account of MSP. Hence, we are of the view that his claim for grant of MSP w.e.f. 01.01.2006 as per recommendations of 6<sup>th</sup> CPC is not sustainable and has rightly been rejected by the respondents which need no interference.

10. In view of above, O.A. has no merits, deserves to be dismissed and is accordingly **dismissed**.

11. No order as to costs.

12. Pending Misc. Applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)