

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No.1****Original Application No. 421 of 2020**Thursday, this the 25th day of November, 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ram Sharan @ Ram Saran (No. 1238622 Ex Gnr (GD),
S/o Gayadin, R/o House No 924, Near Chunna Master,
Indira Nagar, Orai, District- Jalaun (U.P.).**..... Applicant**Ld. Counsel for the : **Shri Ashok Kumar, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO, New Delhi.
2. The Officer Incharge, Records, Rajput Regiment, PIN-900427, C/o 56 APO.
3. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad, U.P.

..... RespondentsLd. Counsel for the Respondents. : **Shri Arun Kumar Sahu,**
Central Govt. Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (i) This Hon’ble Court may graciously be pleased to direct the respondent No. 2 and 3 to revise the pension of applicant by enhancing the reservist pension of the applicant as Rs. 4,443/- w.e.f. 1.7.2014 (i.e. 2/3rd the rank of the pension of Sepoy) with other consequential benefits including interest over its arrear within a stipulated period fixed by this Hon’ble Court, in the interest of justice.*
- (ii) This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) Award costs to the applicant.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in Indian Army on 16.12.1965. He was transferred to Reserve Service on 04.06.1976 and discharged from Army Reserve Service on 31.12.1980 after completion of 15 years and 16 days of service in which 10 years and 112 days in regular army and 4 years, 3 months and 26 days in Army Reserve Service. Applicant is getting basic pension Rs. 3,500/- only whereas he is entitled revision of pension after implementation of OROP. Basic Pay of the applicant was fixed Rs. 18,363/- from 01.07.2014 to October 2019 but from the month of November 2019, it was again fixed as Rs.

9,000/- and Rs, 5,84,068/- was shown to be excess paid wef 01.01.2006 to October 2019 and as such applicant was served with notice for outstanding recovery of excess pension paid to him. Applicant submitted representation to bank for not recovering any amount in the name of excess payment, hence no amount has been recovered from the applicant till date. Applicant prayed to respondents for revision of reservist pension as Rs. 4,443/- per month wef 01.07.2014 with other consequential benefits but the same was not denied. Being aggrieved, the applicant has filed instant O.A. for revision of his pension by enhancing the reservist pension.

3. Learned Counsel for the applicant pleaded that applicant was enrolled in the army on 16.12.1965. He was transferred to Army Reserve Service on 04.06.1976 and discharged from Army Reserve Service on 31.12.1980 under clause 'Transferred to pension establishment on fulfilling the conditions of his enrolment under Army Rule 13 3 III (i)'. The applicant was granted reservist pension from 01.01.1981. Reservist pension of the applicant was enhanced from time to time as he is entitled $2/3^{\text{rd}}$ of pension of Sepoy but after 01.01.2006 the reservist pension of the applicant has not been enhanced by respondents. After implementation of OROP, basic pay of the applicant should have been enhanced to Rs. 4,443/- whereas

applicant is getting basic pay only 3,500/- and the same was not enhanced after 01.01.2006 till 7th Pay Commission.

4. Learned counsel for the applicant further submitted that Rs. 4,443/- x 2.57 was to be revised wef 7th Pay Commission as reservist pension, however it was revised with 3,500/- x 2.57 which was less than 2/3 of Sepoy pension (lowest pension) as such applicant was deprived of his legitimate claim of correct pension. OROP service pension of sepoy has been enhanced to Rs. 6,665/- wef 01.07.2014 but the reservist pension has not been enhanced and remained at Rs. 3,500/- only. Respondents have totally violated the provisions of Section 155 of Pension Regulations for the Army 1961 and fixed Rs. 3,500/- only as basic pay of the applicant which after 7th CPC comes Rs. 9,000/-. Respondents earlier fixed Rs. 18,363/- as basic pay of the applicant upto October 2019 which was rightly calculated after implementation of OROP wef 01.07.2014 but from the month of November 2019, it was again reduced and fixed as Rs. 9,000/- as basic pay, accordingly Rs. 5,84,068 was shown to be excess paid to the applicant and applicant was served with notice for recovery of excess payment paid to him. However till date recovery has not been started. Learned counsel for the applicant submitted that the matter has already been decided by Armed Forces Tribunal, Regional Bench, Chennai in the case of Ex L/Nk Yenumula Sivaramayya,

passed in OA No 156 of 2017 decided on 29.01.2019. Learned counsel for the applicant also submitted that payment of excess amount to the pensioner cannot be recovered in any manner. The applicant is a reservist pensioner and under the provisions of rule 155 of the Pension Regulations for the Army 1961, he is eligible and entitled for 2/3 rate of pension of a regular Sepoy revised from time to time wef 01.07.2014 @ Rs. 4,443/- having fulfilled the conditions of his enrolment of 15 years of qualifying service. He pleaded that respondents be directed to revise the pension of applicant by enhancing the reservist pension of the applicant as Rs 4,443/- wef 01.07.2014 with other consequential benefits.

5. On the other hand, Ld. Counsel for the respondents contended that applicant was discharged from service on fulfilling the conditions of enrolment. He was granted reservist pension @ Rs. 50/- per month plus Dearness relief from 01.01.1981 vide PPO dated 23.05.1981 which was revised from time to time as per Govt policies. As per Regulation 132 of Pension Regulation for the Army 1961 (Part-1) as amended vide Regulation 47 of Pension Regulation for the Army 2008 (Part-1) the minimum qualifying service for earning a service pension of personnel below officer rank (PBOR) is 15 years. Accordingly, applicant was granted service pension. Reservists are those person who have served in active army for a particular period

and then kept in reserve for a particular period to be recalled at the time of need i.e. in case of emergency during war. Reservist who has rendered less than 15 years of actual qualifying (active) service are not granted service pension. However, a reservist who is not in receipt of service pension, is granted on completion of the prescribed combined qualifying active service and reserve service of not less than 15 years a reservist pension equal to $2/3^{\text{rd}}$ of the lowest pension admissible to a Sepoy but in no case less than Rs. 375/- per month being the minimum pension (under the 4th Central Pay Commission). The minimum pension was revised to Rs. 1275/- per month, Rs 3500/- pm and Rs 9000/- pm under 5th CPS, 6th CPC and 7th CPC respectively.

6. Learned counsel for the respondent further submitted that as per Min of Def letter dated 08.03.2010 and PCDA (P) Circular No 430 dated 10.03.2010, the lowest pension of a Sepoy of Army with 15 years of actual qualifying service was enhanced to Rs. 4,603 per month from 3,500/- per month (under 6th CPC) with effect from 01.07.2009. Accordingly, the revised pension of a Reservist in terms of Govt of India, Min of Def letter dated 08.03.2010 works out to Rs. 3,069/- per month ($2/3^{\text{rd}}$ of Rs. 4,603/- per month). Since, the Reservist was already getting the minimum pension of Rs 3,500/- per month, the same was protected being more beneficial to him. The

rate of Reservist pension is not equal to the pension of a Sepoy of Regular Army, it comes to equal only due to protection of the pension with minimum pension decided in various pay commissions. As per Govt of India, Min of Def, letter dated 29 October 2016 and Para 4.4 of PCDA (P), Allahabad Circular No 570 dated 31 October 2016, the minimum basic pension @ Rs. 9,000/- per month (excluding the element of additional pension admissible to old pensioners) with effect from 01 January 2016. The policy of Govt was not to give minimum pension of Rs. 35,00/- per month to Reservist pension but was to give $\frac{2}{3}^{\text{rd}}$ of the lowest pension given to a Sepoy. Since this worked out to be less than Rs 1275/- per month and Rs. 3500/- per month in 5 and 6 CPC. Thus it is seen that a Reservist who has put in less than 15 years of actual qualifying (active) service is not entitled for service pension as admissible to a Sepoy who has put in 15 years of actual qualifying (active) service. There is no provision in the Pension Regulation to grant parity with regular soldiers as there is a difference in their qualifying service. Hence the applicant is not entitled for service pension as admissible to a Sepoy who has put in 15 years of actual qualifying service. As per para 4.1 of Govt of India, Min of Def letter No 12 (1)/2014/D(Pen/Policy) Part-II dated 03 February 2016, the provisions of OROP do not apply to Reservist

pensioner. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the documents available on record.

8. The question before us to decide is where the applicant is entitled for enhanced rate of reservist pension from 01.07.2014 i.e. 2/3 pension of the rank of Sepoy?

9. In the instant case applicant has completed 15 years of colour service and he was retired on fulfilling the terms of engagement. On that ground only, after OROP, Sepoy in 15 years of service (lowest pension) has been granted basic pension 6,665/- and his basic pension should have been enhanced to Rs 4,443/- (2/3rd of the Sepoy Pension (Lowest Pension) as reservist, as per the Regulation 155 of the Pension Regulations for the Army, 1961. Further the applicant was granted minimum basic pension of Rs 3,500/- per month with effect from 01.01.2006 and the pension was not enhanced further at par with Service Pension and therefore, the impugned order is liable to be set aside on the ground of violation of the principles of natural justice and also as per Regulation 155 of the Pension Regulations for the Army 1961. The respondents are not justified in submitting that no further revision can be carried out by the competent authority so far

the Reservist Pension is concerned. The respondents cannot violate the Provisions of the Regulation 155 of the Pension Regulations for the Army, 1961 without any valid reason. Applicant is entitled for 2/3rd pension of Sepoy and not a minimum pension with effect from 01.07.2014. Extract of Rule 155 of Pension Regulations for the Army 1961 Part-1 is reproduced herein for better and proper appreciation of the present matter:-

***Rule 155.** On OR reservist who is not in receipt of service pension may be granted on completion of the prescribed combined colour and reserve qualifying service, of not less than 15 years, a reservist pension equal to 2/3rd of the lowest pension admissible to a Sepoy, but in no case less than Rs. 375/- per month on his transfer to pension establishment either on completion of terms of engagement or prematurely, irrespective of period of colour service.*

10. On the careful study of materials on record, it is indicated that applicant is entitled to get the relief as prayed for in the O.A and the applicant is entitled to receive 2/3rd of the revised scale of the rank of Sepoy as per provisions. The claim of the applicant is a statutory right and the respondents ought to have granted the entitled pension to the applicant. It is seen that action of respondents is an infringement of constitutional, legal and fundamental rights confirmed upon the applicant under Article 14, 16 and 21 of the Constitution of India. Further, no acceptable explanation has been given by the

respondents in rejecting the representation of the applicant. Applicant is entitled to get the relief as prayed for in the O.A. wef 01.07.2014.

11. In the result, the O.A. is allowed and impugned order passed by the respondents rejecting the claim of the applicant is set aside and respondents are directed to enhance the Reservist Pension of the applicant as Rs. 4,443/- wef 01.07.2014 (i.e. 2/3rd of the rank of the pension of Sepoy) within four months from today. In default, the applicant shall be entitled with simple interest @ 8% per annum till the date of realization. No recovery shall be made on account of excess payment.

12. No order as to cost.

13. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 25 November, 2021

Ukt/-