

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

**O.A. No. 401 of 2018**

Wednesday, this the 29<sup>th</sup> day of September, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Santosh Singh S/O Late Hav Kishan Singh, Village-Nayakgoth, P.O.-  
Tanakpur, Uttarakhand-262309

..... Applicant

Ld. Counsel for the: **Shri VP Pandey**, Advocate  
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.
2. ATNK & K Area, PIN-900432, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014 (U.P.).
4. O.I.C. Records, The Parachute Regiment, Bangalore, PIN-900493, C/O 56 APO.
5. Treasurer Officer, Tanakpur, Champawat.

..... Respondents

Ld. Counsel for the : **Mrs Anju Singh**, Advocate  
Respondents Central Govt Counsel.

**ORDER (Oral)**

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

*“(i) That by means of an appropriate order or direction this Hon’ble Tribunal may kindly be pleased to direct the respondents to restore his service pension with immediate effect.*

*“(ii) That by means of an appropriate order or direction this Hon’ble Tribunal may kindly be pleased to direct the respondents to release all the arrears of service pension which has fallen due since 18 April 2012 till date.*

*“(iii) That any other order or direction which this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case may also be passed.*

*“(iv) That the cost of the suit may also be granted.*

2. Brief facts of the case are that Ex Hav Kishan Singh, an Army pensioner was convicted u/s 302 of IPC and awarded life imprisonment by Sessions Court, Nainital. Accordingly, his pension was stopped w.e.f. December, 1994 by Treasury Office, Nainital under the provisions of Rule 82 of Pension Regulations for the Army, 1961 (Part-II). He was enlarged on bail on 24.07.1999 by the Hon’ble High Court of Judicature at Allahabad vide order dated 07.07.1999 (Annexure-II of CA). After release on bail, the ex-serviceman submitted an application dated 24.12.1999 to Records, Parachute Regiment for restoration of his pension but it was denied vide letter dated 31.12.1999 (Annexure V of CA) stating that pension could only be restored on completion of imprisonment. On

24.07.2001, he again approached PCDA (P), Allahabad who intimated vide letter dated 09.09.2002 (Annexure VIII of CA) that pension can be granted by competent authority in case of suspended criminal offence. GOC, ATNKK & G Area vide order dated 01.10.2002 accorded sanction for restoration of pension for the period 24.05.1995 to 23.07.1999 and also w.e.f. 24.07.1999 (Annexure IX of CA). PCDA (P), Allahabad vide letter dated 16.12.2002 (Annexure X of CA) intimated that pension cannot be restored on the ground that if a pensioner is sentenced to imprisonment in a criminal offence by a lower court but is acquitted by the Hon'ble High Court, then only the pension withheld could be restored. It was further submitted that since an appeal was still pending before the Hon'ble High Court of Uttaranchal, Nainital therefore, during the period of bail his pension cannot be restored under the existing rules.

3. A Writ Petition No. 1469/2004 filed by applicant in the Hon'ble High Court at Nainital for restoration of pension was allowed vide order dated 14.07.2006 (Annexure XVI of CA) directing the respondents to grant his due pension. Against aforesaid order, Special Appeal No. 165/2006 was filed by the Union of India & Ors in the Hon'ble High Court at Nainital who while partly allowing the appeal vide order dated 07.03.2007 clarified that pension should be paid only from December, 1994 to 18.05.1995. Accordingly, the aforesaid pension was paid to ex-serviceman.

4. A Criminal Appeal No. 1623/2001 filed by the applicant was partly allowed by the Hon'ble High Court of Nainital vide order dated

30.06.2009 (Annexure 23 of CA) and his sentence was converted from life imprisonment to ten years. On 24.03.2012 applicant was finally released from jail after completion of imprisonment. Writ Petition No. 295 (S/S) of 2015 was filed by applicant in the Hon'ble High Court of Nainital for release of his pension. The Writ Petition was disposed off vide order dated 02.03.2015 with directions to applicant to approach appropriate forum. The ex-serviceman had filed this O.A. on 04.05.2017 for restoration of his pension but during the pendency of this O.A. he died on 06.10.2020. Restoration application filed by his son Santosh Singh was allowed vide order dated 15.07.2021.

5. Learned counsel for the applicant submitted that having undergone full imprisonment, the ex-serviceman was finally released from jail on 24.03.2012 and thus he is entitled to service pension w.e.f. 24.03.2012 till his death i.e. 06.10.2020.

6. On the other hand, respondents have admitted that case pertaining to release of pension in respect of deceased soldier is being processed. He further submitted that on account of involvement of various agencies, arrears of pension shall be granted shortly.

7. We have heard learned counsel for the parties and perused the material placed on record.

8. It is not disputed that the ex-serviceman pensioner was convicted to life imprisonment vide order dated 18.05.1995 and the said imprisonment was converted from life imprisonment to 10 years vide order dated 30.06.2009 which he undergone and was finally

released on 24.03.2012. Thus, he is entitled to service pension w.e.f. 24.03.2012. A number of representations were submitted by applicant and they were replied by the respondents. Writ Petition No. 295 (S/S) of 2015 was filed by the ex-serviceman in the Hon'ble High Court of Nainital for release of his pension. The Writ Petition was disposed off vide order dated 02.03.2015 with directions to applicant to approach appropriate forum. The ex-serviceman had filed this O.A. on 04.05.2017 for restoration of his pension but during the pendency of this O.A. he died on 06.10.2020. Substitution application was allowed vide order dated 15.07.2021 and substitution incorporated.

9. In nut-shell, it is observed that the ex-serviceman is entitled to service pension after his release from jail i.e. w.e.f. 24.03.2012. The respondents version is that case for release of his pension is being processed and it will take some more time on account of involvement of various agencies.

10. The O.A. is **allowed**.

11. In the result, we are of the view that the deceased soldier is entitled to service pension w.e.f. 24.03.2012 till his death i.e. 06.10.2020. The respondents are directed to release pensionary benefits to applicant (son of deceased soldier) within a period of four months from today. Default will invite interest @ 8% per annum.

12. No order as to costs.

13. Pending miscellaneous applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

Dated: 29.09.2021  
rathore

(Justice Umesh Chandra Srivastava)  
Member (J)