

**RESERVED****COURT NO. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 206 of 2017****Friday, this the 5<sup>th</sup> day of January, 2018****"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)"****Radha Devi W/o Late Prem Narayan Army No. 1038662, H  
Lance Dafedar (Armed Corps), R/o Village Bhatkherwa, Police  
Station- Bihar, District- Unnao****..... Applicant****Ld. Counsel appeared  
for the applicant****- Ms Sonia Mishra, Advocate  
(Counsel for the applicant)****Versus**

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General of Ordinance Service, Master General of Ordinance 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. OIC Records, AC Records Ahmad Nagar Maharashtra, Unit 43 Armd Regt.
5. PCDA (Pension), Draupadi Ghat, Allahabad.
6. Punjab National Bank, Through its Branch Manager, Branch Bhagwant Nagar, District- Unnao

**---Respondents****Ld. Counsel appeared  
for the Respondents****- Dr. Shailendra Sharma Atal,  
(Central Govt.Standing Counsel)****Assisted by****- Maj Salen Xaxa,  
OIC Legal Cell**

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred by the applicant under section 14 of the Armed Forces Tribunal Act 2007 for the relief of the release of family pension attended with the plea to release pension which was stopped on account of conviction in a criminal case.

2. Shorn of unnecessary details, the facts of the case are that the husband of the Applicant was enrolled in the Indian Army on 16.10.1965 and was discharged from service on 31.10.1985 under Rule 13 (3) Item III (i) of the Army Rules, 1954 on completion of terms of service. The total service rendered by the husband of the Applicant was 20 years, and 16 days in the Army. After his retirement, the husband of the Applicant was sanctioned pension which he started drawing with effect from 01.11.1985. It is alleged that after retirement, the Applicant was embroiled in a criminal case which culminated in his conviction in the year 2007 vide ST No 240 of 2005 under section 302/34 IPC and he was consequently awarded sentence to undergo life imprisonment. Against the said conviction, a criminal appeal was filed in the High Court at

Lucknow Bench. On account of conviction, the pension of the husband of the Applicant was withheld by the Punjab National Bank, Bhagwant Nagar, District Unnao U.P. on account of non submission of life certificate. It is further alleged that Applicant's husband represented his case against stoppage of pension while in Jail from 2007 - 2013, However he did not get any response. Subsequently after release on bail he again represented vide representation dated 27.09.2016 to Armoured Corps Records intimating that the aforesaid Bank has withheld his pension without any valid justification. It is further alleged that aforesaid Bank was communicated with by the Authorities for knowing the reasons of stoppage of pension but repeated communication elicited no response from the Bank. After about one year of release on bail i.e. on 02.10.2016, the husband of the Applicant breathed his last and as a consequence, the Applicant represented to the authorities concerned to sanction family pension. On receipt of aforesaid representation, the authorities of Armoured Corps Records again communicated with the concerned Punjab National Bank but it again yielded no response. Thereafter, the Applicant invoked the jurisdiction of this Tribunal arraying Armoured Corps Records as one of the respondents. Upon receipt of copy of the O.A, and also the order of the Tribunal

dated 31.05.2017, the Bank concerned was again communicated with to comply with the order of the Tribunal but it again elicited no response.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the materials on record.

4. Learned counsel for the respondents in para 11 of the counter affidavit referred to Para 212 of Pension Regulations for the Army, 1961 (Part-1), according to which an ordinary family pension may be granted to the family of an individual who dies during service or after retirement for causes neither attributable to nor aggravated by military service. It is averred in the self same para that late husband of the applicant was initially granted service pension after his retirement and was in receipt of service pension with effect from 01.11.1985, till his conviction. However after conviction, the same was stopped. The late husband of the applicant was granted bail and during the bail, he died on 02.10.2016, hence the applicant was eligible for grant of ordinary family pension with effect from 03.10.2016 for life as per above regulation. In para 14 of the counter affidavit, it is conceded that the applicant was eligible for grant of ordinary family pension for life with effect from

03.10.2016 but it is the Punjab National Bank concerned which is culprit in the case. Paras 14 and 15 of the counter affidavit being relevant are quoted below.

*"14. That the applicant is eligible for grant of ordinary family pension for life with effect from 03 Oct 2016. The award of the same has not been made to her by the Punjab National, Bhagwant Nagar, Distt- Unnav (UP) whereas her joint notification for receipt of ordinary family pension has already done vide PPO No S/C 28050/1985 dated 31 Oct 1985, Due to sheer negligence of the PDA (Punjab National Bank Bhagwant Nagar, Distt- Unnav (UP) the applicant is not getting her legitimate dues to survive herself after the death of her husband, which is a gross violation of Article 14 of the Constitution of India. Despite of the repeated correspondence with the Punjab National Bank/Pension Disbursement Agency and PCDA (P), Allahabad, they have neither acted upon with respect to starting of family pension to the applicant nor replied to the correspondence.*

*15. That in view of the factual submissions above, the Hon'ble Tribunal may pleased to decided the instant O.A. on its merits and as per PCDA (P), Allahabad Circular No 165 dated 22 Feb 2013, the Punjab National Bank, Bhagwant Nagar, Distt-Unnav (UP) must be ordered for early payment of family pension to the applicant with 8% interest per annum and heavy cost may please be imposed on Punjab National Bank for compelling the applicant to push her to litigation and wrongful denying of her rightful claim".*

5. Learned counsel for the Applicant forcefully submitted that the respondent Bank has withheld the pension for want of life certificate as the husband of the Applicant was in prison on account of conviction. Since the husband of the Applicant was in prison, an application was moved before the Lucknow Bench of Allahabad High Court in Criminal Appeal no 1380 of 2017 for producing the husband of the Applicant in the Bank in custody for physical appearance in the said Bank which was acceded to by the High Court vide order dated 21.05.2015. Thereafter, the husband of the Applicant was enlarged on bail vide order dated 18.12.2015. It is also canvassed that after release on bail, the Applicant's husband made repeated request to the authorities to release the arrears of pension vide letters dated 01.03.2016 and 27.03.2016 but without any relief. It is further canvassed that now after the death of her husband on 01.03.2016 a widow aged 70 years is being harassed unabatedly.

6. The interim order dated 31.05.2017 passed by this Tribunal in M.A. No 965 of 2017 being relevant is quoted below.

*"It appears that the husband of the applicant Late Lance Dafedar Prem Narayan, Army No. 1038662H was convicted in a criminal case, on account of which his*

*pension was stopped from 10<sup>th</sup> March 2010. However, in appeal he was granted bail and during bail, the husband of the applicant died on 01.10.2016. As per Pension Regulations 1961 (Part-1), a person who has been convicted and enlarged on bail, seems to be entitled for provisional pension. It appears that ignoring the aforesaid Regulations, the family pension of the applicant has been stopped.*

*Accordingly, as an interim measure, we direct the respondents to pay the provisional pension to the widow Late Lance Dafedar Prem Narayan, Army No. 1038662H, when it was stopped till death.*

*The question with regard to payment of family pension after death shall be considered on the next date after receipt of the counter affidavit”.*

7. From the aforesaid facts, it clearly transpires that the Authorities of Armoured Corps passed on the buck to the Bank concerned for stopping the pension and for not granting family pension to the Applicant. It is conceded in the counter affidavit that the Bank was not authorised to stop the Pension. It is well known proposition of law that the authority who is competent to sanction pension is also competent to withhold such pension. In the instant case, the pension was sanctioned under the authority of Armoured Corps Records and therefore, withholding or suspension of pension can only be done by the said authority as postulated in Regulation 4 of the Army

Pension Regulations which has not been done in this case. Besides, after the death of husband of the Applicant, the widow moved various representations for grant of family pension which elicited no response. On the other hand, the respondents in the counter affidavit have taken shelter behind the plea that it was the Bank concerned which ought to have paid the ordinary Family pension to the widow.

8. Admittedly, when the applicant's husband died 12.10.2016, he was not drawing any pension which was stopped by the disbursing bank. Neither the pension sanctioning authority nor the pension payment authority (PCDA (P)) had endorsed the action of the Bank. Moreover, the fact remains that the pension payment order or the pension sanctioning order was neither withdrawn nor cancelled by the competent authority. In the absence of any such order, it cannot be said that the husband of the petitioner was not a pensioner at the time his death. It can at best be stated that the pension granted to him was kept in suspended animation during his conviction period and in any case he was out on bail pending disposal of his appeal against conviction.

9. We may now consider Para 29.1 of Pension Payment Instruction based on which the disbursing bank withheld



pension of the husband of the applicant from 2010. To consider this issue, it will be useful to refer to a decision of the Hon'ble Punjab & Haryana High Court in the case of Nasib Singh Ex Subedar Major -vs- UOI & Ors decided on 31 Oct 1996 and reported in (1997)115 PLR 658. 24. In that case also the petitioner had retired from the Army in the rank of Subedar Major on 1.6.82 and service pension was granted from the date of superannuation. Thereafter, he was involved in a murder case and was sentenced to undergo imprisonment for life on 18.2.86. He preferred appeal before the Hon'ble High court and Supreme Court but his conviction and sentence were maintained. He was informed that vide decision dt. 22.11.95, the respondents had forfeited his pension from 18.2.86 to 1.6.95 and had restored full pension for life w.e.f. 2.6.95 i.e. after his release. The petitioner filed the above writ petition claiming the forfeited portion of pension for about 9 years during the period of his conviction.

10. The Apex Court in "Maj. (Retd.) Hari Chand Pahwa v. Union of India, 1995(1) Services Law Reporter, 703 has held as under:- "The provisions of Regulation 16 (a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of 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."

11. A bare reading of the above observations would make it clear that the Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds.

12.. Paragraphs 29 and 29.1 of the Pension Payment Instructions, 1973, which deal with the forfeiture of pension, are reproduced hereunder:-

*"29. Forfeiture of Pensions of Class I, II and V Pensions; The above classes of pensioners are liable to forfeiture of pension if convicted by any Criminal Court of serious crime including political offences or guilty of grave misconduct, should the Pension Disbursing Officer become aware of any case in which a pensioner is sentenced to imprisonment or is found guilty of grave misconduct, he should forthwith report the matter to the Controller of Defence Accounts (Pensions) with a copy of the order of conviction and sentence and suspend*

*the pension provisionally pending receipt of instructions from the Controller of Defence Accounts (Pensions) as to whether the pension should be withheld, reduced or continued in full. Any permanent deduction of pension that may be decided upon, will be notified to the Pension Disbursing Officer who should note the reduced rate on the pensioner's papers and the payment/Check Register."*

*"29.1. Forfeiture of Pensions of Class VI and VII pensions; Should the Pension Disbursing Officer become aware of any case in which a pensioner is sentenced to imprisonment, he should forthwith suspend the payment of his pension and report the fact to the Controller of Defence Accounts (Pension) for keeping a note in his records. On release of the petitioner from imprisonment, the Pension Disbursing Officer will obtain an application from the pensioner for restoration of pension and submit it to the Controller of Defence Accounts (Pensions) with a report in IAFA401 together with the following documents:-*

- i) A copy of the judgment of the Court by which the pensioner was tried and convicted and if an appeal was made a copy also of the judgment of the appellate court;*
- ii) A memo showing the dates from and to which the pensioner was actually in prison, to be obtained from the Superintendent of the jail from which the petitioner was released.*
- iii) A list giving particulars of previous conviction, if any, against the pensioner to be obtained from the Deputy Commissioner or Collector of the District.*
- iv) A memo showing the character on discharge from service, length of service and the date from which*

*petitioner as well as regimental number of the pensioner as shown in the descriptive roll;*

- v) *A memo showing the date of arrest and the period the pensioner was under police custody as an under-trial pension prior to the date of conviction."*

13. From the above paragraphs, it is amply clear that the pension of a pensioner is liable to be forfeited if he is convicted by any Criminal Court in a serious crime. As per paragraph 29.1 of the Pension Payment Instructions, 1973, pension is again restored on the release of pensioner from imprisonment. The Applicant's husband was tried for a murder and was convicted and sentenced to imprisonment for life in the year 2007 by the Additional Sessions Judge, Unnao. After imprisonment of the Applicant provisions of Paragraphs 29 and 29.1 of the Pension Payment Instructions, 1973 came into play and the pension of the Applicant's husband stood automatically suspended. The petitioner was released from the jail on 18.12.2015. After release, he made repeated representation but no action was taken and ultimately he died on 12.10.2016. In the case of the applicant's husband, even though his pension was stopped, but no action was taken to restore it in full after his release from jail in terms of the second part of the *ibid* instruction at Para 29.1 which has been applied in this case. It is unfortunate that the disbursing

bank has acted on the first part of the ibid Para while sat idle so far as restoration part is concerned despite several correspondence by the Record Office and the pensioner and submission of all necessary documents required for the purpose.

14. In para 4.10 of O.A. it is clearly mentioned that late Prem Narayan @ Bhagwan Deen approached the Opposite parties after his release from Jail in the year 2016 along with all necessary papers and applications for release of his current pension as well as arrears of the pension which was lying due since the year 2010 but opposite parties did nothing and late Prem Narayan and his family was kept starving. It is a sorry state that nothing was done in this regard and as a result, the pensioner died without getting any pension and now the widow, who is now more than 70 years of age, is suffering having become penny less and unable to maintain herself without any monetary assistance. It is a very sordid tale that for want of communication amongst inter departmental agencies, the pensioner suffered and died and now the widow is also suffering for want of family pension.

15. As stated supra, in para 14 of the counter affidavit, it is conceded that the applicant is entitled for grant of ordinary

family pension for life with effect from 03.10.2016 but the same has not been done by the Bank concerned while joint notification for receipt of ordinary family pension has already been done vide PPO No S/C 28050/1985 dated 31.10.1985. It is also stated that it was due to sheer negligence of the Punjab National Bank that the applicant has not been given her legitimate dues to survive herself after the death of her husband which is gross violation of Article 14 of the Constitution of India.

16. Thus as a result of foregoing discussion, we are of the view that the Applicant is entitled to ordinary Family Pension with effect from the date of death of her husband.

17. Now coming to the question of arrears of pension which were due to the Applicant's husband from the year 2010, in the instant as observed supra, the pension was not withheld or stopped by the authority that has sanctioned it. No orders for withholding or suspending the pension was passed by the competent authority. As observed above, it is well known proposition of law that the authority, which is competent to sanction pension is also competent to withhold such pension. It is on record that after release from jail the applicant's husband furnished all the papers to the authorities concerned

but no orders were passed. Even no show cause notice was issued. Thus, it is a case in which the widow would be entitled to arrears of pension due to the husband of the Applicant from the date it was stopped while he was incarcerated in jail.

18. As a result of foregoing discussions, the O.A is allowed and it is directed that the Applicant shall be entitled to Ordinary Family pension with effect from the date of death of her husband which is 12.10.2016. It is further directed that the Applicant shall also be entitled to arrears of pension which was due to the husband of the Applicant stopped in the year 2010 till his death on 02.10.2016. The arrears shall be calculated and disbursed to the applicant within a period of four months from today. In case of default, the applicant shall be entitled to interest at the rate of 9% till the date of actual payment. Let this order be complied with within four months.

The Punjab National Bank concerned at Unnao is directed to comply with the order of the Tribunal forthwith.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

**Dated : January, ,2018**

MH/-