

**Reserved Judgment**  
**Court No.1**

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

**Original Application No. 322 of 2016**

**Tuesday this 17<sup>th</sup> day of April, 2018**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

Smt Manjula Tripathi,  
Wife of Colonel Late Hari Shanker Tripathi,  
R/o 479 Civil Lines, Unnao,  
P.S. Kotwali District Unnao (U.P.).

..... **Applicant**

By Legal Practitioner: Col (Retd) Rakesh Johri, Advocate  
Learned Counsel for the Applicant.

Versus

1. Union of India through Secretary,  
Ministry of Defence,  
New Delhi.
2. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Allahabad.

..... **Respondents**

By Legal Practitioner: Dr Shailendra Sharma Atal, learned counsel  
for the respondents, assisted by Maj Salen  
Xaxa, OIC, Legal Cell.

**ORDER**

1. In this case, Original Application was decided by the Division Bench of this Tribunal. Since there was difference of opinion between the two Hon'ble Members, therefore, the matter was referred to the Armed Forces Tribunal, Principal Bench, New Delhi and the Hon'ble Chairperson vide his order dated 17<sup>th</sup> January 2018 has entrusted this matter to the 3<sup>rd</sup> Member, the under-signed.

2. In brief, the facts of this case are, that the applicant joined the Indian Army (Bihar Regiment) on 30.06.1963. The original applicant Colonel Hari Shanker Tripathi (Retd) died before judgment could be pronounced and thereafter his wife Smt Manjula Tripathi was substituted on 25.01.2018. After rendering 27 years of service in Army, the husband of the applicant Colonel Hari Shanker Tripathi retired on 30<sup>th</sup> June 1990. The claim of the applicant was that the husband of the applicant was entitled to the benefit of six years of qualifying service as per Regulation 5 of the Pension Regulation 1961 and, therefore, he was entitled to the weightage of qualifying service to the maximum 33 years of qualifying service. He was granted the benefit of said qualifying service and his pension was fixed accordingly. After Fifth Central Pay Commission (in short 'CPC'), his pension was enhanced to Rs.8550/- with 33 years of service (including weightage of six years given to him at the time of retirement). The pension was further revised in pursuance of Sixth CPC vide Ministry of Defence letter dated 11.11.2008 and it was fixed at Rs.27,795/-. The claim of the applicant is that this weightage of qualifying service was never abolished or withdrawn in respect of officer, who retired before 01.01.2006 and, therefore, the recommendation of the Sixth CPC could not have been given effect retrospectively. The claim of the applicant is that even after implementation of the OROP, the husband of the applicant was entitled to the benefit of the qualifying service of six years, as granted by the Government of India, because the same has not been withdrawn and, therefore, his pension should have been fixed calculating his qualifying service of 33 years. Annexure A-2 to the O.A. which was Circular No.557 was also challenged and Hon'ble Mr Justice D.P.Singh, Member (J) has allowed the O.A. directing the respondents to grant weightage, while implementing OROP and set aside the aforementioned circular to the extent it relates to the OROP and all the orders and instructions issued to withdraw the weightage granted to the husband of the applicant while calculating his pension under OROP. Apart from it, a special cost of Rs.Two Lacs was also imposed on the respondents. Hon'ble Administrative Member has dismissed the O.A. Since there was

difference of opinion, therefore, following questions were framed and the matter has been referred to the undersigned for giving opinion :

- (I) *Whether weightage granted to the applicant at the time of superannuation in 1990 may be withdrawn while implementing OROP under the provisions contained in letter dated 03.09.2015 of Government of India, as contained in Annexure No.6 to the counter affidavit, with special reference to Clause-4 of said letter ?*
- (II) *Whether respondents have right to reduce the pension, directly or indirectly or by withdrawal of weightage while implementing OROP, under the Scheme of OROP, keeping in view various letters issued by the Ministry of Defence from time to time ?*
- (III) *Whether conclusions drawn and findings recorded by one of us (Justice D.P. Singh, Member 'J') in Paras- 49, 50 and 51 of the judgment/ order constitutionally and statutorily are not sustainable ?*
- (IV) *Whether the applicant, who is around 80 years of age and physically handicapped, because of commission and omission of PCDA (P) Allahabad, suffered mental pain and agony, apart from financial crunch, has been forced to enter into litigation and hence is entitled to a compensatory cost of Rs. 2,00,000/- (rupees two lacs) in view of law laid down by Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 and other subsequent judgments, as referred to in Para-50 of the present judgment?*

3. The claim of the applicant is that the policy, whereby the benefit of qualifying service was granted to the husband of the applicant, was never withdrawn. Therefore, he was entitled to the benefit of the same even after implementation of OROP and the decision given by the Hon'ble Judicial Member was in accordance with law.

4. On the contrary, Dr Shailendra Sharma Atal, representing the Union of India, has vehemently argued that the judgment was passed without giving due opportunity of hearing to the respondents, because on that date, the husband of the applicant was seriously ill and was hospitalised. He has argued that the purpose of giving benefit of qualifying service was only to reduce the anomaly in the pension of persons of the same rank to ensure benefit of full pension i.e. 50% of the last pay. At that point of time, the qualifying service for full pension was 33 years, while the same was reduced to 20 years subsequently. The husband of the applicant was getting pension which was revised subsequently in VI CPC also, but his pension was never reduced. It has also been argued that the OROP was implemented by the decision of the Union of India. The letter implementing the OROP was issued by the Union of India addressed to all concerned which has been challenged by the husband of

the applicant. It has also been argued that the power of the PCDA has been described by the husband of the applicant himself in his application for amendment, wherein it has been stated that the PCDA has powers to revise the pension in accordance with Government orders. Admittedly, in this case the husband of the applicant has nowhere pleaded that he was getting less than 50% of the pension of salary last drawn by him notionally updated after every pay commissions or, in any manner he has been discriminated with other similarly situated persons in the implementation of OROP. Keeping in view the submission of both the learned counsel for the parties, I now proceed to deal with the points, mentioned above. Since all the points are inter-related to each other, therefore, I proceed to consider them jointly and thereafter the conclusion shall be given point-wise.

5. Learned counsel for the applicant has drawn our attention towards Annexure SA-9, which reads as under :

*“Ministry of Finance  
(Department of Expenditure)*

*Ministry of Defence, Department of Ex-Servicemen Welfare may please refer to their notes on preceding pages regarding issuance of Government Sanction, containing, inter alia, 101 tables for revised pension in respect of various ranks of Defence Forces personnel with varying Qualifying Service in pursuance of the broad principle of OROP notified by the Ministry of defence (MOD) as per their letter dated 07.11.2015.*

2. *The matter has been considered in the Ministry. This Ministry has no objection to the proposed Draft Sanction, provided it is ensured by MOD that the Draft Sanction fully conforms to the existing pension regulation to the extent of modifications as envisaged in term of the OROP letter dated 07.11.2015.*

3. *This issues with the approval of the Finance Minister.*

*(Amar Nath Singh)  
Deputy Secretary”*

This letter does not support the claim of the applicant in specific words.

6. In the application for amendment moved by the applicant, a circular of Defence Accounts Department Office Manual Part-IV, Principal Controller of Defence Accounts (Pension) Volume-1 dated 1<sup>st</sup> March 2006 issued by Controller General of Defence Accounts has been quoted. It is mentioned that to revise pensionary awards, due to change in entitlement in pursuance of Government Orders. Para 4.37 of this letter is important, which is quoted as under :

*“4.37. That instructions given in Para 3 Item No.12 of Circular 557 (Annexure No. A-2 (1) to the effect that “No weightage in qualifying service is to be allowed to all while extending the benefit of OROP in past cases “are illegal as the same have been passed without authority and approval of the Central Govt who had sanctioned OROP. PCDAP can not be allowed to arrogate himself to become a decision maker what benefit is to be given or not to be given. He is at best an accountant and not a policy making authority. The aforesaid item No. 12 is therefore illegal and deserves to be annulled.”*

7. Alongwith this amendment application as Annexure A-2 (1), Circular No.557 has been filed and its Item No.12 is a question whether qualifying service (Q.S.) is to be taken as actual or with weightage? This reply in the other column is as under :

*“In Post-2006 retirees cases, weightage had been withdrawn from Qualifying Service. Therefore, the qualifying service mentioned in OROP table is actual qualifying service only. No weightage in qualifying service is to be allowed at all while extending the benefit of OROP in past cases. For example, if actual Q.S. was ‘q’ years and weightage, if any, was ‘y’ years, the pension indicated in the concerned table for ‘q’ years only is to be paid to the pensioner.”*

8. Learned counsel for the respondents has placed reliance on the letter dated 03<sup>rd</sup> February 2016, whereby “one rank one pension” to the Defence personnel was implemented. Paras 2 and 4 in this letter are important for this controversy, which are reproduced as under :

*“2. The undersigned is directed to say that in order to quicken the process of revision of pension/family pension, total 101 pension tables indicating rates of pension/family pension under OROP scheme notified vide this Ministry’s order dated 7<sup>th</sup> Nov, 2015, are appended to this order. The appended table indicate revised rates of Retiring/Service/Special/Disability/Invalid/Liberalized disability/War Injury Pension including disability/war injury element and ordinary/special/liberalized family pension of Commissioned Officers, Honorary Commissioned Officers, JCOs/Ors and Non-Combatants (Enrolled) of Army, Navy, Air Force, Defence Security Corps & Territorial Army retired/discharged/invalided out from service/died in service or after retirement. The existing pension of all pre- 1.7.2014 pensioners/family pensioners shall be enhanced with reference to applicable table for the rank (and group in case of JCOs/Ors) in which pension with reference to the actual qualifying service as shown in column-1 of the tables subject to maximum term of engagement for each rank as applicable from time to time. The rate of pension of pensioners/family pensioners drawing pension more than the rate of revised pension/family pension indicated in annexed tables, shall remain unchanged.*

*(Underlined by me)*

**APPLICABILITY**

*4. The provisions of this letter shall be applicable to all pensioners/family pensioners who had been retired/discharged/invalided out from service/died in service or after retirement in the rank of Commissioned Officers, honorary, commissioned officer, JCOs/Ors and Non-Combatants (Enrolled) of Army, Navy, Air Force, Defence Security Corps, Territorial Army & Ex-State Forces and are in receipt of pension/family pension as on 1.7.2014.”*

9. The submission of the learned counsel for the respondents is that this letter was issued after implementation of the policy of OROP by the Union of India and, therefore, this letter has statutory force. This letter has been issued by the Government of India and has been addressed to all the Chiefs of the Army, Navy and Air Force. He has also drawn our attention towards the pension policy issued by the Government of India dated 03<sup>rd</sup> September 2015, which has been addressed to Chief of all the Forces, which is reproduced as under :

*“No.1 (04)/2015(I)-D(Pen/Pol)  
Government of India  
Ministry of Defence  
D (Pension/Policy)*

*New Delhi, Dated : 3<sup>rd</sup> September 2015*

*To,*

*The Chief of Army Staff  
The Chief of Navy Staff  
The Chief of Air Staff*

*Subject : - Revision of pension of pre-2006 Commissioned  
Officer/pensioners/family pensioners.*

*The undersigned is directed to refer to this Ministry's letter No 17(4)/2008(1)/D(Pen/Pol) dated 11.11.2008 as amended, issued in implementation of government decision on the recommendation of the Sixth CPC for revision of pension/family pension in respect of pre-2006 Armed Forces pensioner/family pensioners. As per provisions contained in Para 5 therein, with effect from 01.01.2006 revised pension and revised ordinary family pension of all pre-2006 Armed Forces pensioners/family pensioners determined in terms of fitment formula laid down in para 4.1 above said letter dated 11.11.2008, shall in no case be lower than fifty percent and thirty percent respectively, of the minimum of the pay band plus the Grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalided out/died including Military Service Pay where applicable.*

*2. The above minimum guaranteed pension was revised vide GOI, MOD letter No 1(11)/2012/D(Pen/Pol) dated 17.01.2013 with effect from 24.09.2012 at the rate of minimum of fitment table for the Rank in the revised pay band as indicated under fitment table annexed with SAI 2/S/2008 and SAI 4/S/2008 as amended, plus Grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalided out/died including Military Service Pay.*

*3. Now, after issue of GOI, Ministry of Personnel, PG & Pensioners, Department of Pension & Pension Welfare OM No. 38/37/08-P & PW (A) dated 30.07.2015, it has been decided that the pension/family pension of all pre-2006 pensioners/family pensioners may be revised in accordance with Para 2 with effect from 01.01.2006 instead of 24.09.2012.*

4. *In case the consolidated pension/family pension calculated as per para 4.1 of this Ministry's letter No. 17(4)/2008 (1)/O (Pen/Pol) dated 11.11.2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.*

5. *Accordingly, revised tables indicating minimum guaranteed pension/ordinary family pension for Indian Commissioned Officers which is annexed with GOI, MOD letter No.1(II)/2012-D(Pen/Policy) dated 17.01.2013, shall be effective with effect from 01.01.2006 instead of 24.09.2012. Pension Disbursing Authorities are hereby authorized to step up the pension/family pension of the affected pre-2006 pensioners/family pensioners with effect from 01.01.2006 instead of 24.09.2012 and arrear of pension/family pension will be paid.*

6. *All other terms and conditions shall remain unchanged.*

7. *The provisions of this letter shall take effect from 01.01.2006 and arrears, if any, shall be allowed from 01.01.2006 to 23.09.2012.*

8. *This issues with concurrence of Finance Division of this Ministry vide their ID No.22(5)/2015/Fin/Pen dated 25.08.2015 and Ministry of Finance, Department of expenditure vide their ID No.1(12)/EV/2015 dated 2.9.2015.*

9. *Hindi version will follow.*

*(R.K.Arora)*

*Under Secretary to the Government of India*

*Copy to-*

*As per standard distribution list."*

Para 4 of the abovementioned letter shows that only in case a person was getting higher pension than what would have been fixed by implementing the OROP, then such person shall continue to get the higher pension which he was getting earlier. It thus also established that if the pension after implementing the OROP is higher, then such person shall get such higher pension as re-fixed. Thus, the policy ensured that in no case a person shall get less pension which he was already receiving. A plain reading of the opinion of Hon'ble Judicial Member shows that His Lordship was under the impression that the pension of the applicant has been reduced.

10. On behalf of the applicant, my attention was drawn towards letter dated 12<sup>th</sup> November 2008 issued by the Director (Pension) particularly towards paragraph 5.1.3, which reads as under :

*“5.1.3. ADDITION TO QUALIFYING SERVICE.*

*The benefit of adding years of qualifying service (rank weightage) as provided in Para 5(b)(I) & (II) of this Ministry’s letter dated 03.02.1998 for purpose of computation of pension shall be continued in respect of those Commissioned Officers who retired/invalided out of service during the period 1.1.2006 to 1.9.2008 in respect of Commissioned Officers retired/retiring/invalided out on or after 2.9.2008, the weightage to qualifying service for the purpose of computation of pension stands withdrawn with effect from 2.9.2008.*

*In the case of PBOR discharged/invalided out from service on or after 1.1.2006, the weightage to qualifying service for purpose of computation of pension stands withdrawn with effect from 1.1.2006.”*

This letter also does not help the applicant, as he was not a retiree of the period mentioned in the letter. While this benefit was withdrawn with regard to all officers. It also shows that purpose of weightage of qualifying service was only for the purpose of computation of pension.

11. Learned counsel for the respondents has also drawn my attention towards Pension Regulation For the Army-1961 (Part-I), whereby in Para-2, it is provided that in case there is any dispute regarding the pension, then the matter shall be referred to the Central Government and the decision thereon, shall be final. Para-2 reads as under:

*“Interpretation of Regulations.*

*2. Any doubt or difference of opinion regarding interpretation of these regulations or any particular regulation shall be referred to the Central Government whose decision thereon shall be final. Cases not covered by the regulations but deemed worthy of special consideration may be submitted- to the Government through usual channels and the Accounts Officer concerned.”*

12. Learned counsel for the respondents has argued that the policy of pension is a service matter, which has to be considered in the light of the Service Regulation, Pension Regulation and the policy framed from time to time. Since the Pension Regulation for the Army deals with a special class of persons, therefore, these provision and the policy has to be construed keeping in view the purpose with which the policy has been framed and the same cannot be decided on the basis of the general law.

13. A perusal of the record shows that prior to 01.01.2006 the qualifying service for getting full pension of 50% of the last pay drawn was 33 years. Therefore, in order of minimise the anomaly of pension amongst



the officers retiring from the same rank, but having different years of actual qualifying service for pension, a scheme was floated and certain years of service according to the rank was added to the actual qualifying service, so that the persons having less than 33 years of service may be benefited with full pension of 50% of the last pay drawn. But the said period was to be added with the condition that the total qualifying service, should not exceed 33 years of service. These words assume great importance and established that it was nowhere the intention of the Regulation/policy that any person retiring from any post may get more than 50% of his last pay as pension. In the case of the husband of the applicant, he was having 27 years of actual qualifying service and with the weightage of six years he was having 33 years of qualifying service and thus at that time, he was getting full pension. It appears that after implementation of the OROP, the benefit of weightage in qualifying service of six years of all pre 01.01.2006 retirees was withdrawn for the purpose of implementing new policy of OROP. So this advantage which was earlier granted to the husband of the applicant and to all other similarly situated persons was also withdrawn. Hon'ble Member (Judicial) was of the view that the PCDA (P) had no authority to withdraw such period of benefit of qualifying service and thereby reduce the pension of the husband of the applicant that he was getting earlier and also that unless and until the said Regulation was revoked, the same must be treated to be having full force. Hon'ble Member (Judicial) has, on the basis of certain legal fictions and on the basis of certain case laws, which were not in connection with the Armed Forces and on the basis of said discussion, has opined that it is not permissible for the respondents to withdraw the benefit made available to the applicant at the time of retirement at later stage without amending the regulation, acquiring power for the purpose, therefore, the service of the husband of the applicant shall be deemed to have been increased by the period granted through the weightage of six years given. Thus, the question arises for consideration whether the Authority, which had issued the policy/scheme had the power to add, amend, vary or rescind the notifications, orders, rules or bye-laws. In this context, I would like to quote Section 21 of the General Clauses Act, 1897, which reads as under :

*“21 Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. —Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”*

This provision of law was not taken into consideration by Hon'ble Member (Judicial). In the chain of circumstances for the purpose of implementation of OROP by the Union of India, an order was duly issued, whereby the Government of India has withdrawn the benefit of weightage of qualifying service. Thus, in my considered opinion, it cannot be said that the Government of India had no authority to add, amend, vary or rescind the earlier scheme/policy. In the changed circumstances and keeping in view the intention of the OROP, no such weightage of service was required. Apart from it, a plain reading of the earlier provision, whereby the weightage of qualifying service was given, clearly shows that the same was only for the purpose of computation of pension and not for the purpose of fixation of salary. Now the husband of the applicant wants the said benefit of qualifying service the other way round. His implied argument is that after adding the qualifying service, his basic pay be fixed as his salary last drawn and accordingly pension be fixed on the basis of his pay so fixed. This interpretation is misconceived, misleading and against the basic purpose of that scheme and also against the scheme of OROP. Before hearing the case, I had directed the learned counsels for the parties to file a chart showing the dates on which the pension was revised and the amount of such revised pension. It transpires from the chart filed by the applicant that on 24.09.2012, the husband of the applicant was getting pension of Rs.27,795/- per month. From 01.07.2014 after OROP as per fitment formula, his pension was enhanced to Rs.34,835/- per month. Vide Circular No.555 of the PCDA, after implementation of 7<sup>th</sup> CPC, the pension was revised to Rs.89,526/- per month. Thereafter in view of interim order dated 19.12.2016 of the Hon'ble AFT, Lucknow, the pension was enhanced to Rs.92,855/- per month. Thus, at no point of time, the pension of the applicant was reduced, rather it was enhanced substantially.

15. In view of the discussions made above, I hereby reply Question no.1 as under :

(I) "Yes". The said weightage may be withdrawn by the same Authority in view of provision of Section 21 of the General Clauses Act, 1897.

(II) In reply to Question no.2, it is pertinent to mention that at no point of time, the pension of the applicant was reduced. On the contrary, it was enhanced substantially after implementation of the OROP. It was not the pension which was reduced, but it was only the benefit of qualifying service, which was withdrawn. The said qualifying service was only for the purpose of fixation of pension and not for any other purposes. In no case pension can be fixed more than 50% of the last pay drawn.

(III) Keeping in view the provision of Section 21 of the General Clauses Act, 1897 and the intention of the Legislature for the purpose of enforcement of the qualifying service of six years, I respectfully do not agree with the view expressed by the Hon'ble Member (Judicial).

(IV) The husband of the applicant was not entitled to any cost of litigation, keeping in view the findings given on the aforesaid issues.

Let this order be placed before the available Division Bench of the AFT, Lucknow for passing orders, in view of the majority decision.

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

Dated: April , 2018.  
PKG