

**Court No. 1****Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No 661 of 2022****Friday, this the 21<sup>st</sup> day of April, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 13691903A, Ex GDSM Birendra Upadhyay, S/o Late Badri Upadhyay, Resident of Village : Gahmar, Patti: Babu Rai, Distt: Ghazipur, Uttar Pradesh - 232327.

-----Applicant

Ld. Counsel for the Applicant: **Shri Manish Kumar Rai, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi - 110011.
2. Chief of the Army Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi - 110 011.
3. Officer – in- Charge, Records, Brigade of the Guards, Pin - 900 746, C/o 56 APO.
4. Treasury Officer, Treasury Office, Distt: Ghazipur, Uttar Pradesh.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**  
**Central Govt Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 for the following reliefs:-

- “(a) To Quash / set aside the provisions of Para 74 of the Pension Regulations for the Army 1961 Part-II and provisions of Paras 7,8 and 9 of the Pension Regulations for the Army, Part- I (2008) declaring ultra vires to the Constitution as well as Army Act and Rules framed thereunder to the extent they confer power on the respondents to deprive a retired army personnel of service benefits including pension on account of conviction for an offence which has no nexus with the service element of the Army.*
- (b) To quash / set aside the order dated 20.06.2017, contained in Annexure - I, to the extent that by the aforesaid sanction order of Officer In charge Records, Records, Brigade of the Guards the disability pension of applicant has been forfeited for the period from 17.11.2003 to 21.12.2016 being the period of imprisonment pursuant to the conviction under Sections 302, of the Indian Penal Code.*
- (c) Direct the respondent for restoration of full Disability pension for life with effect from 17.11.2003 including the arrear and other*

*consequential benefits thereon, after having been remitted the sentence and released from the jail.*

*(d) Any other relief which the Tribunal may deem fit and proper in the fact and circumstances of the case in favour of the applicant.”*

2. Briefly stated, applicant was enrolled in the Indian Army on 27.10.1990 and was invalided out from service on 28.02.2002 in Low Medical category after rendering 11 years and 04 months and 05 days of service under Rule 13 (3) Item III(i) of the Army Rules, 1954. At the time of discharge from service, applicant was granted disability pension vide P.P.O. dated 07.01.2003. The applicant was implicated in a Criminal Case under Section 302 IPC and convicted for Life Imprisonment vide Fast Track Court Ghazipur judgment dated 17.11.2003 which was confirmed by Hon'ble High Court at Allahabad vide its order dated 04.03.2005. The Hon'ble Supreme Court also confirmed the conviction on 04.04.2006. The applicant was in the jail since 17.11.2003 to 21.12.2016, accordingly, his disability pension was stopped. After release from Jail on 21.12.2016, the applicant approached the Principal Controller of Defence Accounts (Pension), Allahabad for restoration of Disability Pension for the period he was in jail which was denied. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension for the period he was in jail.

3. Learned Counsel for the applicant pleaded that as per Para 101 (d) and (e) of Pension Regulations for the Army, 2008 (Part II, 1961 Edition), the applicant is entitled for restoration of his disability pension for the period he was in jail. He pleaded that Treasury Office, Ghazipur has acted without authority in stopping disability pension of applicant without any order passed by the competent authority for stoppage of disability pension on conviction. Moreover, no show cause notice or opportunity of hearing was given to the applicant before stopping the disability pension.

4. Ld. Counsel for the applicant further submitted that the Pension regulation 1961 is in contravention of statutory provisions of Army Act 1950 as such Army Act does not provide or make such provision regulating deduction or stoppage of pension after post retirement and hence, Para 74 of the Pension Regulation 1961 Part-II is ultravires. He submitted that Pension Regulations for the Army 1961, Part II, provisions of para 7, 8 and 9 of the Pension Regulations for the Army, Part I (2008) and other Army Orders or Army Instructions depriving a retired member of the armed forces from pensionary benefits on account of involvement or conviction in a criminal case have no nexus with the service. He urged that a person cannot be punished twice for the same offence. The applicant was sentenced for imprisonment by the competent court for the offence committed by him and further his disability pension was also stopped, hence he was punished twice for the same

offence. Learned counsel for the applicant pleaded that respondents be directed to release disability pension to the applicant for the period he was in jail.

5. On the other hand, Ld. Counsel for the respondents raised preliminary objection saying that para 8(b) of Pension Regulation for the Army 2008 (Part I) envisages that “The competent authority may, by an order in writing, withhold or withdraw a pension or a part thereof whether permanently or for a specified, if the pensioner is convicted for a serious crime or is found guilty of grave misconduct” and Para 103 of Pension Regulations for Army 2008 (Part II) states that “A pension withheld in whole or in part may be restored in full or in part by the competent authority in consultation with the State government or administration concerned and with the principal controller of defence accounts pension and the civil authorities, if necessary in other cases. In cases of pensioner undergoing imprisonment any action under this regulation shall only be taken on his application after release but in no case, shall pension be sanctioned for a period of imprisonment in jail for a serious crime.” He submitted that the disability pension for the duration of the imprisonment of the applicant from 17.11.2003 to 21.12.2016 was suspended by the competent authority as per extant policy. Hence, the applicant is not entitled for disability pension for the conviction period under the provisions of Para

103(a) of Pension Regulation for the Army 2008 (Part II). O.A has no merits and is liable to be dismissed.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the records and we find that the question which needs to be answered is “whether the applicant is entitled for grant of disability pension for the period he was in Jail (Custody)”.

7. The provisions for suspension, dis-continuance or withholding in whole or in part of pension and gratuity (including retirement/death gratuity) under various circumstances – Defence personnel have been provided in Para 101 of Pension Regulations for the Army, Part I (2008) which reads as under :-

**SUSPENSION, DIS-CONTINUANCE OR WITH-HOLDING IN WHOLE OR IN PART OF PENSION AND GRATUITY (INCLUDING RETIREMENT/DEATH GRATUITY) UNDER VARIOUS CIRCUMSTANCES – DEFENCE PERSONNEL**

*101. If a pensioner is convicted of a crime by court of law or guilty of grave misconduct, the following procedure shall be followed:*

*(a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended by the Pension Disbursing Authority from the date of his imprisonment and the case reported to the Principal Controller of Defence Accounts (Pensions) for obtaining the order of the competent authority. In a case where a pensioner is kept in police or jail custody as an undertrial prisoner and is eventually sentenced to a term of imprisonment for a criminal offence, the suspension of pension shall take effect from the date of imprisonment only.*

*(b) crime or offence of serious nature: The competent authority shall decide in consultation with the Principal Controller of Defence Accounts (Pensions) and*

*if necessary, with civil authorities also, whether the offence is a serious one and if so, he shall order the removal of the pensioner's name from pension list, from the date of his imprisonment. Pension thereupon shall cease to be payable from that date.*

*(c) crime or offence not of serious nature: If the competent authority decides that the offence is not so serious as to justify the removal of the pensioner's name from the pension list, it shall not be removed; the payment of arrears of pension due from the date of last payment before imprisonment shall be made on release from prison.*

*Note:- Serious crime or offence would mean a crime or offence under the Indian Penal Code or Official Secrets Act. 1923 (19 of 1923) or any other law for the time being in force in the country for which the maximum punishment prescribed under the law is imprisonment for a period of three years or more, with or without fine.*

*(d) If a pensioner is sentenced to imprisonment for a criminal offence by a lower court but is acquitted, on appeal, by a higher court, the pension withheld shall be restored.*

*(e) If a pensioner is in imprisonment for debt, pension shall continue to be paid.*

*(f) If a pensioner is guilty of grave misconduct not falling under the preceding clauses, it shall at once be reported to the competent authority who may, if he considers it justifiable, order the suspension of his pension from a date to be specified. The competent authority shall subsequently investigate the case in consultation with the Principal Controller of Defence Accounts (Pensions) and if necessary the civil authorities, (i) either authorise the withholding of pension in whole or in part from a date to be specified by him not earlier than the date of original suspension; or (ii) authorise continuance in full.*

*Note: The expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act. 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.*

*(g) If a pensioner is convicted by a foreign court (including Nepal) or is imprisoned in a jail out side India for a serious crime, his case shall be referred to the Government of India through the Principal Controller of Defence*

accounts (Pensions) for a decision on the question of reduction/forfeiture or restoration of pension.

*(h) Where a pensioner is convicted of serious crime by a court of law, action to withhold or withdraw gratuity and pension or a part thereof shall be taken by the competent authority in the light of the judgment of the court and other provisions of this chapter. 8. From bare perusal of Para 101 (d) of Pension Regulation for the Army, Part I (2008) it is clear that if a pensioner is sentenced to imprisonment for a criminal offence by a lower court but is acquitted, on appeal, by a higher court, the pension withheld shall be restored.*

8. Learned counsel for the respondents invited our attention to the final order and judgment of Armed Forces Tribunal (Regional Bench), Chandigarh rendered in **O.A. No. 159 of 2013 and AFT Regional Bench, Chandigarh** in the case of **Chandra Singh vs. Union of India**, decided on 10.09.2013. The relevant portion of the judgment of AFT, Chandigarh in the case of Chandra Singh (Supra) is reproduced below for ready reference :-

*“It is again surprising that in spite of letter and legal notice from the petitioner, the respondents, instead of restoring the pension of the petitioner, have tried to justify the stoppage of pension on the ground that the outcome of the exercise at the end of the respondents would be the suspension of the pension of the petitioner as he has yet not been acquitted by the Court. We deplore and depreciate this attitude of the respondents. Instead of doing justice to the petitioner they are adamant to add insult to the injury.*

*Learned counsel for the respondents has taken shelter of the provisions of Para 82 (d) of the Pension Regulations for the Army, 1961 (Part II) to argue that as per this provision if a pensioner is convicted and sentenced for a criminal offence by the Court below and then is acquitted by the Higher Court the pension withheld shall be restored. We may mention here that this Para 82(d) has been submitted by the respondents as Annexure R-3 but the whole of the regulation 82 has not been reproduced for some ulterior motive. Clauses (a) and (b) of the*

said regulation 82 which have been concealed by the respondents are very material and we reproduce them as under:

*“82 (a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended from the date of his imprisonment and the case will be reported to the Controller of Defence Accounts (Pension), Allahabad for the orders of the competent authority. In case, where a pensioner is kept in police or jail custody as an under-trial prisoner and is eventually sentenced to a term of imprisonment for a criminal offence, the suspension of pension shall take effect from the date of imprisonment only.*

*82(b) **Restoration of Pension withheld** – A pension withheld in whole or in part may be restored in full or in part by the competent authority in consultation with the State Government or Administration concerned in political cases and with the Controller of Defence Accounts (Pensions) and the civil authorities, if necessary, in other cases. In the case of a pensioner undergoing imprisonment, any action under this Regulation shall only be taken on his application after release but in no case, shall pension be sanctioned for the period of imprisonment in jail for a serious crime. Learned counsel for the respondents tried to argue that it is only upon the acquittal of the petitioner that his pension can be restored.*

*Although the petition is entitled to be allowed simply on the ground that neither show cause notice was issued to the petitioner nor order in writing was passed by the competent authority for the suspension of the pension of the petitioner yet a conjoint reading of Para 82(a) and 82(b) makes it abundantly clear that the pension during the period of imprisonment will not be payable. However, the pension may be restored after the release of the pensioner from custody. The word used in the Regulation is “Release” and not “Acquittal”. These are two entirely different words having different meanings. One cannot be equated with other. If the word “Release” is equated with the word “Acquittal” then it would mean that if the hearing in the appeal does not take place for 20 years, the petitioner will not get the pension for 20 years till his acquittal. That cannot be the intention of the framers of the Regulations. Word “Release” has*

*consciously been used in Para 82(b) which means if a person is released on bail, his pension should be restored. Para 82(d) deals with a different situation which we need not elaborate in this case.*

*In view of the entire discussion we are satisfied that the pension of the petitioner has wrongly been withheld and is liable to be restored.*

*Looking at the gross negligence and stubborn attitude of the respondents we also intend to impose cost.*

*The petition is allowed with cost of Rs. 10,000/- to be paid by the respondents No. 1 to 3. The action stopping the pension of the petitioner is set aside. The pension of the petitioner be restored with effect from 01.09.2009. The petitioner will be paid the arrears with interest at the rate of 8% per annum with effect from 01.09.2009 till the arrears are paid.*

*The respondents are at liberty to take further action, if any, as per the Rules.”*

9. In the instant case, applicant was enrolled in the army on 27.10.1990 and invalided out from service on 28.02.2002. He was granted disability pension vide PPO dated 07.01.2003. applicant was sentenced to imprisonment for a criminal offence by a lower court i.e. Additional Session Judge, Fast Track Court, Ghazipur under Trial No. 358 of 1998 and the sentence was confirmed by the Hon'ble High Court of Judicature at Allahabad as well as by the Hon'ble Apex Court. The applicant was denied disability pension due to reason that applicant was sentenced for life imprisonment as he was involved in a criminal case under IPC 302. It is admitted that the disability pension has been restored by the respondents from the date applicant was released from Jail on 22.12.2016.

10. Para 82 (b) of the Pension Regulations for the Army, 1961 (Part II) reads as *“In the case of a pensioner undergoing imprisonment, any action under this Regulation shall only be taken on his application after release but in no case, shall pension be sanctioned for the period of imprisonment in jail for a serious crime.* Conjoint reading of para 82 (a) and 82 (b) makes it abundantly clear that pension during the period of imprisonment will not be payable. As such the applicant is not entitled for disability pension for the period he was in Jail (Custody) i.e. from 17.11.2003 to 21.12.2016. The disability pension has been restored by the respondents w.e.f. 22.12.2016 excluding the imprisonment period of 13 years 01 month and 04 days. We do not see any error in the impugned order rejecting grant of disability pension for the period of imprisonment. The case laws referred by the applicant are based on different facts and are of no help to the applicant. In the circumstances, we have no option except to reject the present Application.

11. In view of above discussions, we find no merit in the instant case. O.A is devoid of merits and is liable to be dismissed. Accordingly, O.A. is Dismissed.

12. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 21 April, 2023  
ukt/-