

Court No.1

Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No.205 of 2012

Tuesday this the 3rd day of February, 2015

Hon'ble Mr. Justice S.C. Chaurasia, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

Ex Havildar Ran Bahadur Gurung (Army No.5746471)
of 4/8 GR, son of Nar Jang Gurung, resident of
Ibrahimpur, Ward No.1, Sharda Nagar,
Post Office Nilmatha, Lucknow-226006

..... Applicant

By Legal Practitioner Shri A.K.Singh, Advocate

Versus

1. Union of India, through Secretary,
Ministry of Defence,
New Delhi.
2. The Chief of Army Staff, Integrated Headquarters of
Ministry of Defence, South Block,
New Delhi.
3. The PCDA (P) Allahabad.
4. Pension Paying Officer (Indian Embassy)
Pokhra, Nepal
5. O.C., 58 GTC, Happy Vally, Shillong.

..... Respondents

By Legal Practitioner Shri D.S. Tiwari, Standing Counsel
for the Central Government,

ORDER

“Hon’ble Air Marshal Anil Chopra, Member (A)”

1. The Original Application (O.A.) has been filed by the applicant under Sections 14 of the Armed Forces Tribunal Act, 2007, claiming the following reliefs:

- “(a) Issuing/passing of an order or direction to Respondents to set aside/quash the Pension Paying Office Pokhra letter No.21(95)8 GR53(P)/3876 dated 17 July, 2009 and Army Headquarters letter No. B/6014/1087/58 GR/Inf. (Legal) dated 16 April, 2009, stopping the service pension of the applicant illegally.*
- (b) Issuing/passing of an order or direction to the Respondents to restore the pension of the applicant from 1997 onwards and pay the arrears with 10% interest.*
- (c) issuing/passing of an order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) Allow the original application with cost.”*

2. The factual matrix of the case is that the applicant was enrolled in Gorkha Regiment of the Indian Army on 19.01.1974 and was discharged on 01.02.1995 in the rank of Havildar, after serving the Indian Army for a period of 22 years. The applicant was drawing service pension vide PPO dated 30.12.1994 (Annexure A-4). In 1997, the applicant was awarded 10 years R.I. in Nepal on charge of

murder, but the award was later on reduced to 7 years on account of the applicant's good behavior and conduct in jail and he was released on 08.11.2004 (Annexure A-5). On release from jail, the applicant met with Army Pension Paying authorities requesting for resumption of pension. He submitted relevant papers. The Pension Paying Officer, Pokhara, Nepal informed him vide letter dated 17th July 2009 (Annexure A-1) that the Army Headquarters had stopped the pension vide their letter dated 16th April, 2009. The applicant felt that this unilateral action of the Army Headquarters was contrary to Regulations for Army, 1961, in that no show cause notice was given before stopping the pension. The applicant wrote to the PCDA, Allahabad on 01.09.2010 (Annexure A-6) and to the President of India, through letter dated 17.12.2009 (AnnexureA-8).

3. The applicant has produced the relevant Regulation 4 of the Pension Regulations for the Army, 1961 Part I as reproduced below:

“Grant of Pension is subject to future good conduct

4. *Further good conduct shall be an implied condition of every grant of a pension or allowance and its continuance under these Regulations.*

Note for the Readers:-(1) *The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified*

period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five per month.

(2) Where a pensioner is convicted of a serious crime by a court of law, or is found guilty of grave misconduct, action under (1) above shall be taken in the light of the judgment of the court relating to such conviction.

(3) In cases falling under (2) above, as well as other cases where the competent authority consider that the pensioner is prima facie guilty of grave misconduct, the competent authority before passing an order under (1) above shall,

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken against him and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the competent authority, such representation as he may wish to make against the proposal, and

(b) Take into account consideration of the representation, if any, submitted by the pensioner under clause (a).

(4) An appeal against an order under (1) above, passed by any authority other than the President, shall lie to the President and the President shall pass such orders on the appeal as he deems fit.

EXPLANATION: *(a) the expression 'serious crime' or offence means a crime or an offence under the Indian Penal Code or Official Secrets Act 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 a fine. [M/D No. 12(17)/ 86/D(Pen/Ser) dated 29/8/88]

(b) 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 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 interest of the general public or the security of the State.

(c) The term "Pension" shall mean any type of pension admissible under these rules.

4. No communication was received by the applicant from the competent authority before or after withholding pension as above mentioned. Regulations 4 and 5 of Army Pension Regulations, 1961 were not complied with. The stoppage of pension is arbitrary, illegal and violative of Article 21 of the Constitution of India, as pension was a subsistence allowance. Pension Regulation 5 is annexed as Annexure A-10. Through an additional affidavit, the applicant has filed a copy of Defence Pension Payment Instructions (Defence PPI), 2005 (Annexure AA-1). The relevant portion of para 73.1 is reproduced below:

“Forfeiture of pensions when sentenced to imprisonment by court

73.1 If a pensioner is convicted by any criminal court of serious crime or found guilty of grave misconduct, his pension is liable to be forfeited. Should the Pension Disbursing Authority 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 Principal Controller of Defence Accounts (Pensions), with a copy of the order of conviction and sentence for reporting the matter to competent Administrative Authority so that he may be able to serve a show cause notice to the pensioner before his pension is withheld / suspended. On release of the pensioner from imprisonment, the Pension Disbursing Authority will obtain an application from the pensioner for restoration of pension and submit it to the Principal Controller of Defence Accounts (Pensions), with a report 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 prisoner was released.*
- (iii) A list giving particulars of previous convictions, 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 pensioned as well as the 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 prisoner prior to the date of conviction.

5. The above regulation clearly indicates that on release from imprisonment, the applicant should inform the PCDA and submit an application with the required documents.

6. Through a counter affidavit, the respondents have brought out that as per Rule 8 (b) of PR-1 (1961) (amended up to 2008), there is no obligation to issue notice for stoppage of pension, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct (Annexure SCA-4) and that the pension of the applicant was stopped as per the said regulation.

7. Through a rejoinder affidavit, the applicant has asserted that the applicant was not governed by the Pension Regulations of Army (2008) which came into effect on 01.07.2008, but was governed by the Pension regulations for Army 1961, as the applicant was discharged on 01.02.1995. The relevant part is reproduced below:

“Extent of application-

- (1) Unless otherwise provided, these Regulations shall apply to the personnel of the Army and all claims to pension, gratuity or allowance shall be regulated by the Regulation in force at the time of an individual retirement, release, resignation, discharge, death etc., as the case may be.

The paras 1 and 2 of Chapter-I of Pension Regulations for the Army, Part-I (2008) is reproduced below.

Short title and commencement

1. These regulations shall be called the Pension Regulations for the Army, part-I (2008) and shall come into force w.e.f. 1st July, 2008.
2. (a) Unless otherwise provided, these Regulations shall apply to the (i) Permanent Commissioned Officers of the Army, including Military Nursing Service Officer, Territorial Army Officer, Short Service Commissioned Officer and Emergency Commissioned Officer, (ii) Personnel below Officer rank (including those granted

honorary commission while on the effective list) of regular Army, Defence Security Corps and Territorial Army.

(b) Unless otherwise provided, all claims to pension, gratuity or allowances shall be regulated by the Regulations in force at the time of individual's retirement, release, resignation, discharge, invalidment, death, etc., as the case may be.

(c) The day on which an individual is retired or is released or is discharged, or is allowed to resign or is invalided out from service or dies in harness, as the case may be, shall be treated as his last day in service. Provided that in the case of an individual who is retired pre-maturely or who retires voluntarily, the date of retirement shall be treated as a non-working day.”

8. Through a supplementary counter affidavit, the respondents have highlighted that vide IHQ of MOD (Army) Letter No. B/6014/1087/58 GR/Inf (Legal) dated 16 April, 2009 (Annexure SCA-1) restoration of pension of the applicant was rejected and therefore, not restored by the Pension Paying Officer, Pokhra. This rejection was in response to the applicant's request for restoration forwarded to the PCDA (P), Allahabad through the Indian Embassy, Nepal vide Pension Paying Officer, Pokhra letter dated 25.01.2006 (Annexure SCA-2). The letter from PCDA (P) taking up the case with Army H.Q. New Delhi seeking direction in the case dated 20.04.2006 is at Annexure SCA-3.

9. During the arguments, learned counsel for the applicant highlighted the following points:

- (a) The applicant was drawing pension before he was imprisoned is not in dispute. The pension was stopped in June, 1997, when the applicant was imprisoned. The restoration was rejected through a cryptic order vide Army H.Q. letter

dated 16.04.2009 (Annexure SCA-1) without giving any reason, whatsoever.

- (b) The PCDA letter dated 20.04.2006 to the Army H.Q. clearly states that the competent authority is empowered to restore the pension from the date of release from the jail, however, the pensioner is not entitled for payment of pension for the period for which he remained in jail.
- (c) The applicant had retired after 22 years of unblemished service with no punishment. He has four children (three daughters). His pension has been stopped now for over 17 years, which is causing financial hardship.
- (d) He has referred to the case of ***Col Gajraj Singh vs. Union of India & others, MLJ 1998 P & H 104*** and has relied on paragraph 5 thereof, which is reproduced as under:

“5. Regulation 5 of Pension Regulations for Army deals with circumstances which allows the authorities to withhold, suspend or discontinue pension. Sub-clause (v) of clause (b) of Regulation 5 allows the department to withhold or suspend pension when report is received that departmental

proceedings are in progress against the petitioner. In the instant case, respondents ought to have taken action as contemplated by the above sub-clause if they wanted to withhold or suspend the pension, but in doing so they should have followed the procedure laid down in Chapter IV-A, Part-II of the Regulations. Chapter IV-A of the Regulations deals with suspension, discontinuance or withholding in whole or in part of pension. Regulation 82-C of the Regulations in that part, enjoins issuance of a notice specifying the action proposed to be taken for withholding or suspending the pension in order to enable the pensioner to submit his representation against the proposed action. The representation of the pensioner should be considered by the competent authority before issuing of an order in writing for withholding or suspending payment of pension. Respondents have not resorted to any of these procedures fixed by the Regulations. So, we are clear in our mind that the action resorted to by the respondents in stopping the payment is clearly in violation of the provisions contained in the Pension Regulations. Consequently, we quash the order passed by the respondents withholding the payment of pension to the petitioner. We, therefore, direct the respondents to disburse the pension as expeditiously as possible at any rate, preferably within one month from the date of receipt of the copy of this judgment. If it is not disbursed within the said period of one month, the amount will carry interest @ 12% P.A. from the date of expiry of period mentioned above till the date of actual payment.”

- (e) The applicant has also referred to the case of **Ex. Sub Maj Nasib Singh vs. Union of India & others, (1997) 115 PLR 658 decided on 31st October, 1996**, the relevant portion of paragraph 9 is reproduced as under:

"..... "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)"

".....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 petitioner was tried for a murder and was convicted and sentenced to imprisonment for life on 18.2.1986 by the Additional Sessions Judge, Hoshiarpur. After imprisonment of the petitioner provisions of Paragraphs 29 and 29.1 of the Pension Payment Instructions, 1973 came into play and the pension of petitioner stood automatically suspended. The petitioner was released from the jail on

2.6.1995. After his release, full pension of the petitioner has been restored.....”

(f) The applicant reiterated that the Pension Regulations, 2008 were not applicable to him.

10. The respondents were asked to produce the extract of the Preface of the Pension Regulations, 2008. Para 3 thereof is reproduced below:

“3. Except as otherwise provided in these Regulations or elsewhere, the Regulations contained in this book, apply to personnel who are in Army Service on 1st July, 2008 and take effect from that date. Those who are not so governed or for whom no provision is made in these Regulations will continue to be governed by the Pension Regulations for the Army, Part I & Part II (1961) and Govt. Orders issued from time to time.”

11. Heard Shri A.K. Singh, learned counsel for the applicant, Shri D.S. Tiwari, learned counsel for the respondents and perused the record.

12. There is no dispute about the stoppage of pension to the applicant on being imprisoned. The issues that require to be adjudicated are, whether a notice was served on the applicant before stoppage of pension and can the pension be restored after release from jail, under the pension

Regulations applicable to the applicant? it is clear from the extract reproduced above that Pension Regulation, 2008 is not applicable to the applicant and he will be governed by the Pension Regulations, 1961.

13. Nothing has been brought on record by the respondents to indicate that any notice was served on the applicant before stoppage of pension. Notwithstanding this, we are of the view that in view of the nature of the crime committed by the applicant and the imprisonment served by him, the respondents were well within their right to stop the pension.

14. The applicant has had an exemplary 22 years of service record in the Indian Army with no punishment on record. He concedes that he made a gross one time error and for which he was punished with imprisonment. His good conduct in the prison impressed upon the authorities in directing his early release. The provisions for restoration of pension are very clear. The two judgments of Hon'ble Court reproduced above further support the case of the applicant. All documents for restoration of pension from the date of release, i.e. 08.11.2004 were forwarded. The Indian Pension Authorities in Nepal and the PCDA have

been supportive of the case and have sought approval of the sanctioning authority for the restoration of pension.

15. The applicant has a family and the children to support for rest of his life. He has very honestly and with courage served the Nation. For one time gross mistake, he has been adequately punished. He has also shown good conduct in the prison thereafter and was released early. In their cryptic order, the authorities have given no reason for denying the lawful right for restoration of pension after release from jail. An ex-soldier has had to run from pillar to post to get his rightful dues for over ten years and had to take recourse to court of law.

16. In view of the aforesaid, the Original Application No.205 of 2012, Ex Hav Ran Bahadur Gurung vs. Union of India and others, is partly allowed. The pension stopped vide Army HQ Letter No. B/6014/1087/58 GR/Inf. (Legal) dated 16th April, 2009 is restored from the date of release of the applicant from jail, i.e., 08.11.2004 with all attendant benefits. The applicant shall be entitled for an interest of 9% on the arrears till the date of actual payment. We further direct the competent authority to carry out this exercise within a period of four months from the date a

certified copy of this order is served upon them. No order,
however, as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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