

Court No. 3
(Ser No. 21)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 546 of 2018

Wednesday, this the 25th day of January, 2023

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vide Admiral Atul Kumar Jain, Member (A)"

IC-21811Y Lt Colonel Raja Singh Parihar (Retd), son of late Jagannath Singh, D-30, Sarojini Nagar Sainik Society, Lucknow-226008.

..... Applicant

Ld. Counsel for the : **Wg Cdr AK Singh (Retd)**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), South Block, DHQ, PO-New Delhi-110011.
3. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP)-221014.
4. Assistant General Manager, Bank of India, Centralised Pension Processing Centre (CPPC), 4th Floor, Bank of India Building, Kingsway, Nagpur-400023.
5. Chief manager, Bank of India, Sarojini Nagar Branch, Lucknow-226008.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani**, Advocate
Central Govt. Counsel

ORDER (ORAL)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the following reliefs have been claimed:-

- (I) *Set aside/quash the letter issued by PCDA (P) Allahabad addressed to Asst General Manager Bank of India CPPC, showing the applicant as Civilian NCC Officer and accordingly reducing the pension from Rs 89347.00 to Rs 87188.00 (reducing by Rs 2159.00 pm) and reducing the qualifying service for pension from 37 years, 5 months and 6 days to 30 years 5 months and 6 days.*
- (II) *Set aside/quash PCDA (P) Allahabad letter No AT/PSB/XI/PNB/CPPC/Jaipur/2018 dated 08 Jun 2018 for wrongly fixing the pension of the applicant.*
- (III) *Direct the PCDA (P) Allahabad, respondent No 3, Centralised pension processing centre, Bank of India Building Nagpur (Respondent No 4) and Pension Disbursing Agency, Bank of India, Sarojini Nagar Branch (Respondent No 5) to refund the amount of Rs 87297.00 illegally recovered from the pension of the applicant with interest of 12%.*
- (iv) *Issue direction/orders to PCDA (P), Allahabad, respondent No 3 to rectify the irregularity committed by them and fix the pension of the applicant correctly as per existing entitlement adding weightage of 7 years of service in actual qualifying service of 30 years 5 months and 6 days.*
- (v) *issue direction/orders to CPPC Bank of India at Nagpur to correctly fix the pension of the applicant as per existing entitlement.*
- (vi) *Impose heavy cost on the respondents for the physical, mental and financial harassment and torture of a veteran of 84 years.*
- (vii) *Pass any other orders/directions as the Honourable Tribunal deems fit and proper in the circumstances of the case.*
- (viii) *Allow the Original Application with exemplary cost.*

2. Brief facts giving rise to this application are that the applicant was commissioned in the Indian Army on 03.05.1964 and superannuated from Army service on 31.01.1987 after rendering 30 years, 05 months and 06 days qualifying service. As per applicant he was granted 07 years weightage for pensionary purposes vide PCDA (P), Allahabad letter dated 15.10.1999 (Annexure A-1 to O.A.). Applicant's main grudge is that the respondents vide letter dated 00 January, 2018

(Annexure A-4 to O.A.) have removed the weightage of 07 years for the purpose of pensionary benefits treating him as a civilian NCC officer, thereby reducing his service pension to the tune of Rs 2159/- per month and recovery of certain amount from his pension.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the Army on 03.05.1964 and superannuated on 31.01.1987 after putting in 30 years, 05 months and 06 days qualifying service. He further submitted that as per PCDA (P) letter dated 15.10.1999 (Annexure A-1 to O.A.) the applicant was also given 07 years of weightage for pensionary purposes. It was further submitted that the respondents, while issuing corrigendum PPO, has taken 30 years, 05 months and 06 days qualifying service for calculating service pension which is illegal and arbitrary. It was further submitted that while granting benefits of 7th CPC, his pension was revised correctly but PCDA (P) Allahabad issued letter dated 00 January 2018 to Asst General Manager, Bank of India CPPC showing the applicant as a civilian NCC officer thereby reducing his pension from 89,347/- to Rs 87,188/- ignoring 07 years of weightage. It was submitted that a total amount of Rs 87,297/- was recovered till June 2018 which is unjustified.

4. Learned counsel for the applicant further submitted that despite sending representations dated 05.03.2018, 09.07.2018 and 10.09.2018 in this regard, PCDA (P), Allahabad has taken no

corrective measure to redress the grievance of the applicant. He further submitted that PCDA (P), Allahabad in a most careless manner has started treating the veteran, who is a permanent commissioned officer of the Army, as a civilian NCC officer inspite of the fact that the applicant has put in 30 years, 05 months and 06 days of qualifying pensionable service in the Regular Army. He pleaded for correct fixation of pension by granting 07 years weightage and refund the amount illegally recovered from the applicant.

5. On the other hand, learned counsel for the respondents submitted that applicant's service pension was fixed taking into consideration the pensionary entitlements according to his rank of Lt Col and actual qualifying service. He further submitted that the applicant has rendered only 30.5 years actual service and tables of OROP as prepared by Govt of India are based on the basis of the average of minimum and maximum pension of personnel retired in 2013 in the same rank and with the same length of service.

6. Learned counsel for the respondents further submitted that applicant's pension was revised based on letter dated 07.11.2015 and demand of the applicant for inclusion of 07 years additional weightage in his actual qualifying service is unjustified and not in order and it was communicated to the applicant vide letter dated 13.09.2018 in response to his mail dated 29.08.2018. He

pleaded for dismissal of O.A. on the ground that additional weightage is not applicable under OROP scheme.

7. Heard Wg Cdr AK Singh (Retd), learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the record.

8. The applicant was commissioned in the Army on 03.05.1964 and superannuated on 30.01.1987 after putting in 30 years, 05 months and 06 days qualifying service. Table of OROP, which is applicable w.e.f. 01.07.2014, prepared by the Govt of India is based on the basis of minimum and maximum pension of the personnel retired in the same rank and with the same length of service so as to maintain the payment of pension to the defence forces personnel regardless of their date of retirement. Certain anomalies arose on implementation of OROP which were clarified by issuing letter dated 03.02.2016. This letter, which was issued to remove anomalies, is just to clarify that demand of inclusion of 07 years additional weightage in actual qualifying service is not in order for payment of pension payable to personnel of the same rank and with the same length of service. For convenience sake, extract of para 2 of letter dated 03.02.2016 is 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 7th Nov, 2015, are appended to this order. The appended tables 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, hony commissioned officers, JCOs/Ors and non combatants (enrolled) of Army, Navy, Air Force, Defence Security Corps and 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-I 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."

9. The applicant's pension was fixed @ 34,765/- w.e.f. 01.07.2014 and @ Rs 89,347/- w.e.f. 01.01.2016 for 33 years i.e. above the actual qualifying service and the same was corrected taking into account the actual service rendered by the applicant i.e. 30.5 years which seems to be in order based on Para 2 of letter dated 03.02.2016 as quoted above.

10. The applicant was entitled pension @ Rs 33,925/- as basic pension and @ Rs 87,188/- (after multiplying 2.57) as per 7th CPC. However, the bank was paying basic pension @ Rs 34,765/- w.e.f. 01.01.2014 and Rs 89,347/- w.e.f. 01.01.2016 in incorrect manner. On perusal of table annexed to letter dated 03.02.2016 it is crystal clear that the applicant having rendered 30.5 years qualifying service is entitled to basic pension @ Rs 33,925/- p.m. and no further weightage is payable.

11. Contention of the applicant that weightage of 07 years given vide letter dated 15.10.1999 is applicable after implementation of OROP Scheme, is not sustainable on the ground that after implementation of OROP this weightage was withdrawn. We find

that the respondents have not erred in fixing his pension based on his qualifying service of 30.5 years.

12. We have noticed annexure to letter dated January 2018 and we find that applicant has been treated to be an NCC civilian officer which is wrong. The applicant was commissioned in the Army and he retired in the rank of Lt Col having put in 30.5 years pensionable service, which the respondents ought to rectify in their records.

13. We find that a sum of Rs 87,297/- has been recovered by PDA from the applicant through his pension slips (Annexure A-5 to O.A.) for the months April 2018 to Jun 2018 without giving prior intimation to applicant which is against the principles of natural justice. We also find that the order of recovery being passed without giving notice to him is bad in law. In regard to recovery applicant's contention is that in any case, the amount received by him, allegedly in excess, cannot be recovered since there is no element of fraud or misrepresentation on his part and, therefore, in view of various pronouncements, no recovery can be given effect.

14. In view of the aforesaid expositions of law, and the admitted fact, in the case in hand, that, the impugned recovery was initiated without affording any opportunity to the applicant, this O.A. deserves to be partly allowed, since the recovery impugned is unsustainable being in violation of the principle of natural justice. Law is well settled long back and still respondents

have chosen to disregard law and have recovered a huge amount from the old veteran.

15. It cannot be doubted that whenever an employer takes a view, or from the record, finds, that certain amount has been paid to an employee, in excess to what he was not entitled, before issuing an order of recovery of the same, he must give an opportunity to the employee concerned to show cause, whether such amount should be recovered from him or not. If this opportunity is given to an employee, he can always show that what was paid to him, he was entitled therefore, and, there is neither any excess payment, nor any payment for which he was not entitled. An order passed directly without giving any show cause notice or opportunity to the employee, in our view, would suffer the vice of non observance of principles of natural justice. In a case where there is a dispute as to whether the employee has been paid an amount rightly or not, before passing any order, having civil consequences, the employer must afford an opportunity to the employee, else, such an order would be in violation of principles of natural justice. The Hon'ble Apex Court in ***Bhagwan Shukla Vs. Union of India & Others***, 1994 (6) SCC 154, in similar circumstances, has held that an order passed in violation of principles of natural justice cannot be sustained. In para 3 of the judgment, the Hon'ble Apex Court observed as under:

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause ...Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him hearing in the matter."

16. In view of the above, we feel that since consequent upon implementation of OROP, weightage was withdrawn and pension was fixed as per qualifying service, applicant is not entitled to 07 years weightage but recovery affected without giving prior notice to the applicant is against principles of natural justice. Therefore, amount of Rs 87,297/- recovered from the applicant without giving him prior notice is refundable in view of settled law on the subject.

17. Apropos above, respondents are directed to refund Rs 87,297/- to the applicant within a period of two months on receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

18. With the aforesaid discussion, the O.A. is **partly allowed**.

19. No order as to costs,

20. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 25.01.2023

(Justice Anil Kumar)
Member (J)