

Original Application No. 710 of 2022

Wednesday, this the 11th day of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar (J)
Hon'ble Vice Admiral Atul Kumar Jain. Member (A)

Santosh Singh, S/o late Hav Kishan Singh, R/o Village-
Nayakgoth, P.O.- Tanakpur, Uttarakhand- 262309.

Counsel for the Applicant : **Shri Kishore Rai, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence,
New Delhi.
2. ATNK & K Area, PIN- 900432, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension)
Draupadighat, Allahabad- 211014 (U.P.).
4. OIC Records, The Parachute Regiment, Bangalore, PIN –
900493, C/o 56 APO.
5. Treasurer Officer, Tanakpur, Champawat.

.....RespondentsCounsel

for the Respondents :

Shri Rajesh Sharma,
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(i). A direction to the respondents for payment of arrears of pension to the applicant in respect of his father w.e.f. 25.07.1999 and upto 23.07.2009, the period for which the father of the applicant was in bail or to

(ii) To summon the entire records of the father of the applicant pertaining to computation of his service pension.

(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. The factual matrix of the case is that father of the applicant Ex Hav Late Kishan Singh was enrolled in the Indian Army on 17.12.1969 and was discharged from service on 01.04.1987 on his own request before completion of terms of engagement. Father of the Applicant was sanctioned pension vide PPO No S/020677/1987 for the services rendered in the army. He was convicted under Section 302 IPC and awarded life imprisonment by learned Sessions Court, Nainital and pension of the father of the applicant was stopped wef December 1994 by the Treasury Office, Nainital. Later on punishment of father of the applicant was

reduced from life imprisonment to 10 years by High Court of Uttarakhand, Nainital vide order dated 30.06.2009. Father of the applicant was enlarged on bail vide order dated 07.07.1999 and finally he was released from jail on 24.03.2012. He submitted application for restoration of pension which was rejected. The father of the applicant was left to heavenly abode on 06.10.2020. Father of the applicant sent representation for grant of service pension for the period he was on bail but the same was denied. Being aggrieved, applicant has filed instant Original Application for grant of service pension of his father for the period his father was on bail.

3. Learned counsel for the applicant submitted that father of the Applicant Ex Hav Late Kishan Singh was enrolled in the Indian Army on 17.12.1969 and was discharged from service on 01.04.1987. After retirement from army, father of the applicant was sanctioned service pension vide PPO No S/020677/1987. Father of the applicant was convicted under Section 302 IPC and awarded life imprisonment and his pension was stopped wef December 1994 by Treasury Office, Nainital under the provisions of Rule 182 of Pensions Regulations for the Army 1961, Part – II. He was enlarged on bail by High Court of Judicature at Allahabad vide order dated 07.07.1999 and released from jail on bail on 24.05.1995. After release on bail,

father of the applicant submitted an application to Records Parachute Regiment for restoration of his pension but the same was denied vide letter dated 31.12.1999 citing the reason that the pension could only be restored on completion of imprisonment. Father of the applicant wrote various letters and finally GOC, ATNKK and G area vide order dated 01.10.2002 accorded sanction for the restoration of pension for the period from 24.05.1995 to 23.07.1999 and also wef 24.07.1999. PCDA (P), Allahabad intimated that since an appeal was still pending before the Hon'ble High Court of Uttarachal, Nainital, therefore, during the period of bail his pension cannot be restored under the existing rules. Father of the applicant preferred a writ petition bearing No 1469/2004 before High Court at Nainital for restoration of pension which was allowed vide order dated 14.07.2006 directing the respondents to grant his due pension. Against aforesaid order, Special Appeal No 165/2006 was filed by the Union of India & Others in High Court at Nainital which was partly allowed vide order dated 07.03.2007 clarifying that pension should be paid only from December 1994 to 18.05.1995. Accordingly, aforesaid pension was paid to father of the applicant. Father of the applicant also preferred a Criminal Appeal bearing No 1623 of 2001 which was allowed by High Court of Uttarakhand, Nainital vide order dated 30.06.2009 and

his sentence was converted from life imprisonment to ten years imprisonment. Father of the applicant was sent to jail to serve the sentence awarded by High Court of Uttarakhand at Nainital and he was sent to jail on 10.07.2009. Father of the applicant was finally released from jail after completion of sentence on 24.03.2012. He further approached High Court of Uttarakhand Nainital vide Writ Petition No 295 of 2015 (S/S) for release of his pension which was disposed of with the direction to approach appropriate forum. Father of the applicant filed O.A. No 401 of 2018 before this Tribunal which was allowed vide order dated 29.09.2021 with the direction that applicant be granted pension after his release from jail i.e. wef 24.03.2012 till his death i.e. 06.10.2020. Respondents have right to withhold the pension of the father of the applicant wef the day when he was sent to jail i.e. December 1994 and upto 24.09.1999 and for a period commencing from 10.07.2009, the day on which the father of the applicant was sent to jail for serving the sentence and upto 24.03.2012 whereas the respondents in violation of rule withheld the pension of father of the applicant wef 25.07.1999 and upto 23.07.2009 for the reason that father of the applicant during that period was on bail and only sentence he served in jail wef December 1994 upto 24.07.1999 and a period starting from 10.07.2009 upto 24.03.2012. Learned counsel for the applicant

submitted that in number of judgments this Tribunal as well as various courts have granted pension in such cases. In para 4.15 of Original Application, applicant has himself mentioned that father of the applicant was sent to jail for serving the sentence on 10.07.1999. Learned counsel for the applicant pleaded that respondents be directed to grant pension to the applicant for the period from 25.07.1999 upto 09.07.2009 for the period for which the father of the applicant was on bail.

4. Per contra, learned counsel for the respondents submitted that father of the applicant on retirement from service was granted service pension vide PPO No S/020677/1987. He was convicted in a murder case and was awarded imprisonment for life by Session Court, Nainital. He was kept in Bareilly Jail from 24.05.1995 to 24.07.1999 and got released from Jail on bail on 24.07.1999 vide High Court Allahabad order dated 07.07.1999. Accordingly, his service pension was suspended by Pension Disbursing Authority, i.e. Treasury office, Nainital with effect from December 1994 till completion of imprisonment period under the provisions of Rule 82 of Pension Regulations for the Army, Part -II (1961 Edition). He represented his case for grant of service pension. PCDA (P) Allahabad replied his representation vide letter dated 09.09.2002 stating that ***“Being in jail, he has not drawn his pension with effect from December 1994 onwards. Under the provisions of***

Rule 82 of Pension Regulations for the Army Part – II, in case of criminal offence pension is suspended from the date of imprisonment and the competent authority is empowered for taking further considering the seriousness of the offence.”

Sanction of General officer Commanding, Headquarters ATN KK & G Area was returned vide PCDA (P) Allahabad letter dated 04.12.2002 stating that ***“As per Para 82 (d) of Pension Regulations, Part -II, if a pensioner is sentenced to imprisonment for criminal offence by a lower court but is acquitted on appeal, by the High Court then only the pension withheld shall be restored.”*** In the instant case appeal of the pensioner was pending before the High Court of Uttarachal, Nainital and therefore, during the pendency of appeal, pension could not be restored under existing Rules and requested to re-examine the subject case in terms of Para 82 (1) and (b) of Pension Regulations Part II. The same was intimated to Treasury Office, Champawat and the petitioner vide letter dated 30.12.2002. The sanction of General Officer Commanding Headquarters ATN KK & G Area was cancelled vide letter dated 01.01.2003. The applicant filed Writ Petition No 1469/2004 in the High Court of Uttarachal, Nainital and demanded to restore his service pension and the same was allowed vide order dated 14.07.2006 with the direction that ***“The respondents to pass appropriate order***

regarding the grant of regular pension to the petitioner. The entire arrears of the pension be paid to the petitioner within one month after obtaining the certified copy of this Order.”

Union of India & Others filed Special Appeal No 165 of 2006 against the order of High Court dated 14.07.2006. High Court of Uttranchal, Nainital vide its order dated 07.03.2007 further directed that ***“The respondents shall only pay the pension of the petitioner for the period from December 1994 to 18 May 1995”***. The case was settled and applicant was paid service pension vide order dated 30.05.2007. High Court of Uttarakhand, Nainital had passed an order dated 30.06.2009 in Criminal Appeal No 1623 of 2001 arising in Writ Petition No 937 of 1995 filed by father of the applicant and appeal was partially allowed as ***“The conviction and sentence recorded by the trial Court under Section 302 of Indian Penal Code had set aside. Instead, accused/appellant Kishan Singh was convicted under Section 304 Part I of Indian Penal Code, and sentenced to Rigorous Imprisonment for a period of ten years. Out of the sentence of ten years awarded by the Court, the period already spent in jail by the accused/ appellant Kishan Singh shall be set off. The accused is on bail. His bail is cancelled. The lower Court ordered to sent back so that the trial court may make the accused /appellant Kishan Singh serve out the remaining part***

of the sentence, as modified by this Court.” Father of the applicant completed his conviction and released from Dehradun Jail on 24.03.2012 and demanded to restore his service pension. He filed petition before High Court of Uttarakhand, Nainital to release arrear of family pension for the period of 18 years which was dismissed vide order dated 02.03.2015 with the direction to approach appropriate forum. Petitioner filed O.A. No 401 of 2018 before this Tribunal and demanded to restore his service pension with effect from 24.03.2012. This Tribunal vide order dated 29.09.2021 directed that ***“ The deceased soldier is entitled to service pension wf 24.03.2012 till his death i.e. 06.10.2020. The respondents are directed to release pensionary benefits to applicant (son of deceased soldier) within a period of four months from today.”*** Infantry Directorate informed that ***“The sub treasury office has confirmed that the ibid petitioner is already drawing his pension directly from State Bank of India, Tanakpur, Distt- Champawat Branch and requested to verify the above from PCDA (P) Allahabad and file a compliance affidavit before the Hon’ble AFT (RB), Lucknow”***. Learned counsel for the respondents submitted that as far as grant of service pension for the period from 25.07.1999 upto 09.07.2009 is concerned, matter is under consideration with PCDA (P) Allahabad and no final outcome has been received till date. Learned counsel

for the respondents pleaded that Original Application is misconceived and devoid of merits as such liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. There is no dispute about the stoppage of pension on being imprisoned on conviction. The issue that requires to be adjudicated is, whether father of applicant is entitled to service pension for the period from 25.07.1999 to 09.07.2009, the period for which he was on bail.

7. The father of the applicant had an exemplary 17 and half years of service record in the Indian Army with no punishment on record. The provisions for restoration of pension are very clear. Learned counsel for the applicant rebutted the contention of respondents and invited our attention to the final order and judgment of the Armed Forces Tribunal, (Regional Bench) Lucknow in **O.A. No. 26 of 2015, Satyapal Singh vs. Union of India & Others**, decided on 21.07.2016 and Armed Forces Tribunal (Regional Bench), Chandigarh judgment rendered in **O.A. No.159 of 2013, 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 deprecate 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.”

8. Keeping in view the aforesaid observations made by the Armed Forces Tribunal, Regional Bench, Chandigarh, the question with regard to payment of pension during pendency of Criminal Appeal seems to be no more res integra. The Tribunal has decided that the word 'Release' used in Para 82 (b) of the Regulations has been consciously used which means if a person is released on any ground whether on bail or after due acquittal in a criminal case, his pension should be restored. The Bench further held that Para 82(d) deals with a different situation which we need not to elaborate in this case. The interpretation given by the Armed Forces Tribunal Chandigarh does not seem to have been modified or annulled by any higher forum and therefore, it has the binding effect. In the circumstances, we have no option except to allow the present Application. Admittedly, father of the applicant was granted bail in Criminal Appeal and he was released from jail, applicant seems to be entitled for grant of

pension for the period his father was on bail i.e. for the period from 25.07.1999 to 09.07.2009, in view of law settled by the Chandigarh Bench.

9. Accordingly, the O.A is partly **allowed**. Order passed with regard to stoppage of pension to father of the applicant is set aside. The respondents shall grant service pension of the father of applicant for the period from 25.07.1999 to 09.07.2009 i.e. the period father of the applicant was on bail.

10. Let necessary exercise be done in compliance with this order by the respondents within a period of four months from today. Default will invite interest @ 8% p.a.

11. No order as to costs.

12. Pending applications, if any, stand disposed off.

13. Major Danish Farooqui, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated: 11 October, 2023

Ukt/-