

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 135 of 2014

Tuesday, this the 27th day of February, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 1450288L NK Rajendra Pratap Singh son of Sri Sita Ram Singh resident of village Rigdapur Post Office Baraut, Tehsil Handia District : Allahabad

.....**Applicant**

Ld. Counsel for the : **Shri V.P. Pandey, Advocate.**
Applicant

Verses

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff Integrated Head Quarter of Ministry of Defence South Block New Delhi 110001.
3. The Officer-In-Charge, Records Defence Security Corps Pin - 901277 C/o 56 APO.
4. Principal Controller of Defence Account (Pension) Dropdi Ghat Allahabad.
5. State Bank of India Branch Handia, District Allahabad through its Branch Manager.
6. State Bank of India, Centralized pension, Processing Centre 4 - Kachahari Road, Allahabd - 211002 through its Chief Manager.

.....**Respondents**

Ld. Counsel for the : **Shri D.C. Lohumi, Advocate**
Respondents

Assisted by : Maj Piyush Thakran, OIC Legal Cell.

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief which is excerpted below for ready reference.

"To pass an order or direction to the respondents to give effect to original PPO No S/010441/2006 dated 23 June 2006 and corrigendum PPO No. S/CORR/100313 dated 11 June, 2009 and pay the service pension to applicant since 2006 alongwith interest of 18% on total arrears incurred w.e.f 2006 till date of payment and to continue to pay the pension regularly."

2. The facts in nutshell are that the applicant was initially enrolled in the Indian Army on 22.03.1971 and was discharged from service on 31.05.1986 after rendering more than 15 years of service. Thereafter, he was re-enrolled in the Defence Security Corps (DSC) on 01.02.1988 and was discharged under Army Rule 13 (3) Item III (i) on superannuation on 31.8.2006 after having completed 18 yrs of service in DSC and earned his second pension in DSC. Before discharge, he was brought to Release Medical Board which found his disability as NIDDM but at the same time, it was opined to be neither attributable to nor aggravated by Military service. Despite receiving PPO dt 26 Jun 06, he was

not paid anything after superannuation from DSC, he therefore, initially made verbal queries and thereafter, preferred a representation dated 10.02.2009 to State Bank of India Branch Handia District Allahabad through its Branch Manager for payment of DCRG and commutation amount which is arrayed as respondent no. 5 in the instant petition. Since no payment of commutation amount and DCRG was made, DRDO Kanpur directed the respondent no 5 for payment of all dues to the applicant like DCRG, commutation amount vide communication dated 17.03.2009. Despite receipt of the above communication from DRDO Kanpur, the requisite payment towards DCRG and commutation amount was not made and instead the respondent no 5 denied of having any record of applicants PPO. Subsequently, it communicated to the Applicant that the record has been traced out and asked the applicant to complete the formalities vide communication dated 24.04.2009 which is annexed as Annexure no A-10 to the O.A. On 12.05.2009, the applicant addressed a communication to the respondent no 5 informing that payment has not yet been made to him either on the count of pension or the commutation amount etc. In the mean time the applicant received post VI CPC corrigendum PPO in Jun 2009 with enhanced benefits and copy of PPO to respondent No. 5. The respondent no 5 again wrote a letter to DSC records with the request to send a new

PPO at the same time informing that the Applicant was getting another pension from DPDO under PPO No S/024556 /1986 and raised doubts on his eligibility to second pension. Thereafter by means of letter dated 14.07.2010, the respondent no 5 again informed the Applicant that his papers pertaining to pension etc have been returned to DSC Records and he was asked to contact the DSC Records at Kanpur. Thereafter, the applicant made a complaint to DPDO Kanpur Road Allahabad that his pension and other dues have not yet been paid to him by the Bank. In the follow up response to the complaint the Record Officer DSC Records again wrote to the State Bank respondent no 5 vide letter dated 12.08.2010 to make payment of all dues and pension to the applicant. Additionally PCDA (P) Allahabad also wrote a letter to the State Bank respondent no 5 vide letter dated 30.03.2011 to ask them as to why the dues and pension admissible to the Applicant had not yet been paid. The respondent No. 5 (i.e. SBI) vide letter dated 23.09.2011, informed the Controller of Defence CDA (Pension) Allahabad that due to belated submission of pension papers by the applicant, the payment could not be made. Again vide letter dated 28.09.2011, the Branch Manager respondent no 5 returned all the pension related papers (which had been received back from DSC Records) to the Controller of Defence CDA (Pension) Allahabad. Again vide letter dated 09.05.2011, the State

Bank respondent no 5 informed the Controller of Defence PCDA (P) Allahabad that duplicate PPOs have been received at their end and the matter has been forwarded to the Central Pension Processing Centre Allahabad but they are unable to process the same without your approval. It was requested by means of the aforesaid letter to accord approval.

3. We have heard learned counsel for the parties and perused the materials on record.

4. The only contention advanced by learned counsel for the respondent no 5 is that since PPO had been issued in the year 2006, it became time barred and as such it was necessary to obtain fresh sanction and approval from competent authority besides this DPDO was the PDA for previous pension of the applicant and therefore the Bank required prior approval and instruction from competent authority before disbursement of second pension.

5. The above contention advanced by learned counsel for the applicant does not commend to us for acceptance for the reason that various communications were addressed to the respondent no 5 by the Controller of Defence PCDA (P) Allahabad in which it was specifically stated that in case payment is not made within one year from the date of issue of PPO the same shall be treated as time barred and then

prior approval is required. Initially, the PPO was issued in the year 2006. It remained unacted upon. Thereafter, it was said to have been lost at the Bank. From the letter dated 09.05.2011 it would clearly transpire that it was admitted by the respondent no 5 that the Bank had received duplicate PPO.

6. There is no doubt in the instant case that the applicant was made to run from pillar to post on one pretext or the other since 2006 by the Bank respondent no.5. Initially, the respondent no 5 delayed the processing till the year 2009 on the ground that the PPO and other papers were missing and subsequently informed that the papers have been traced out. Thereafter it took a stand that the applicant was already receiving one pension from Army & expressed doubts as to how can be receive second pension from DSC. Again it took shelter behind the plea that since the PPO had become time barred it required fresh approval from the Controller of Defence CDA (P). Again it took the plea that the matter was lingering with the Central Pension Processing Centre of the Bank. Aggrieved by repeated denial of payment of dues, the Applicant instituted the aforesaid O.A and it was thereafter that respondent No. 5 became serious on the issue and payment was lastly made on 27.08.2014. The total amount paid by the Bank is to the following effect.

(i) Rs 4,54,070/- towards arrears of pension

(ii) Rs 3,36,709/- towards commutation

(iii) Rs 879,359/- as Gratuity

It is mentioned in the counter affidavit that the respondent no 4 accorded approval on 13.08.2014. It is also mentioned that the Opp party no 3 was informed of disbursement vide letter dated 22.07.2015.

7. From the above discussion, it would clearly transpire that the respondent no 5 carried out numerous acts of omission and commission and procrastinated the processing for payment of dues and pension to the applicant without any valid reason. The stand of respondent No - 5 if summed up is as follows:-

"(a) No action because applicant didn't contact us from 2006 - 2009. We are not convinced that the bank can get away with this plea. The bank has not produced any evidence as to whether they made a reasonable effort to inform the applicant to contact the bank between 2006-2009.

(b) When the applicant after many verbal queries decided to write to Bank in 2009, the bank reacted in the following manner:-

(i) We don't have your PPO records.

(ii) We have found your PPO come & collect your pension.

(iii) You are not eligible for second pension, you are already getting one pension & therefore your pension related papers returned initially to DSC records and subsequently to PCDA (P) Allahabad for clarification.

(iv) Fresh duplicate PPO & Authority from PCDA (P) Allahabad is required to pay despite the fact that PCDA (P) Allahabad & DSC records were aggressively corresponding with the bank to pay the entitled pension at the earliest."

8. The corrective action and response of a Bank which has over 60% of defence pension accounts was extremely disappointing. It appears that the Bank was hell bent on finding reasons one after the other to deny payment of pensionary benefits to the applicant. It is indeed shameful that despite the Hon'ble Supreme Court orders on ensuring timely payment of pension, we have a case where PPO issued in 2006 was finally paid in 2013 & 2014 due to acts of omission & commission of respondent No. 5 and 6. The Bank has shown urgency & sincerity to pay only after initial M.A was filed in this Tribunal by the applicant in 07.10.2013.

9. Thus the matter was treated with utmost levity and without showing any seriousness and concern for the applicant who was facing financial crunch and was being made to make repeated approaches. The harassment faced

by the Applicant was at its crudest form & in total defiance of guidelines given by Hon'ble Apex Court on pension matter.

10. We can't ignore the fact that what was due to applicant in 2006 & 2009 was paid to him in 2013 & 2014 only after filing of M.A in this Tribunal in 2013 which was subsequently admitted as O.A 135 of 2014 in this Tribunal. Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in **A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others**, (2012) 6 SCC 430. In the case of **A. Shanmugam** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. **Indian Council for Enviro-Legal Action V. Union of India**, (2011) 8 SCC 161;
2. **Ram Krishna Verma V. State of U.P.**, (1992) 2 SCC 620;
3. **Kavita Trehan V. Balsara Hygiene Products Ltd.** (1994) 5 SCC 380;
4. **Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.**, (1999) 2 SCC 325;
5. **Padmawati V. Harijan Sewak Sangh**, (2008) 154 DLT 411;

6. **South Eastern Coalfields Ltd. V. State of M.P.**, (2003) 8 SCC 648;
7. **Safar Khan V. Board of Revenue**, 1984 (supp) SCC 505;
8. **Ramrameshwari Devi and others** (supra).

11. In the case of **South Eastern Coalfields Ltd** (supra), the apex Court while dealing with the question held as under :

"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".

12. In the case of **Amarjeet Singh V. Devi Ratan**, (2010) 1 SCC 417 the Supreme Court held as under :-

"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the

case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court”.

13. The question of award of cost is meant to compensate a party, who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to administer caution to the authorities to work in a just and fair manner in accordance to law. The case of **Ramrameshwari Devi and others** (supra) rules that if the party, who is litigating, is to be compensated.

14. In the case of **Centre for Public Interest Litigation and others V. Union of India and others**, (2012) 3 SCC 1, the Hon’ble Supreme Court after reckoning with the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents

No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

15. In the case reported in ***National Textile Corporation (Uttar Pradesh) Limited V. Bhim Sen Gupta and others***, (2013) 7 SCC 416 the Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court and so the contempt petition was dismissed and the cost was quantified at Rs 50,000/-.

16. In the present case, the applicant was made to run from one quarter to another between 2006 to 2014 and it was only after he initially filed the M.A in 2013 and subsequently the present O.A. in 2014 that the respondent No 5 and 6 pieced together their acts and hastened to act on the PPOs. As stated supra, from the year 2006 to the year 2009, the Bank delayed processing the matter on the ground that the applicant didn't approach the bank. Thereafter, the stand was that PPOs were missing and subsequently, the applicant was informed that the PPOs have been traced and he can

complete paper formalities to draw pension. Thereafter, surprisingly the respondents 5 and 6 took the plea that the Applicant was already getting one pension from Army, therefore, he was apparently not eligible for second pension form DSC and returned all his pension papers initially to DSC Records and subsequently to PCDA (P) Allahabad. Subsequently, it took refuge behind the plea that the PPOs were time barred and therefore, required issue of fresh PPO. After issuance of fresh PPOs by PCDA (P) Allahabad it took the plea that express approval of PCDA (P) Allahabad is required to action the duplicate PPOs. Thus it is a fit case in which exemplary cost should be awarded. Looking at the facts and circumstances, we quantify the cost at Rs 1,00,000/- (Rupees one Lac only) which the offices representing Bank i.e. respondent no 5 and 6 shall pay jointly to the Applicant for compensating the applicant towards litigation cost incurred by him to get his rightful dues. It shall, however, be open to the bank to recover the cost from its erring employees.

17. As a result of foregoing discussion, the O.A is allowed and the applicant is held entitled to interest on delayed payment at the rate of 9% per annum since the year 2006 for original PPO & 2009 for amount due in corrigendum PPO. The respondent Bank is also directed to pay cost which we quantify at Rs 1,00,000/- (Rupees one lac only). The cost

shall be paid to the Applicant within four months from today. The interest on the arrears of pension, commutation as also the gratuity shall be payable at the rate of 9% from three months after the date of issue of the PPO in the year 2006 & issue of corrigendum PPO in 2009 till the date of actual payment. The respondents are directed to comply with the orders within four months.

**(Air Marshal BBP Sinha)
Member (A)**

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

Dated : February, 27 ,2018

MH/-