

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No 263 of 2014**Friday, this the 04<sup>th</sup> day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ishwar Prasad S/o Dhuri, R/o Village-Gajegarha, P.O.-Gola Bazar, Police Station-Gola, Tehsil-Gola, District-Gorakhpur. The retired Army No 143592249Y Ex Hav Washerman, Regt/Corps-Arty Regt, C/o 56 APO.

.....Applicant

Learned counsel for the Applicant : **Shri Kunwar Bahadur Sing**, Advocate.  
**Shri Yashpal Singh**, Advocate.

Versus

1. Union of India, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief Record Officer, N.E. Group, Arty Records, Nasik Road Camp (Mah), Nasik-422102.
3. Principal Controller of Defence Account (C.D.A.), Pension, Allahabad. U.P.
4. Manager, State Bank of India, Gola Bazar, Gorakhpur.
5. Bank/Sub Treasury Station Gorakhpur through its Treasurer.

.....Respondents

Learned counsel for the Respondents : **Mrs Deepti Prasad Bajpai**, Advocate  
Central Govt Counsel

**ORDER (Oral)**

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

- (i) *That this Hon'ble Tribunal may be pleased to direct the opposite party No 2 to 5 to pay the service pension i.e. Feb 2006 and entire dues of the pensionary amount and other retiral benefits alongwith 12% appropriate interest in accordance with law to the petitioner which has been illegally withhold by the paying authority, State Bank of India, Gola Bazar, Gorakhpur.*
- (ii) *That this Hon'ble Tribunal may be pleased to direct the opposite party No 3 and 4 to pay continuously the full pension month by month within reasonable time in accordance with service pension payment order dated 23.08.2005.*
- (iii) *That allow this original application of the applicant with costs.*
- (iv) *That this Hon'ble Tribunal may be pleased to set aside the impugned order dated 01.12.2008 and 31.07.2009 (Annexure 4 & 5 to this application) passed by the Record Officer, Topkhana Artillery Records, Nasik Road Camp (Mah) Nasik-422102.*

2. Applicant vide this petition has prayed that respondents be directed to calculate, fix and pay the proper pensionary benefits admissible to him along with past dues from February, 2006 along with all allowances, revisions of pay and other admissible benefits. It is also prayed that letter Nos dated 01.12.2008 and 31.07.2009 be set aside being wrong, illegal and unjust and petitioner be compensated for the same. It is also prayed that directions be issued to the respondents to give the proportionate monetary benefits to the petitioner.

3. The applicant was enrolled in the Army on 11.09.1981 and he was discharged from service w.e.f. 30.09.2005 (AN) on fulfilling the conditions of enrolment. While availing annual leave (11.03.2005 to 26.04.2005) he was arrested by civil police on 29.03.2005 for investigation and trial for the offences under Sections 147, 148, 149, 302, 307, 323, 504 and 506 of IPC. He was released on bail by the learned Chief Judicial Magistrate, Gorakhpur on 18.07.2005 and after release he rejoined his unit from where he was discharged from service under Rule 13 (3) III (i) of Army Rules, 1954.

4. Since his pension papers had already been prepared and processed, PPO No. S/029479/2005 (Army) dated 05.07.2005 was issued vide which besides his service pension, death cum retirement gratuity and capitalized value of pension were granted. Later, when it came to the knowledge of PAO (OR), Artillery that the applicant has been convicted in a civil offence, letter dated 22.09.2005 was issued to the Senior Record Officer for cancellation of original PPO as per which service pension was granted. It was also conveyed vide aforesaid letter that the applicant is entitled to provisional pension due to his conviction.

5. The material placed on record reveals that plethora of correspondence has been made between PAO (ORs), Records Artillery Centre, PDA and PCDA (P), Allahabad but the fact is that the applicant is only entitled to provisional pension in

terms of Rule 3(B) of Pension Regulations for the Army, 1961 (Part-I). The aforesaid regulation, for convenience sake, is reproduced as under:-

*"(a) (i) A service personnel (including a Commissioned Officer) against whom any departmental or judicial proceedings are pending or instituted after retirement in respect of an event which took place not more than 4 years before such institution, may on his retirement on attaining the age of compulsory retirement or otherwise, be authorised a payment of provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.*

*(ii) The provisional pension may be authorised during the period commencing from the date of retirement up to and including the date on which, upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.*

*(iii) No gratuity (including retirement gratuity) shall be authorised until the conclusion of such proceedings and issue of final orders thereon.*

*(iv) No commutation of the provisional pension shall be permitted.*

*(b) Payment of provisional pension as mentioned in sub-clause (a) (i) above shall be adjusted against the final retirement benefits that may be sanctioned to such service personnel upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or where final pension is reduced or withheld either permanently or for a specified period."*

6. Since the petitioner's acquittal is subject to order of the Court therefore, at this stage applicant is only entitled to receive provisional pension. It will be open for the petitioner to seek review of his case for full pensionary benefits after acquittal. Therefore, the respondents are directed to pay applicant provisional pension from the date he was enlarged on bail and intimate the applicant the details of provisional pension

which he is entitled to receive. Applicant is also directed to forward requisite information to the respondents as asked vide letters dated 01.12.2008 and 22.10.2008 (Annexure CA-9 and 10).

7. With the aforesaid observations, the O.A. is disposed off.
8. No order as to costs.
9. Miscellaneous application(s), pending if any, shall stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 04.02.2022

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