

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1006 of 2023

Monday, this the 22nd day of January, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Lt Gen Anil Puri, Member (A)

Saraswati Devi widow of late Sub Kedar Singh (Retd) (JC086809X), C/o Kedar Singh, Vill & PO-Malsoona, Tehsil-Kanda, Bageshwar, Uttarakhand-263640.

Learned counsel for the: **Shri Rahul Pal**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No 101-A, South Block, DHQ, PO-New Delhi-110011.
2. OIC Records, RO AMC Lucknow, Uttar Pradesh-226002
3. PCDA (P), Draupadi Ghat, Prayagraj.
4. CPPC, State Bank of India, Distt-Dehradun, State-Uttarakhand.

.....Respondents

Learned counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by which the applicant has made the following prayers:-

(i) To award the enhanced rate of pension to the applicant's husband w.e.f. 01 Jul 2015 onwards @ 20% and 01 Jul 2020 onwards @ 30% instead of 01 Jul 2016 and 01 Jul 2020 alongwith 9% interest on the arrears.

(ii) To pass any other order or direction in favour of applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

2. The facts as given in the O.A. are; that the applicant's husband was discharged from Army service on 31.10.1984. He was getting his pension in the prescribed scale and as per his entitlement. He died in the year 2022 and thereafter, applicant is in receipt of family pension. The grievance of the applicant is that prior to her husband's death, he was not granted enhanced rate of pension on reaching the age of 80 and 85 years on 01.07.2015 and 01.07.2020 respectively, rather he was granted enhanced rate of pension @ 20% w.e.f. 01.07.2016 i.e. on attaining the age of 80 years and @ 30% w.e.f. 01.07.2021 i.e. on attaining the age of 85 years. The said claim has been declined by the respondents, hence this O.A. has been filed.

3. It is submitted by learned counsel for the applicant that the enhancement of pension from the age of 80 years is governed by Govt of India, Min of Def letter dated 11.11.2008, wherein it is clearly mentioned in Para 12 that enhanced rate of pension is

applicable @ 20% from 80 years, @ 30% from 85 years, @ 40% from 90 years, @ 50% from 95 years and @ 100% from 100 years. It is further submitted that as per Rules on the subject the enhancement is to be granted for the age bracket from 80 years to less than 85 years. The words 'from 80 years' would mean as from the start of the 80th year of age. Hence, as per Rules, the applicant's husband is entitled to the enhancement of 20% in pension, from the date he completed 79 years of age and entered into 80th years of age. In support of his argument, learned counsel for the applicant has relied upon the judgment rendered by the AFT, Principal Bench, New Delhi vide order dated 21.02.2023 passed in O.A. No. 418 of 2023, **Bishnu Deo Ojha (Retd) vs UOI & Ors**, order dated 22.12.2023 passed by Hon'ble High Court of Judicature at Patna in CWP No 7400 of 2023, **Mukhlal Ojha vs State of Jharkhand**, order dated 03.09.2014 passed by Hon'ble High Court of Karnataka Dharwad Bench in writ petition No 105189 of 2014 in the case of **Siddangouda vs Shivabasanagouda Aayyangoudra vs Principal Account General Karnataka**, order dated 15.03.2018 passed by Hon'ble Guwahati High Court in writ petition (C) No 4224 of 2016 in the case of **Virendra Dutt Gyani, Ex Acting CJI Guwahati High Court vs Union of India & 5 Ors** and order dated 08.07.2019 passed by the Hon'ble Apex Court in Civil Appeal Diary No 18133 of 2019 in the case of **Union of India & Ors vs Virendra Dutt Gyani**. The learned counsel further

submitted that since the issue has been settled by the Hon'ble Apex Court vide order dated 08.07.2019, direction be issued to PCDA (P), Prayagraj to amend the circulars to read the intention of the Govt correctly as after completing 79 years of age applicant's husband had become entitled to enhancement of 20% of pension at the beginning of 80th year.

4. Advancing his arguments, the learned counsel for the applicant has submitted that the Rule, which was interpreted in the said judgment is pari-materia to the present case. The counsel has further pointed out that the said judgment was taken to the Hon'ble Supreme Court by way of Special Leave to Appeal. However, even the SLP was dismissed by the Hon'ble Supreme Court vide order dated 8.7.2019. Hence, it is submitted that the interpretation of the phrase "from 80 years"; as given by the Hon'ble Gauhati High Court to mean as "from the commencement of the 80th year", has attained finality. His further submission is that since the applicant's husband had already completed 79 years and had entered into 80th year of the age as on 01.07.2015 and 90th year of age as on 01.07.2020, therefore, he was also entitled to grant of enhanced pension at the rate of 20% and 30% of his basic pension w.e.f. 01.07.2015 and 01.07.2020 respectively.

5. Per contra, learned counsel for the respondents submitted that applicant's husband was enrolled in Army Medical Corps (AMC) on 30.10.1956 and he was discharged from service w.e.f.

01.11.1984 (FN) on completion of terms of engagement. It was further submitted that while in receipt of service pension vide PPO No S/C/19102/1984 dated 03.08.1984, applicant's husband died on 22.09.2022. After his death, applicant was granted family pension w.e.f. 23.09.2022.

6. Learned counsel for the respondents further submitted that the deceased soldier was granted 20% enhanced pension w.e.f. 01.07.2016 on attaining the age of 80 years and 30% enhanced pension w.e.f. 01.07.2021 on attaining the age of 85 years (Exhibit R-2) as per PCDA (P), Prayagraj Circular No 165. It was further submitted that after her husband's death applicant had submitted representation through CPGRAM on 24.05.2023 which was suitably replied vide letter dated 11.07.2023 (Exhibit R-3).

7. It is further submitted by the learned counsel for the respondents that the Rule specifically prescribed that 20% of basic pension shall be available only on attaining the prescribed age, as is given in the table mentioned in the Circular No 165 issued by PCDA (P), Prayagraj. Accordingly, it is submitted by the counsel that as per the table, the applicant's husband would be entitled to enhanced pension only from the date he attained the age of 80 years and not from the date of start of 80th year of his age. From that moment, her husband attained the age of 80 years; till he attained the age of 85 years, he would be entitled to the enhancement of 20% of basic pension under the aforesaid Circular/Rule. He pleaded for dismissal of O.A.

8. Having considered the arguments of learned counsel for the parties and having perused the case file, we do not find substance in the arguments advanced by learned counsel for the applicant. However, since the Rules relating to pension, as applicable to the applicant's husband, and as involved in the various judgments referred to by learned counsel for the applicant, therefore, it is necessary to have reference to Circular No 165 issued by PCDA (P), Prayagraj and also clarification issued on the subject vide letter dated 22.03.2013 (Annexure-4 to CA).

9. The deceased ex-serviceman was in receipt of service pension w.e.f. 01.11.1984. He was granted 20% enhanced service pension on completion of 80 years age w.e.f. 01.07.2016 and 30% enhanced service pension on completion of 85 years age w.e.f. 01.07.2021. While in receipt of due pension, he died on 22.09.2022 and thereafter, enhanced family pension was granted to his wife Smt Saraswati Devi (applicant) being NOK of the deceased pensioner.

10. Applicant's contention is that her husband ought to have been granted enhanced service pension on reaching 80th year and 85th year age which was denied by the respondents keeping in view of PCDA (P), Prayagraj Circular No 165 as per which enhanced pension is payable as under:-

Age of pensioners/family pensioners	Additional quantum of pension/family pension
<i>From 80 years to less than 85 years</i>	<i>20% of basic pension/family pension</i>
<i>From 85 years to less than 90 years</i>	<i>30% basic pension/family pension</i>
<i>From 90 years to less than 95 years</i>	<i>40% basic pension/family pension</i>
<i>From 95 years to less than 100 years</i>	<i>50% basic pension/family pension</i>
<i>100 years or more</i>	<i>100% basic pension/family pension</i>

11. Scrutiny of record reveals that as per ibid Circular the applicant's husband was accurately granted additional quantum of pension @ 20% for a sum of Rs 2,454/- (in addition to basic pension) w.e.f. July, 2016 on attaining the age of 80 years and 30% for a sum of Rs 9,459/- (in addition to basic pension) w.e.f. July, 2021 on attaining the age of 85 years.

12. Central government pensioners start receiving enhanced pension @ 20% after completion of 80 years. Central Civil Services (CCS) Pension Rules make special arrangements for super senior citizens and as the age of pensioners crosses the figure of 80, 85, 90, 95 and 100 years, their payment also increases rapidly. According to the CCS Pension Rules, 2021, after the pensioner attains 80 years of age, his compensation allowance increases, which is available in the form of enhanced pension. For convenience sake, salient features are appended below:-

-Above 80 years but below 85 years of age, the basic pension increases by 20%.

-Above 85 years but below the age of 90 years, the basic pension increases by 30%.

-Above 90 years but below the age of 95 years, the basic pension increases by 40%.

-Above 95 years but below the age of 100 years, the basic pension increases by 50%.

-On attaining the age of more than 100 years, the pensioner is entitled to get 100% additional pension of his basic pension.

13. Whatever be the date of birth, according to the rules, even if the pensioner was born on any date, but he starts getting the benefit of additional pension from the 1st of that month only. For example, if a person was born on 15th August, then on attaining the age of 80 years, the benefit of 20% increased pension would start from 1st August. Similarly, pensioner born on 04th August will also be paid the increased amount as on August 01.

14. A bare perusal of the PCDA (P) Circular No 165 and CCS Pension Rules, as applicable to the deceased pensioner, shows that the enhanced component of the pension is prescribed to be paid only on 'attaining' the prescribed age, which is prescribed in the table mentioned in Para 10 above. The Rule prescribed the age for the enhanced pension as "from 80 years to less than 85 years". Hence, it is clear that the enhancement of pension would be applicable only when a pensioner has attained the age of 80 years. Therefore, from the age of 80 years till the day immediately preceding the day when the pensioner attains the age of 85 years, the pensioner is entitled to the enhancement to the extent of 20% of the basic pension. This leaves no scope extending the applicability of enhanced pension from the start of

the first day of the 80th year of the age. Thus, the correct interpretation is that the enhancement is available only on attaining the age of 80 years and by any means it cannot be interpreted as starting the 80th year of the age. For example; a person does not attain the age of one year on the day he is born. He has to undergo the duration of one year to attain the age of one year. The word "age" itself signifies the time period as having already passed. So attaining age of one year would mean passing of one full year.

15. It is obvious that a calendar year starts from first day of the calendar month of January and ends on the last day of the calendar month of December. If a person is born on 1st January, he would be completing age of one year only at 2400 hours of 31st December of the said year and not on start of the 00 hours of 1st January of the said year. It is only in this sense that the word attaining the age from 80 years to less than 85 years has been used in the Rule/table. It is obvious that the day has the meaning of start of the duration of the period from 00 hours to 2400 hours, immediately before the succeeding day. Hence, on complete interpretation, it is clear that a pensioner would be entitled to enhanced pension from 00 hours of the day next to the date when he completes his 80th year and this will continue till the moment preceding the moment when he completes 2400 hours on the date when he completes his 85th year of age. Hence,

we do not find anything wrong in the interpretation given in the rules and submitted by the respondents.

16. We have perused the judgments relied upon by the applicant and we find that AFT, PB, New Delhi has delivered judgments based on Hon'ble High Court Guwahati order dated 15.03.2018 which was in respect of a judges for grant of additional/enhanced pension against which an SLP was filed which was dismissed by the Hon'ble Supreme Court. Thereafter, by amendment to the High Court Judges (salaries and conditions of service) Act, 1954 vide the Gazette of India, No. 611 dated 20.12.2021, the following explanation has been inserted in Section 17B of the Act as under which holds good:-

"Explanation – For the removal of doubts, it is hereby clarified that any entitlement for additional quantum of pension or family pension shall be, and shall be deemed always to have been, from the first day of the month in which the pensioner or family pensioner completes the age specified in the first column of the scale."

17. Additionally, in the year 2022, Govt of India, Department of Personnel and Training, New Delhi issued letter dated 23.08.2022 in which it is clearly stated that 20% additional quantum of pension shall be payable after completion of 80 years of age (from 80 years to less than 85 years), hence, the applicability of granting 20% additional quantum of pension will be from the first day of the month in which pensioner completes the age of 80 years. So, in the present case, applicant's husband's date of birth being 01.07.1936, he was entitled to 20% additional

quantum of pension from the first day of the month of July, 2016 and 30% additional quantum of pension from the first day of the month of July, 2021 and not from July, 2015 and July, 2020 as claimed.

18. We find that facts of the instant case are dissimilar to the judgment delivered by the Hon'ble Guwahati High Court being related to judges. However, presuming that rules are universal to all pensioners, the correct interpretation of word 'on attaining the age of 80 years' is that a pensioner is entitled to additional quantum of pension on completion of 80 years of age. Hence, this Tribunal does not find the reliance of the applicant on the judgment of Gauhati High Court to be well placed. Applicant's husband was rightly granted additional quantum of pension w.e.f. 01.07.2016 and 01.07.2021 on attaining the age of 80 years and 85 years.

19. In view of the above, finding no merit in the present O.A., the same is **dismissed**.

20. No order as to costs.

21. Pending application (s), if any, stands disposed of.

(Lt Gen Anil Puri)
Member (A)

Dated:22.01.2024
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(Justice Anil Kumar)
Member (J)

RESERVED
(Court No 2)

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

ORIGINAL APPLICATION NO 1006 OF 2023

Saraswati Devi
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Ors
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.01.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 1006 of 2023 is dismissed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Lt Gen Anil Puri) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>