

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 458 of 2018**

Wednesday, this the 28th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Bhanu Pratap Rajak (No. 4246397Y Ex Hav/Clk) son of Late Bhagelu, resident of village-Gajegarha, Post Office-Gola, District-Gorakhpur (Uttar Pradesh).

.... **Applicant**

Ld. Counsel for the: **Shri Yashpal Singh, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer-in-Charge Records, Bihar Regiment, PIN-908765, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

... **Respondents**

Ld. Counsel for the: **Shri Namit Sharma, Advocate.**
Respondents Central Govt Counsel.

ORDER (Oral)

1. Being aggrieved with non grant of service pension for the period 29.03.2005 to 05.05.2017, applicant has filed the instant O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

(i) *Issue/pass an order setting aside the order denying service pension of the applicant for the period from 29.03.2005 to 05.05.2017 during which he was under detention/in jail, as intimated by the letter/order dated 05.04.2018 issued by the office of Principal Controller of Defence Accounts (Pension), Allahabad, after summoning the original records; and provide the same with interest.*

(ii) *Issue/pass an order directing the respondents to consider case of the applicant for grant of medical allowance and provide the same from due date alongwith arrears and interest.*

(iii) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(iv) *Allowi this Application with cost.*

2. The brief facts necessary for disposal of the case are that applicant Ex Hav/Clk Bhanu Pratap Rajak was enrolled in the Army on 20.12.1965 and was discharged from service w.e.f. 28.02.1986 under the provisions of Rule 13 (3) III (iv) of Army Rules, 1954. He was granted service pension for life w.e.f. 01.03.1986 vide PPO No. S/16404/1986. In the year 2005 applicant was convicted for an offence under Section 148, 307/149 and 302 of IPC vide order dated 29.09.2007 passed by learned Additional Sessions Court, Gorakhpur and he was awarded two years imprisonment under Section 148 of the IPC, seven years imprisonment and fine of Rs 5,000/- under Section 307/149 of the IPC and life imprisonment under Section 302 of the IPC. Being in jail, applicant's service pension was stopped w.e.f. 29.03.2005.

Applicant was released from jail w.e.f. 05.05.2017 and his service pension was restored which he is in receipt of. This O.A. has been filed for grant of pension for the period from 29.03.2005 to 05.05.2017. Applicant wrote several letters for release of pension for the period from 29.03.2005 to 05.05.2017 to authorities concerned but PCDA (P) Allahabad vide letter dated 05.04.2018 informed that he is not entitled to pension for the period he was in jail. This O.A. has been filed for release of pension for the period 29.03.2005 to 05.05.2017.

3. Learned counsel for the applicant submitted that applicant had retired in the year 1986 and provisions contained in Pension Regulations for the Army, 2008 (Part-II) have no application in case of the applicant. His further submission is that the whole criminal incidence leading to conviction and sentence is of the period subsequent to retirement of applicant, and the offence for which he was convicted and sentenced to jail has got no relation with his service career therefore, applicant is entitled to service pension for the period he was in jail. Further contention of applicant's learned counsel is that Army Act, 1950 does not provide for deduction or stoppage of pension on account of conviction in a private dispute and hence in absence of any provision under the Act, it cannot be done under executive instructions or regulations. In para 4.23 of the O.A. learned counsel for the applicant asserted that Pension Regulations have no statutory force and therefore, any provisions contrary to Army Act or Army Rules have no sanctity of law. His submission is that since Army Act and Army Rules having statutory force do not provide for stoppage of pension on account of conviction in a private dispute, therefore, Pension Regulations, which have no statutory force, cannot stop pension in any way. Arguments advanced by learned counsel

for the applicant is that “the right of the applicant to receive pension is property under Article 31 (1) of the Constitution of India and by a mere executive order the state has no power to withhold the same. Similarly, the said claim is also property under Article 19 of the Constitution of India. Therefore, denying the applicant his right to receive pension, which is his property, affects his fundamental right under Article 19 (1) (f) and 31 (1) of the Constitution of India”. He pleaded for grant of service pension for the period 29.03.2005 to 05.05.2017 to applicant.

4. Per contra, learned counsel for the respondents submitted that applicant’s service pension was stopped from the day he was arrested by police in a criminal case on 29.03.2005. He was sentenced to jail and released w.e.f. 05.05.2017. His further contention is that as per para 103 of Pension Regulations for the Army, 2008 (Part-II) his pension was restored w.e.f. 06.05.2017 (i.e. w.e.f. next day of release from jail) vide order dated 24.02.2018 (CA-13 refers) and he was granted pension alongwith arrears accordingly. His further contention is that applicant is not entitled to service pension for the period 29.03.2005 to 05.05.2017 being lodged in jail in connection with a criminal case. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the records.

6. It is not disputed that applicant was enrolled in the Army on 20.12.1965 and discharged from service on 28.02.1986. It is also not in dispute that applicant was convicted in a criminal case and sentenced to life imprisonment vide order dated 29.09.2007. Contention of learned counsel for the applicant that Rule 103 of Pension Regulations for the Army, 2008 (Part-II) is not applicable to applicant as he was discharged from service prior to the year 2008 does not satisfy us as Pension Regulations for the

Army, 1961 (Part-I), which is applicable in the instant case, has same ruling as in Pension Regulations for the Army, 2008 (Part-II). In this connection it is added that clauses 78 and 79 of Pension Regulations for the Army, 1961 (Part-I) are identical to the clauses 101 to 103 of Pension Regulations for the Army, 2008 (Part-II).

7. Applicant's pension was suspended on his arrest by police w.e.f. 29.03.2005 and stopped thereafter when he was sentenced for life imprisonment in terms of para 78 of Pension Regulations for the Army, 1961 (Part-I) which reads as under:-

“If a pensioner is convicted of a crime by a court of India or is guilty of misconduct, his case shall be reported by the Principal Controller of Defence Accounts (Pensions) to the competent authority, who on the recommendation of the State Government or Administration concerned may order the withholding of his pension (service and disability pensions and family pension drawn by adult males only) from a date to be specified. If the pensioner is sentenced to imprisonment, pension shall, pending the orders of the competent authority, be suspended from the date of his imprisonment.”

8. Thus, in view of the aforesaid regulation, it is abundantly clear that pension in respect of applicant was rightly suspended w.e.f. 29.03.2005 i.e. the date on which he was arrested by police and stopped subsequently on his sentencing to life imprisonment by order dated 29.09.2007. Further, on applicant's acquittal w.e.f. 05.05.2017 pension alongwith arrears was restored in terms of para 79 of Pension Regulations for the Army, 1961 (Part-I) w.e.f. 06.05.2017 i.e. the date next to his exoneration. For convenience sake para 79 of the aforesaid regulation is as under:-

“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 and with the Principal Controller of Defence Accounts (Pensions) and the civil authorities, if necessary, in other cases. In the case of 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.”

9. Additionally, while restoring pension in respect of applicant, PCDA (P) Allahabad vide letter dated 05.04.2018 has also clarified that applicant is not entitled to pension for the period he was in jail. For convenience sake, extract of the aforesaid letter is appended below:-

“Sanction of the competent authority for restoration of pension in respect of above named pensioner has been received in this office vide the Records Office letter cited above and the ink signed copy of the same is forwarded herewith for further necessary action. As per sanction, pensioner is not entitled for payment of pension during the period he remained in jail custody, i.e. 29.03.2005 to 05.05.2017.”

10. In view of the above and the fact that applicant was in jail during the period 29.03.2005 to 05.05.2017, he is not entitled to pension for the period from 29.03.2005 to 05.05.2017. The O.A. has no merit and is liable to be dismissed. It is accordingly **dismissed**.

11. No order as to cost.

12. Pending applications, if any, are disposed off accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 28.07.2021
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