

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 331 of 2019**Friday, this the 2<sup>nd</sup> day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Smt. Prabhawati  
Widow of No. 8003192L Late Naik Nanku Singh  
R/o Vill – Atanpur, Ramgal, Kathan  
District – Allahabad

..... Applicant

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

Versus

1. Union of India and others, through Secretary, Ministry of Defence (Army), South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Officer Incharge, PCDA (P), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,  
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the stoppage of pension consequent of conviction and sentences passed for the following reliefs:-

- “(i) To direct the respondents to restore the revise normal rate of family pension to the applicant with immediate effect.
- (ii) To direct the respondents to pay arrear of pension from 25/02/2010 till actual restoration with interest of 10%.

(iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(iv) Allow this application with cost of 1,00,000/-.”

2. The factual matrix of the case is that after death of applicant's husband on 11.09.2008, applicant was in receipt of revised rate of family pension. In the year 2009, applicant alongwith her son was charged under Section 302 r/w 34 IPC for alleged dowry death of her daughter-in-law. Resultantly, she was sent to imprisonment on 04.04.2009 and her pension was stopped in the month of Feb. 2010. The applicant approached the Hon'ble High Court of Allahabad for grant of bail and she was given bail on 06.01.2014 though her son Mr. Rajesh Kumar Singh was not granted bail. Thereafter, applicant visited PCDA (P) Allahabad on 11.04.2014 and submitted an application for restoration of her family pension. The PCDA (P), Allahabad replied through letter dated 11.04.2014 that she being not acquitted from criminal offence, her pension cannot be restored. Thereafter, applicant tried her best but her pension has not been restored. Being aggrieved, the present Original Application has been filed for restoration of pension.

3. Learned counsel for the applicant submitted that vide Para 82 (b) of Pension Regulations for the Army, 1961 (Part-1), which states that if a pensioner is convicted and sentenced for a criminal offence by the Court and then is released by the Higher Court the pension withheld shall be restored. Accordingly, family pension of the applicant should be restored from the date of bail.

4. **Per contra**, learned counsel for the respondents submits that the applicant has merely been enlarged on bail, she has not been acquitted of the charges in pending Criminal Appeal and by this reckoning, she is not

entitled for resumption of pension in view of Para 73.1 of Defence Pension Payment Instructions-2013. Therefore, pension withheld shall be restored only after applicant's acquittal.

5. We have heard learned counsel for the parties and perused the record.
6. Learned counsel for the applicant invited our attention to the 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 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 depreciate 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."

7. 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, Applicant has been granted bail in a pending Criminal Appeal and in pursuance of the order passed by the Hon'ble High Court, she has been released from jail. Since, she is not incarcerated in jail at the moment and released on bail, she seems to be entitled for restoration of pension, in view of law settled by the Chandigarh Bench. Otherwise also, the law is bad since pension has been stopped without serving show cause notice or without providing opportunity of hearing to the applicant.

8. Accordingly, the O.A is **allowed**. Any decision or order passed with regard to stoppage of pension is set aside. The respondents shall restore the payment of family pension to the applicant with effect from the date she has been granted bail/released from jail in pursuance of the order of bail dated 06.01.2014 granted by the Hon'ble High Court, Allahabad.

9. Let necessary exercise be done in compliance with this order by the respondents within a period of three months from today.

10. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: July, 2021

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