

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 554 of 2017**Monday, this the 22nd day of July 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**No. 14580093K Ex Nk Parsu Ram S/O Late Duryodhan Ram,
R/O Village-Jaunpur, PO-Dihawan, Distt-Kannauj, UP-209735.

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of defence, 101, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ (Army), Ministry of Defence, South Block, New Delhi.
3. Officer In Charge, EME Records, PIN-900453, C/O 56 APO.
4. The Principal Controller Defence Account (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
Respondents. Central Govt. Standing Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Set aside/quash the impugned order contained as Annexure A-1.*
- (b) *Issue/pass an order and direction to the respondent to pay service pension to the applicant to the rank of Naik as the last rank held w.e.f. his date of discharge.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with exemplary cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.03.1985 and was promoted to the rank of Naik w.e.f. 10.12.2000. He was discharged from service at his own request on 30.06.2001 and was granted pension in the rank of Sepoy w.e.f. 01.07.2001 vide PPO No S/042665/2001 dated 20.08.2001. Grievance of the applicant is that since he was promoted to the rank of Naik, he should have been granted pension commensurate to his rank instead of granting him pension to the rank of Sepoy. In this context he had preferred a representation dated 18.08.2016 and when it was not decided in time, he had filed M.A. No. 995 of 2017 for issuance of directions to the respondents to decide his representation and grant pension equivalent to the rank of Naik. The said M.A. was disposed off by this Tribunal vide order dated 10.08.2016 with the directions to the respondents

to decide his representation within a period of three months by passing a reasoned and speaking order. The respondents vide order dated 23.06.2017 had decided his representation and denied him pension equivalent to the rank of Naik on the plea that the applicant had not completed ten months mandatory service period in the rank of Naik at the time of his discharge. It is in this perspective the above O.A. has been filed.

3. Contention of Ld. Counsel for the applicant is that in view of Govt of India, Ministry of Defence letter dated 07.06.1999 and 09.02.2001 the applicant is entitled to service pension of the rank of Naik w.e.f. 01.07.2001 irrespective of length of service in the rank last held. He submitted that the impediment of ten months service in the rank last held has been waived in terms of above Government orders. He further submitted that in addition to the Govt letter on the subject dated 09.02.2001 and VIth Pay Commission Report, circulated vide order dated 11.11.2008, also stipulates that there is no embargo that a person should complete ten months service in the rank last held to earn service pension of that rank. Further submission of Ld. Counsel for the applicant is that the pension granted to the applicant in the rank of Sepoy should have been revised in the rank of Naik as per the tenor of revised policy letters and his pension ought to have been revised by the respondents. However the respondents did not take any step to revise the pension of the applicant which is arbitrary and

illegal. He pleaded that the applicant be granted service pension of the rank of Naik w.e.f. his date of discharge alongwith arrears thereon.

4. On the other hand Ld. Counsel for the respondents submitted that the applicant was granted service pension to the rank of Sepoy as per Para 133 of Pension Regulations for the Army, 1961 (Part-I) which clearly stipulates that an incumbent is entitled to service pension for the rank actually held for ten months before the date of retirement. He contended that the applicant was promoted to the rank of Naik on 10.12.2000 and discharged from service w.e.f. 30.06.2001 at his own request before fulfilling the terms of service. Since the applicant had not held the rank of Naik for ten months before his date of discharge, he is not entitled to the service pension for the rank of Naik. He pleaded for dismissal of O.A.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The following facts of this case are absolutely clear to us:-

(a) That the applicant was discharged from service on 30.06.2001 in the rank of Naik. He held this rank for about six months.

(b) That the Govt has specifically issued a letter on this matter of eligibility for last rank pension vide letter No

“B/39013/AG/PS-4(a&c)/131/A/D(Pension/Services) dated 09.02.2001. This letter reads as follows:-

*“No.B/39013/AG/PS-4(a&c)/131/A/D pension/Services)
Government of India
Ministry of Defence
New Delhi, Dated the 9th February, 2001*

I am directed to refer to this Ministry’s letter No 1(1)/99/D(Pen/Sers) dated 7.6.99 as amended wherein the government has decided that w.e.f. 1.1.96 pension of all armed forces pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96. PC DA (P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However, there is no such stipulation on the government order under reference.

The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the pension of all pre-96 retiree of Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply”

(c) As per Govt letter dated 09.02.2001 on this subject, it is very clear that the applicant is clearly eligible for the pension of Naik from the date of his discharge. However, it is surprising that though the applicant has been discharged after four months of issue of this letter, he has not been extended the benefit of this letter. It is also a matter of concern that in the teeth of the existence of the aforesaid Govt letter, the concerned Record Officer and PCDA (P), Allahabad are justifying the denial of last rank pension on the basis of old and superseded rules/regulations.

(d) We have noted with concern that despite this Tribunal order dated 10.08.2016 to the respondents to consider the applicant’s grievances, the respondents have ignored the provision of Govt letter dated 09.02.2001.

Additionally, they are totally silent on the provisions of this letter in their counter affidavit despite this letter being specifically mentioned in para 4.5 of this O.A.

6. From the facts enumerated above it is crystal clear that the applicant was inducted in the Indian Army on the post of Sepoy on 15.03.1985. After rendering minimum qualifying services for promotion to the next rank of Naik he was promoted to the said post on 10.12.2000 and thereafter on his own request he was discharged from service in the rank of Naik w.e.f. 30.06.2001. Thus the applicant has put in about six months service in the rank last held i.e. Naik. As per Pension Regulation for the Army 1961, (Part-I) it was incumbent upon the applicant to have served the Army in the promoted rank for a minimum of ten months to fetch pension in that rank. However, the Vth Central Pay Commission recommended to waive off the ten months period for calculating the pension and it was decided to grant pension in the last rank held by a PBOR. Thereafter certain anomalies were reported and accordingly the Government of India through a letter dated 09.02.2001 directed that pension of all pre-1996 retirees of the Armed Forces personnel will be revised on the basis of rank/group last held by an individual and the revised pay scale connected thereto, even if the term of holding the rank was less than 10 months before retirement/discharge. Thus as per clarification made in said letter all the pre-1996 retirees had become

eligible for pension in the last rank held and pension was calculated based on the maximum of the scale of the rank last held. Meanwhile the VIth Central Pay Commission recommended fixation of pension of pre-2006 retirees in accordance with policy letter dated 11.11.2008 i.e. the rank held at the time of discharge is to be considered for grant of pension.

7. In this regard, the main issues which emerge for consideration are:-

(a) Whether the applicant is entitled to a revised pension at the rank of Naik w.e.f. 01.07.2001 (Date of discharge of the applicant) or at the rank of Sepoy as contended by the respondents?

(c) If found eligible, whether the applicant is entitled to arrears of pension, if so from which date?

8. We have noticed that provisions contained in Govt letter dated 07.06.1999 were not beneficial to the PBORs proceeding on pension as there were certain anomalies which have been removed vide Govt letter dated 09.02.2001. For convenience sake operative portion of ibid letter is again reproduced as follows:-

“I am directed to refer to this Ministry’s letter No.1(1)/99/D(Pen)/Sers) dated 7-6-99 and amended wherein the government has decided that w.e.f. 1-1-96 pension of all armed forces pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1-1-96. PCDA (P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However there is no such

stipulation on the government order under reference. The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected there to, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years, other criteria to earn pension will continue to apply.

9. The aforesaid letter has thus clarified that the requirement of 10 months' service in the rank to earn pension of that rank was taken away and it is sufficient for the pensioner to hold the post even for one day at the time of his discharge to earn the pension for that post.

10. In a similar facts and circumstances, the Armed Forces Tribunal, Kochi Bench, has also given verdict in the case of **Ex Sergeant Vasudevan. K. Vs. Union of India and Others**, O.A. No. 20 of 2012 decided on 20.3.2013. The relevant portion is as under:-

“10. In our view, the respondent No.2 as also the respondent No.4 while passing the order Annexure A8 overlooked the terms and conditions of the Government letter dated 9th February, 2001 whereby the requirement of 10 month's service in a particular rank or group had been taken away, therefore, there was no question of invoking the provisions of Regulations 122 and 123 of the Pension Regulations for the Air Force, 1961 for the condonation of the deficiency in service. According to the Government of India letter dated 9th February 2001, the pensions of all pre 1.1.1996 retirees were required to be revised according to the group/rank last held by them. Therefore, the question of denying pension to the applicant of the rank of Sergeant only on the ground that he had not rendered 10 months service on the rank of Sergeant was not proper. Had the respondents No.2 and 4 perused the Government letter dated 9th February 2001 (Annexure A2) they would not have taken the decision Annexure A8. More so, the second contention of the respondents that the pension of the rank of Sergeant was not beneficial to the applicant also has no substance. In this connection reference may be made to para 2.2 (b) of the Government letter dated 7th June 1999 (Annexure R2) whereby a provision has been made for grant of pension on the maximum pay for 33 years of qualifying service, subject to a minimum pension of Rs.1913/- per month. In case the qualifying service is less, the pension is to be reduced proportionately. Therefore we are unable to understand as to how the

respondents contend that the pension of the rank of Sergeant was not beneficial to the applicant. It appears that the respondents intended to calculate the applicant's pension of the rank of Sergeant on the minimum of the pay of that rank against the true spirit of the letter dated 7th June, 1999, which virtually requires to fix the pension on the basis of the maximum of the pay, therefore, this contention of the respondents has no substance."

11. Therefore, the contentions raised by the Learned Counsel for the respondents cannot be sustained. The applicant should have been given revised pension in the rank of Naik. The applicant should have been considered in the rank of Naik on the date of his discharge for the revision of pension with effect from 01.07.2001.

12. From the above discussion, we find that the applicant is held entitled to revised pension in the rank of Naik with effect from 01.07.2001 (date of discharge of the applicant) along with arrears as per the Government of India, Ministry of Defence letter dated 07.06.1999, 09.02.2001 and the latest policy letter dated 11.11.2008.

13. The applicant has been unfairly denied his last rank pension despite a Govt letter of 2001 clearly supporting his claim for pension as Naik. Prima facie the applicant has suffered because of indifference and lack of knowledge on the Govt provisions at the level of Record Office and PCDA (P), Allahabad. This indifference on the part of the respondents has forced the applicant to litigation twice. Hence the respondents are directed to compensate the litigant for forcing him into an avoidable and nonexistent litigation in terms of Hon'ble Apex

Court judgment in the case of **Ramrameshwari Devi and others vs Nirmala Devi and others**, (2011) 8 SCC 249, wherein an exemplary cost was imposed on the opposite party for forcing the applicant to enter unnecessary litigation.

14. In view of the above, ends of justice will be met if a cost of Rs 75,000/- (Rupees seventy five thousand only) is paid to the applicant by the respondents for forcing him in prolonged litigation to get his rightful dues and ignoring Govt orders of 2001 on the subject. The cost so quantified shall be deposited in the Tribunal by the respondents within two months of this order and shall be released in favour of the applicant by the Registry through cheque. The respondents are at liberty to hold an inquiry and recover this cost from erring officers in Record Office and PCDA (P), Allahabad.

15. As a result of foregoing discussion, the O.A. is **allowed**. The applicant shall be entitled to service pension for the rank of Naik w.e.f. his date of discharge i.e. 01.07.2001. However since the applicant has approached this Tribunal after a huge delay of about 15 years, the arrears shall be restricted to three years prior to filing of his first O.A. in view of the pronouncement of the Hon'ble Apex Court judgment in the case of **Shiv Dass Vs Union of India & Ors** reported in 2007 (3) SLR 445. The first O.A. was filed on 29.04.2016. Additionally the respondents shall pay a cost of Rs 75,000/- (Rupees seventy five thousand only) to the applicant as a compensation for forcing him into

avoidable litigation. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: July, 2019
gsr

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