

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No 703 of 2021

Tuesday, this the 31st day of May, 2022

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

Ex No. 4080399M Hav Rajesh Prasad Uniyal
S/o Girish Chandra Uniyal,
R/o Village and Post – Nathuwala, near SBI Nathuwala,
Dehradun, Uttarakhand – 248008

..... Applicant

Ld. Counsel for the Applicant : **Shri Anil Anthwal** holding brief of
Shri Kishore Rai, Advocate

Versus

1. The Union of India, Ministry of Defence, through its Secretary, South Block, New Delhi-110011.
2. Director (Pensions), Ministry of Defence, Govt. of India, New Delhi.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).
4. OIC Records, Garhwal Rifles, Lansdowne.
5. Director Soldier Welfare and Rehabilitation Board, Dehradun.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,
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 for the following reliefs:-

“i A direction to quash the PPO/order dated 14.11.2018 passed by respondent no. 3 by which the additional commute amounting to Rs. 7,06,838/- is given to the applicant, inspite of

the fact that applicant had shown his unwillingness for additional commute and had specifically applied and chosed option 'No' for additional commute, in prescribed format and within time and same is forwarded by Records, Lansdowne to respondent no. 3 as per the Circular No. 584 dated 07.09.2017.

ii. A direction to quash the order passed by respondents in Complaint ID 36989 dated 30.10.2019.

iii. A direction to revert the additional commute of Rs. 7,06,838/- given to the applicant and further may direct respondents to fix pension of applicant after adding Rs. 6480/- in pension of applicant as per Circular No. 584 dated 07.09.2017 and option filed by applicant.

iv. To direct respondents to pay interest to applicant for loss which applicant suffered due to adamantly additional commute given by applicant from 01.01.2019.

v. To summon the entire records of the applicant pertaining to additional commute.

iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 09.10.1998 and was discharged from service on 30.06.2017 after rendering more than 18 years of service under Rule 13 (3) III (iv) of Army Rules, 1954. Based on recommendations of 7th CPC, the Garhwal Rifles processed LPC-cum-Data Sheet of the applicant for revised pension alongwith option certificate for commutation duly giving unwillingness of the applicant. Despite the fact that applicant was unwilling to receive capitalized value of commuted pension, the PCDA (P) Allahabad paid a sum of Rs. 11,56,

248/- to the applicant. The applicant made a representation dated 14.12.2018 to Garhwal Rifles records stating that he did not want to draw commuted value of pension which has been paid to him vide revised PPO No. 1682011700718 as he was unwilling and therefore, respondents are requested to take appropriate action in the matter but nothing has been done so far to recover the additional commuted value given to him. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that on 07.09.2017, a Circular No. 584 was issued by PCDA (P) Allahabad wherein it was provided that the pensioners have to exercise an option 'Yes' or 'No' for additional commutation in the prescribed format as per 7th CPC. On 16.10.2017, the applicant submitted his form of option for computation of additional commutation giving his unwillingness stating that "*I do not opt to commute the additional commutable amount which became due on account of revision of my pension*". The applicant had clearly opted 'NO' in LPC-Cum-Data Sheet forwarded by Garhwal records to PCDA (P) Allahabad but in spite of that, PCDA (P) Allahabad vide its order dated 14.11.2018 has paid an amount of Rs. 7,06, 838/- to the applicant, against his unwillingness for additional commutation of service pension. The applicant made a representation dated 14.12.2018 to Garhwal records stating that he did not want to take additional commuted value which has been given to him vide revised PPO No. 1682011700718 against his unwillingness and therefore, respondents

are requested to take appropriate action in the matter but nothing has been done so far to revert the additional commuted value given to him.

4. Learned counsel for the applicant prayed that respondents be directed to receive back additional commutation amount of Rs. 7,06,838/- without further delay and commence full service pension from the date of discharge and pay arrears of 50% pension being not paid on account of commutation.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 30.06.2017 under Rule 13 (3) III (iv) of Army Rules, 1954. Accordingly, applicant was granted service pension w.e.f. 01.07.2018 vide PPO dated 03.04.2017. Based on recommendations of 7th CPC, the Garhwal Rifles processed LPC-cum-Data Sheet of the applicant for revised pension alongwith option certificate for commutation as the applicant was unwilling. Despite the fact that the applicant was unwilling to receive capitalized value of commuted pension, the PCDA (P) Allahabad paid a sum of Rs. 11,56, 248/- to the applicant.

6. Learned counsel for the respondents further submitted that a case was taken up by Records, The Garhwal Rifles with PCDA (P) Allahabad vide letter dated 02.01.2019 to revert back the aforementioned amount of Rs. 11,56, 248/- and issue Corrigendum PPO but the matter is still under consideration with PCDA (P) Allahabad.

7. Having heard submissions of both sides and after perusal of material on record, we are of the opinion that applicant was unwilling to receive commutation amount of his pension and an option certificate for commutation duly giving unwillingness of the applicant was submitted by Garhwal Records to PCDA (P) Allahabad. Despite the fact that the applicant was unwilling to receive capitalized value of commuted pension, the PCDA (P) Allahabad paid a sum of Rs. 11,56,248/- to the applicant. If all this was happened against the desire of applicant the same can be corrected as requested by the applicant by directing him to return complete commutation amount of Rs. 11,56,248/- (and not Rs. 7,06,838/-).

8. In view of above, the Original Application is **allowed**. The applicant is directed to return commutation amount of Rs. 11,56,248/- to the respondents. The respondents are directed to receive back the commutation amount of Rs. 11,56,248/- from the applicant through demand draft/cheque/electronic transmission or by whatever method they desire to take it back and thereafter, Corrigendum PPO shall be issued to applicant with full service pension from the date of discharge alongwith arrears of 50% pension which was not released on account of commutation. The entire exercise shall be completed at earliest, preferably within four months from the date certified copy of order is produced to the respondents.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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