

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 875 of 2022**Thursday, this the 01st day of June, 2023**Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)****Hon'ble Maj Gen Sanjay Singh, Member (A)**

No-14241924-H Ex Hony Naib Sub Krishana Pal Singh, Son of Shri Ram Singh, Resident of Village Kachotpura, Post- Kaimthal, Thana-Gounda, Tehsil- Inglash, District- Aligarh- 202124.

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. The Officer-In-Charge, Record Office Signals, Pin- 908770, C/o 56 APO.
4. PCDA(Pension), Draupadi Ghat, Prayagraj - 211014.
5. State Bank of India, Centralised Pension Procession Centre, 3rd Floor Chandni Chowk, Delhi – 110006.
6. The Branch Manager, State Bank of India (06619) Iglas, Aligarh, U.P.- 202124.

..... Respondents

Ld. Counsel for the Respondents : **Shri DK Pandey,****Central Govt Counsel.**

ORDER**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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:-

- “(a). To issue/pass an order or directions to set aside/quash the order dated 10.09.2022 passed by respondent no.-3, Annexed as Annexure No 1 to this Original Application.
- (b). To issue/pass an order or directions to the respondents to grant service pension from the date of stoppage of his pension i.e. December 2009 (say 01.12.2009) along with 12% interest on arrear.
- (c). To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant”.

2. The factual matrix of the case is that applicant was enrolled in the Army on 21.01.1981 and discharged from service with effect from 31.01.2005 on completion of terms of engagements after rendering 24 years and 11 days of service. The applicant was granted service pension after retirement from service vide PPO dated 27.12.2004. The applicant was awarded life imprisonment for involvement in criminal case and his pension was stopped. He was released from jail on 30.04.2022. He preferred

application for grant of pension after release from jail which was denied. Being aggrieved, applicant has filed instant O.A. for grant of pension on release from bail.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 21.01.1981 and discharged from service with effect from 31.01.2005 on completion of terms of engagements after rendering 24 years and 11 days of service. The applicant was granted service pension after retirement from service vide PPO dated 27.12.2004. After retirement, FIR dated 21.07.2006 was lodged against the applicant at Police Station Gaunda, District Aligarh vide Case Crime No 161 of 2006 under Section 25/27 Arms Act, under Section 147, 148, 323, 49/452, 302/149, 504, 506 IPC and Criminal Law Amendment Act. The applicant was sentenced for Life Imprisonment by Court of Additional Session Judge, Aligarh (U.P.) on account of which pension of the applicant was stopped since 01 December, 2009 by the Bank without serving any show cause notice. The reason behind stoppage of pension was that the applicant was convicted in a Criminal case and was incarcerated in jail from 28.07.2006 to 29.04.2022 for 15 years, 09 months and 02 days. He was released from jail on 30.04.2022. Submission made by learned counsel for the applicant is that once the applicant has been released from jail, he is entitled to restoration of pension in accordance with Para 82 (a) & (b) of the Pension Regulations for the Army, 1961. Learned counsel for the applicant pleaded that respondents be directed to release pension of the applicant.

4. Learned counsel for the applicant submitted that the applicant's case is covered with the various judgments mentioned below :-

(a) O.A. No. 26 of 2015, Satyapal Singh vs. Union of India & Others, decided on 21.07.2016 by the AFT, Regional Bench, Lucknow.

(b) O.A. No. 205 of 2012, Ex Hav Ran Bahadur Gurung Vs. Union of India & others, decided on 03.02.2015 by the AFT, Regional Bench, Lucknow.

(c) 1971(2) Supreme Court Cases 330, Deokinandan Prasad Vs the State of Bihar & Others.

(d) O.A. No. 145 of 2013 Satendra Singh Pal vs. Union of India & others, decided on 19.01.2018 by the AFT, Regional Bench, Lucknow.

5. **Per contra**, learned counsel for the respondents submits that after retirement from service, applicant was granted service pension vide PPO dated 27.12.2004. PCDA (P), Allahabad informed that service pension of the applicant has been withheld from December 2009 as per Para 73.1 of DPPI-2013 for being convicted for life imprisonment by Aligarh Court. He submitted that there is no provision to restore service pension for convicted personnel. He submitted that the applicant is not entitled for resumption of pension in view of Para 82 (b) of the Pension Regulations for the Army, Part-I (2008). He pleaded that instant O.A. has no substance and is liable to be dismissed.

6. We have heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents and perused the documents available on record.

7. In a similar matter, 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 rendered in **O.A. No.159 of 2013** and AFT Regional Bench, Chandigarh in **Chandra Singh vs. Union of India**, decided on 10.09.2013 have held that after release from jail, service pension is entitled. 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."

8. Keeping in view the aforesaid observations made by the Armed Forces Tribunal, Regional Bench, Chandigarh, the question with regard to payment of pension 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 released from jail after completion of period of confinement. Otherwise also action of respondents to stop pension without serving show cause notice or without providing opportunity of hearing to the applicant is against the principle of natural justice.

9. 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 pension to the applicant with immediate effect with effect from the date applicant was released from jail.

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

11. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 01 June, 2023

Ukt/-

Learned counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case, the plea is rejected.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Date: 01 June, 2023

