

**Reserved**

(Court No. 3)

(Ser No. 5)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 221 of 2022**Friday, this the 24<sup>th</sup> day of March, 2023**"Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**No. 5843526W Ex Nk (TS) Krishna Bahadur Chhetri Son of  
Shri Bal Bahaur Chehetri R/o Ward No. 16, Lekhnath,  
Pokhara (Nepal).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate  
Applicant

Versus

1. Union of India through, the Secretary, Ministry of  
Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters,  
South Block, New Delhi - 110011.
3. Officer-in-Charge, 39 GTC, Varanasi Cantt-221002.
4. Embassy of India, Pension Paying Office, Pokhara  
(Nepal).
5. The C.G.D.A., Ulan Batar Road, Palam, Delhi Cantt-  
110010.
6. PCDA (P), Draupadi Ghat, Allahabad-14.

.....Respondents

Ld. Counsel for the : **Shri Alok Kumar Mishra**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

1. Being aggrieved with non grant of pension applicant has filed the instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

(i) The Hon'ble Tribunal may be pleased to set aside the order dated 04.03.2022 (Annexure No. A-1).

(ii) The Hon'ble Tribunal may be pleased to issue/pass an order or direction to the respondents to grant service pension and disability pension from the date of stoppage of his pension i.e. May 2013 along with 12% interest of arrear.

(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

(iv) To allow this Original Application with costs.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.06.1976 and was discharged from service on 30.06.1994 after completion of 17 years service for which he was in receipt of service and disability element of pension vide PPO Nos S/010725/1994 and DE/03565/1994 respectively. While at home, being involved in a criminal case, he was convicted and sentenced to imprisonment for a term of 06 years with fine of Rs 1,25,000/- by learned District Court Gulmi Nepal but later, he was released from jail on the occasion of Nepal Republic Day, 2016 after incarceration of 03 years and 02 months. His pension, after conviction, was stopped under

Regulation 8 (a) and 101 (f) of Pension Regulations for the Army-2008 (Part-I). Applicant being released from jail submitted letter dated 28.06.2016 to Officer-in-Charge, Indian Embassy to Nepal for restoration of his pension. The case was taken up with PCDA (P), Allahabad which was further referred to MoD (Army) who vide letter dated 27.11.2021 intimated that pension may not be restored in view of provisions contained in Regulations 101 (b), (g) and note below (c) of Pension Regulations for the Army-2008 (Part-I), hence this O.A.

3. Submission of learned counsel for the applicant is that the applicant, who was in receipt of pension, was involved in a domestic dispute case with his brother Khaljit Khatri Chhetri and was sentenced to jail for a period of 06 years w.e.f. 30.05.2013 with a cash penalty of Rs 1,25,000.00 by the order of learned District Court Gulami in a charge of attempt to homicide. He further submitted that the applicant remained in jail for a period of 03 years and 02 days and after that his punishment was exempted by Nepal Govt on the occasion of Nepal Republic Day, 2016. It was further submitted that on release, he submitted an application dated 28.06.2016 (Annexure A-4 to O.A.) for restoration of his pension, which on being processed through various agencies, was denied vide order dated 27.11.2021 in view of provisions contained in Regulation 101 (b), (g) and note below (c) of Pension Regulations for Army, 2008 (Part-I).

4. Learned counsel for the applicant further submitted that on 19.04.2018 Govt of Nepal, Ministry of Home, Kathmandu issued a certificate regarding his non involvement in criminal case but even then PCDA (P), Prayagraj has not restored his pension and besides this it was intimated by their office on 04.03.2022 that his name is being removed from the pension list. In support of his contention for grant of pension, learned counsel for the applicant has relied upon order dated 08.01.2021 passed by this Tribunal in O.A. No. 601 of 2018, **Nk (TS) Dhruvjit Singh vs UOI & Ors** and order dated 08.10.2021 passed in O.A. No. 151 of 2021, **Sanjeev Kumar Singh vs UOI & Ors**. He pleaded for restoration of pension to applicant.

5. On the other hand, learned counsel for the respondents submitted that applicant, being a pensioner of Indian Army, was convicted for serious crime of homicide by learned District Court Gulmi, Nepal and he was imprisoned in Jail for 03 years and 02 months. It was further submitted that good conduct is an implied condition for continuance of pension in terms of Para 8 (a) of Pension Regulations for the Army, 2008 (Part-II).

6. Learned counsel for the respondents further submitted that as per Para 101 (g) of Pension Regulations for the Army, 2008 (Part-I) if a person is convicted by a foreign court (including Nepal), his pension may be forfeited. It was further submitted that the case was processed for restoration of pension but it was

turned down vide letter dated 27.11.2021 stating that pension may not be restored in view of provisions contained in Regulation 101 (b) (g) and note below (c) of Pension Regulations for the Army , 2008 (Part-II). He pleaded for dismissal of O.A. on the ground that since the applicant was convicted in a criminal offence, he is not entitled to pension.

7. Heard Shri R Chandra, learned counsel for the applicant and Shri Ashok Kumar Mishra, learned counsel for the respondents and perused the material placed on record.

8. Applicant being a Nepalese origin was in receipt of service and disability pension. He was sentenced to jail for a term of 06 years and fine of NRs 1,25,000/- by order dated 09.06.2009 passed by learned District Court Gulmi on the charges of attempt to murder. Consequently, his pension was stopped, however, after remaining in jail from 30.05.2013 to 28.05.2016 i.e. 03 years and 02 days he was released from jail on 29.05.2016 as the remaining period of punishment was exempted by Govt of Nepal on the occasion of Nepal Republic Day, 2016. After release from jail he applied for resumption of pension which was denied by the respondents as per Para 101 (g) of Pension Regulations for the Army, 2008 (Part-II). For convenience sake, the aforesaid Para is reproduced which reads as under:-

"101. If a pensioner is convicted of a crime by court of law or guilty of grave misconduct, the following procedure shall be followed:

(a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended by the Pension Disbursing Authority from the date of his imprisonment and the case reported to the Principal Controller of Defence Accounts (Pensions) for obtaining the order of the competent authority. In a 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.

(b) Crime or offence of serious nature: The competent authority shall decide in consultation with the Principal Controller of Defence Accounts (Pensions) and if necessary, with civil authorities also, whether the offence is a serious one and if so, he shall order the removal of the pensioner's name from pension list, from the date of his imprisonment. Pension thereupon shall cease to be payable from that date.

(c) crime or offence not of serious nature: If the competent authority decides that the offence is not so serious as to justify the removal of the pensioner's name from the pension list, it shall not be removed; the payment of arrears of pension due from the date of last payment before imprisonment shall be made on release from prison.

Note:- Serious crime or offence would mean a crime or offence under the Indian Penal Code or Official Secrets Act. 1923 (19 of 1923) or any other law for the time being in force in the country for which the maximum punishment prescribed under the law is imprisonment for a period of three years or more, with or without fine.

(d) If a pensioner is sentenced to imprisonment for a criminal offence by a lower court but is acquitted, on appeal, by a higher court, the pension withheld shall be restored.

(e) If a pensioner is in imprisonment for debt, pension shall continue to be paid.

(f) If a pensioner is guilty of grave misconduct not falling under the preceding clauses, it shall at once be reported to the competent authority who may, if he considers it justifiable, order the suspension of his pension from a date to be specified. The competent authority shall subsequently investigate the case in consultation with the Principal Controller of Defence Accounts (Pensions) and if

*necessary the civil authorities, (i) either authorize the withholding of pension in whole or in part from a date to be specified by him not earlier than the date of original suspension; or (ii) authorize continuance in full.*

*Note: The expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act. 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.*

*(g) If a pensioner is convicted by a foreign court (including Nepal) or is imprisoned in a jail outside India for a serious crime, his case shall be referred to the Government of India through the Principal Controller of Defence accounts (Pensions) for a decision on the question of reduction/forfeiture or restoration of pension.*

*(h) Where a pensioner is convicted of serious crime by a court of law, action to withhold or withdraw gratuity and pension or a part thereof shall be taken by the competent authority in the light of the judgment of the court and other provisions of this chapter."*

9. Thus, the aforesaid regulation provides that pension may be stopped if a person is found to have committed a grievous offence for which he was convicted.

10. The controversy involved in this case is whether pension may be resumed after conviction in a criminal offence and thereafter, release from jail after imprisonment. Undoubtedly, the applicant was convicted for a term of 06 years but he was released from jail after 03 years and 02 months. He was being granted pension from PCDA (P), Allahabad as he had served in a Gorkha unit stationed in India. Stoppage of pension is a

punitive action and Sections 34 to 70 of the Army Act does not specify conviction after retirement. To arrive at a conclusion it would be relevant to quote Paras 8 and 9 of the Pension Regulations for the Army, Part-I (2008) which are reproduced as under:

*"8. (a) Future good conduct shall be an implied condition for every grant of pension or allowance and its continuance under these Regulations.*

*(b) The competent authority may, by an order in writing, withhold or withdraw a pension or a part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Provided that where only a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of minimum pension fixed by Government from time to time.*

*(c) Where a pensioner is convicted of a serious crime by a court of law or by court martial or is found guilty of grave misconduct, action under clause (b) above shall be taken in the light of the judgment of the court relating to such conviction.*

*(d) In a case not falling under clause (c) above, as well as other cases where the competent authority considers that the pensioner is prima facie guilty of grave misconduct, the competent authority before passing an order under clause (b) above; (i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken against him and calling upon him to submit, within 15 days of the receipt of the notice or such further time not exceeding 15 days as may be allowed by the competent authority, such representation as he may wish to make against the proposal, and (ii) take into consideration the representation, if any, submitted by the pensioner under sub clause (i) above. Notes: 1. The expression 'serious crime' means an offence under the Indian Penal Code 1860 or Official Secrets Act, 1923 or any other law for the time being in force in the country for which the maximum punishment prescribed under the law is imprisonment for a period of 3 years or more with or without a fine.*

*2. The expression grave misconduct includes the communication or disclosure of any secret official*

*code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State.*

9. (a) *In circumstances to be determined by the competent authority or as may be specified in these Regulations, the pension including the commuted value thereof which has not been paid or gratuity to be granted to an individual, or any portion of it, may be withheld, suspended or discontinued. In exceptional cases payment of part or whole of the pension, allowance or gratuity withheld or suspended may, by an order of the competent authority be made to the wife or other dependant(s) of the pensioner.*

(b) *This Regulation may be invoked under the following circumstances – (i) Offences against the State during the period of service, including service rendered upon re-employment after retirement, as listed in Chapter-VI of the Indian Penal Code. Relevant provisions of the Indian Penal Code are reproduced below –*

(1) *Waging or attempting to wage war or abetting waging of war against the Government of India;*

(2) *Conspiracy to commit offence punishable by section 121 I.P.C.*

(3) *Collecting arms etc. with intention of waging war against the Government of India.*

(4) *Concealing with intent to facilitate design to wage war.*

(5) *Assaulting President, Governor etc. with intent to compel or restrain the exercise of any lawful power.*

(6) *Sedition.*

(7) *Waging war against any Asiatic power in alliance with the Government of India.*

(8) *Committing depredation on territories of powers at peace with the Government of India.*

(9) *Receiving property taken by war or depredation mentioned in sections 125 and 126 Indian Penal Code.*

(10) *Public servant voluntarily allowing prisoner of State of war to escape.*

(11) *Public servant negligently allowing such prisoner to escape.*

(12) *Aiding escape of, rescuing or harbouring such prisoner. (ii) Other serious crimes under Indian Penal Code, Official Secrets Act or any other special law of the land and grave misconduct; as defined in Notes to Regulation 8 of these Regulations. (iii) To recover the whole or part of any pecuniary loss caused to the Government in cases where in any departmental or judicial*

*proceedings, the pensioner/individual is found guilty of misconduct or negligence committed during the period of service including service rendered on re-employment after retirement/discharge, leading to the said loss; (iv)Unauthorized by continuing to occupy the residential accommodation including hired one provided by the Government; (v) When a report is received after sanctioning the pension, that departmental or judicial proceedings (for the offences committed while in service or during the period of re-employment) are in progress against the individual; (vi)When an individual obtains re-employment after retirement without obtaining prior permission of the competent authority where required; and, (vii) Any other circumstances considered special by the Central Government.”*

11. We also find that pension being property and granted by following a due procedure of law may not be deprived without due process of law and without compliance of principles of natural justice as held by the Hon’ble Supreme Court in **Wazir Chand vs State of Himachal Pradesh**, AIR 1954 SC 415 and **Biswanath Bhattacharya vs Union of India**, (2014) 1 SCALE 514. In the aforesaid judgments the Hon’ble Supreme Court has reiterated that a person cannot be deprived from property except by following the requirement of Articles 330A and 14 of the Constitution. In the case in hand, admittedly, applicant’s pension was withheld when he was convicted but after release from jail his rights cannot be curtailed keeping in view issue of certificate dated 19.04.2018 by Ministry of Home, Govt of Nepal, issued after release from jail, with regard to his non involvement in other criminal cases, which is against principles of natural

justice. For convenience sake, copy of certificate dated 19.04.2018 is reproduced as under:-

*"This is to certify that Mr. Krishna Bahadur Chhetri KC, son of Mr. Bal Bahadur KC, date of birth 21 Mar, 1960, resident of Isma Neta Village Development Committee, Ward No 1, Gulmi, Nepal, bearer of Nepalese Citizenship No 3973 issued from District Gulmi while conducting necessary investigation in Attempt Murder Case, the verdict made by District Court, Gulmi on 09 Jun, 2009, he was sentenced for six years in prison and fined NRs 1,25,000. Beside that he has no criminal record against him till 18 Apr, 2018, as verified from Central Police Crime database."*

12. The aforesaid certificate issued by Govt of Nepal makes it clear that, besides the offence which he committed and sentenced to jail, he is not involved in other dreadful act which may deprive his pension. In our view stoppage/withdrawal of pension suffers from arbitrary exercise of power and is hit by Article 14 of the Constitution of India.

13. We find that after retirement, an Army person is not subject to Army Act/Rule and a retired soldier having no nexus with Armed forces cannot be dealt with Army Act/Rule for an offence committed in private capacity outside the duty or assignment in the Army. Therefore, fundamental rights of a person of Armed forces to enjoy pensionary benefits cannot be taken away when he is not involved in any criminal offence. Applicant being involved in criminal offence has already undergone imprisonment for the offence he committed, therefore, he cannot be punished again for the same offence by

withdrawing his pension which is hit by Article 20 (2) of the Constitution of India. The action taken against the applicant is a punitive one since it deprives him of the source of livelihood.

14. Executive instructions are framed to supplement Act and Rules and not to supplant them. In this case applicant's pension has been stopped in accordance with Para 101 (g) of Pension Regulations for the Army, 2008 (Part-II) which seems to suffer from vice of arbitrariness affecting his rights conferred under Articles 14, 16, 300 and 300A read with Article 21 of the Constitution of India, hence depriving a retired member of the Armed forces from pensionary benefits on account of involvement or conviction in a criminal case have no nexus with the service and duties with the Armed forces.

15. Article 300A of the Constitution protects the property which includes source of livelihood. A person cannot be deprived of such constitutional right except in accordance to law. It is trite law that pension is a property and it cannot be reduced or taken away by Govt through executive fiat as held by the Hon'ble Apex Court in the case of **Deokinandan Prasad vs State of Bihar**, AIR 1971 SC 1409.

16. Since the applicant has been released from jail after exempting rest of the sentence and no criminal proceedings are pending against him as per certificate dated 19.04.2018, in our opinion stopping his pension is unlawful. In view of the above,

we allow this O.A. directing the respondents to grant him pension w.e.f. 29.05.2016 i.e. the date on which he was set free, but due to law of limitation as held by the Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, applicant is entitled to receive pension w.e.f. three years preceding the date of filing this O.A. which was filed on 22.03.2022. The aforesaid exercise shall be completed within a period of four months from today. Default will invite interest @ 8% p.a.

17. No order as to costs.

18. Miscellaneous application(s), if any, stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 24.03.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**