



**COURT No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No 782 of 2021**

Thursday, this the 12<sup>th</sup> day of May, 2022

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

No. 15617373N GDSM (ACP-I) Sangram Singh, son of Sri Devnath Singh,  
 R/o Tejopur (Baba ka pura), Post-Maunath Bhanjan, District-Mau (U.P.),  
 Pin-275101.

..... Applicant

Learned counsel for the :**Shri Dwijendra Nath Pandey**, Advocate  
 Applicant

Versus

1. The Union of India through its Secretary the Ministry of Defence, South Block, Sena Bhawan, New Delhi, C/o 56 APO.
2. Chief of Army Staff through its Officer-in-Charge/Chairman, Ministry of Defence, New Delhi, C/o 56 APO.
3. Director General of Indian Army Veterans, 104, Cavalry, Maude Lines, Delhi Cantt, New Delhi-110010, C/o 56 APO.
4. Centre Commandant, Record Brigade of the Guards, Brigade of the Guards Regiment, Nagpur, Campiti, Maharashtra, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, C/o 56 APO.

.....Respondents

Learned counsel for :**Shri Ram Saran Awasthi**, Advocate  
 the Respondents. Central Govt. Counsel

## **ORDER**

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

- (a) *Quash the portion of order/letter dated 26.06.2021 thereby request for joining in service or granted provisional pensionary service benefits of the petitioner has been deemed by the opposite party No 4 with all consequential service benefits to meet the ends of justice.*
- (b) *Direct the respondents to allow the applicant to join his duty to his post along with all consequential service benefits OR direct the respondents to grant provisional pensionary service benefits to the applicant with effect from due dates on 01.03.2021 and pay him entire arrears of pensionary service benefits along with compound interest at prevailing market rate from the date of its accrual to the date of actual payment to the applicant in the interest of justice.*
- (c) *Pass such any other order or direction etc which are just proper and appropriate in the facts and circumstances of the case in favour of the applicant and against the respondents to meet the ends of justice.*
- (d) *Allow this O.A. with heavy costs in the interest of justice.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 17.02.2003 and during the course of his service he served at various places including field/high altitude area. While posted with 61 Rashtriya Rifles (RR) he was granted 30 days part of annual leave w.e.f. 06.05.2015 to 04.06.2015. During his leave period he was arrested by civil police on 30.05.2015 and was lodged in civil jail in an alleged crime under Section 307, 324, 506 and 302 of IPC. After being arrested by the civil police the unit authorities published Part II Order dated 24.04.2017 (Annexure CA-1) with regard to his arrest and accordingly, under the provisions of para 4 (a) and 5 (a) (ii) of Army Order 17/2001/DV, his pay and

allowances to the extent of 25% were withheld by the competent authority. Meanwhile, the applicant, while in custody in civil jail, was discharged from service on 29.02.2020 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 on completion of terms of engagement of 17 years (including 04 years and 09 months as non qualifying service). The applicant was enlarged on bail vide Hon'ble High Court Allahabad order dated 19.03.2021. Claim for grant of provisional pension was processed in terms of Para 7 (a) (i) of Pension Regulations for the Army, 2008 (Part-I) but it was rejected by PCDA (P), Allahabad stating that the applicant has not completed mandatory service of 15 years to earn service pension. Applicant had represented his matter for re-instatement in service/grant of pension but the respondents vide letter dated 26.06.2021 have stated that he is not entitled to provisional pension at this stage and it will be considered on his acquittal. Letter dated 26.06.2021 is under challenge in this O.A.

3. Learned counsel for the applicant submitted that there being some scuffle between applicant's father and uncle, his uncle who was suffering from brain haemorrhage, expired in hospital and in that case a FIR was lodged in which applicant, who was not present at that time, was nominated and arrested in case crime No 535 of 2015 under Section 302, 307, 324 and 506 IPC. He further submitted that during the period of his imprisonment, he was discharged from service w.e.f. 29.02.2020 which is illegal and

arbitrary. His other submission is that the applicant was discharged from service after completion of terms of engagement which includes 04 years, 09 months and 02 days while in civil custody, and there being no fault on the part of the applicant, he deserves to be granted service pension after discharge from service. Advancing his submission, learned counsel for the applicant submitted that pension is the fundamental right of an employee and not a bounty as held in the Hon'ble Apex Court judgment in **Deoki Nandan Prasad vs State of Bihar & Ors**, (1971) Supp SCR 634 which was re-affirmed in **State of Punjab and Ors vs Iqbal Singh**, (1976) II LLJ 377 SC and **Dr. Hiralal vs State of Bihar & Ors**, Civil Appeal No 1677-1678 of 2020 decided on 18.02.2020.

4. On the other hand, learned counsel for the respondents submitted that the applicant being on leave was arrested by civil police under Section 307, 324, 506 and 302 of IPC. After being arrested, the casualty was notified vide Part II Order dated 24.04.2017 and his basic pay to the extent of 25% was withheld in terms of Paras 4 (a) and 5 (a) (iii) of Army Order 17/2001/DV. He submitted that while the applicant was in custody he completed his terms of engagement, and he was discharged from service w.e.f. 29.02.2020 after completion of 17 years service under Army Rule 13 (3) III (i).

5. Learned counsel for the respondents further submitted that after discharge from service since trial of the individual was under progress and he was not convicted by the competent court, claim for provisional pension was submitted under the provisions of para 7 (a) (i) of Pension Regulations for the Army, 2008 (Part-I) but it was rejected by PCDA (P), Allahabad stating that the applicant has not completed 15 years mandatory service prior to civil custody. Learned counsel for the respondents pleaded for dismissal of O.A. on the ground that since the applicant has not completed qualifying service to earn service pension, no provisional pension can be granted to him.

6. Heard learned counsel for the parties and perused the material placed on record.

7. Ex Guardsman (Gdsm) Sangram Singh was enrolled in the Army on 17.02.2003. While serving with 61 Rashtriya Rifles Battalion (RR Bn) (JAT) he was granted 30 days part of annual leave for the period 06.05.2015 to 04.06.2015. He was arrested by civil police on 30.05.2015 and placed in civil custody on an alleged crime under Section 307, 324, 506 and 302 of IPC. After arrest the casualty was notified vide Part II Order dated 24.04.2017 and his pay and allowances were also withheld up to 25% of basic pay under the provisions of para 4 (a) and 5 (a) (ii) of Army Order 17/2001/DV. While in civil custody, the applicant

was discharged from service w.e.f. 29.02.2020 on completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954. Under the provisions of Para 7 (a) (i) of Pension Regulations for the Army, 2008 (Part-I), Case for grant of provisional pension was processed vide letter dated 15.09.2020 but it was rejected vide order dated 19.10.2020 stating that the individual has not completed 15 years mandatory service before civil custody.

8. With regard to withholding 25% basic pay of the applicant during civil custody as admitted by the respondents in para 3 of the counter affidavit, we find that the Commanding Officer is empowered to withhold pay and allowances to the extent of 25% under Paras 4 (a) and 5 (a) (ii) of Army Order 17/2001/DV, which for convenience sake are excerpted as under:-

*"4. The following procedure will be followed to withhold pay and allowances :-*

*(a) In cases where the Commanding Officer, by virtue of his authority to convene a Summary Court Martial, is competent to withhold pay and allowances, he will pass necessary orders based on the merits of the case.*

*x x x x x x x x x x*

*5. The guide-lines for withholding pay and allowances under different circumstances are given below :-*

*(a) On suspension or on being placed under arrest.*

*(i) x x x x x x x x*

*(ii) In cases where a grave offence has been committed and it is proposed to withhold pay and allowances. Upto 25 percent of basic pay may be withheld."*

9. Para 7 (a) (i) deals with payment of provisional pension to the discharged/retired/invalided personnel against whom any disciplinary proceedings under the Army Act, 1950 or judicial proceedings are pending. The aforesaid Para for convenience sake is reproduced as under:-

*"7 (a) (i). An individual against whom any disciplinary proceedings under the Army Act, 1950 or judicial proceedings are pending/instituted may, on his retirement/release/discharge/invalidment, be authorized by the Principal Controller of Defence Accounts (Pensions) a provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of the maximum pension which would have been admissible to him on the basis of the qualifying service up to the date of retirement/release/discharge/invalidment, or if he was under suspension on the dates of retirement/release/discharge/invalidment, upto the date immediately preceding the date on which he was placed under suspension."*

10. After discharge from service, applicant's claim with regard to grant of provisional pension was processed by the unit authorities which was denied by PCDA (P), Allahabad vide letter dated 19.10.2020 on the ground that the applicant did not complete qualifying service of 15 years. Extract of letter dated 19.10.2020 is as under:-

*"1. Since, pension is wholly based on the last pay drawn at the time of retirement of the individual. Therefore, Record Office may confirm as to whether, the individual was paid pay and allowance during his civil custody and upto his retirement. If not, then said jail period will not be considered for qualifying service. In such case, the total qualifying service of the individual is only 12 years 03 months and 12 days (from 17.02.2003*

*to 29.05.2015) and he is not eligible for service pension as per Regulation 47 of PR-I (2008)-'unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years'. The provisional pension may be sanctioned to an individual only if he is eligible for service pension.*

*2. Further, as per Regulation 7 (a) (i) of Pension Regulations, Part-I (2008) for Army, an individual against whom any disciplinary proceedings under the Army Act, 1950 or judicial proceedings are pending/instituted, PCDA (P) is competent authority for authorising provisions pension for JCOs/Ors on the basis of the qualifying service upto the date of retirement/release/discharge/invalidment.*

*3. In this case, total qualifying service of the individual is 12 years, 3 months and 12 days (from 17.02.2003 to 29.05.2015) before civil custody, which is less than minimum qualifying service for earning service pension.*

*4. Therefore, the considered view of this office is that the individual may not be eligible for provisional pension unless O I/C Record Office confirmed that full pay and allowances had been paid to the individual during civil custody upto the date of his discharge and counted towards qualifying service."*

11. Thus, keeping in view of aforesaid it is obvious that the applicant had not completed the necessary qualifying service of 15 years at the time when he was discharged from service. Provisional pension on release/discharge/retirement/invalidment can only be granted if an individual is released/discharged/retired/invalided during the period of his civil custody provided he had completed 15 years qualifying service prior to civil custody. Since the applicant had not completed 15

years qualifying service on the date he was placed in civil custody, he is not entitled to provisional pension.

12. In view of the above, O.A. deserves to be dismissed. It is accordingly, dismissed.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand disposed of accordingly.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 12.5.2022  
rathore