

E- Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 406 of 2020****Wednesday this the 27th day of April, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Urmila Devi W/o Late Ex. Nk (TS) Ram Naresh Dubey
Resident of Village- Khajura Kala, Post Office- Jaswal Mehdawal,
District-Sant Kabir Nagar (U.P).

..... Applicant

Learned counsel for the Applicant : **Shri Shiv Nath Goswami, Advocate.**

Versus

1. Union of India, through its Secretary, Ministry of Defence, District Headquarter, Post Office- New Delhi.
2. Chief Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.
3. Officer –In-Charge, Signal Records, Jabalpur, Madhya Pradesh.

.....Respondents

Learned counsel for the Respondents. : **Shri Yogesh Kesarwani,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- (i) *The Hon’ble Tribunal may kindly be pleased to issue an order or direction to the opposite parties to release the pensionary benefits i.e. GPF, AGI, Leave Encashment, insurance, Gratuity, NPA and other admissible retiral dues along with interest, in the interest of justice.*
- (ii) *The Hon’ble Tribunal may kindly be pleased to pass any other order or direction which it deems, just and proper in the circumstances of the matter along with the cost of O.A.*

2. Brief facts of the case are that the husband of the applicant was enrolled in the Army on 23.09.1976 and retired from service on 13.09.1993 on completion of terms of normal terms of service under Army Rule 13 (iii) item 3. In the year 1984 while husband of the applicant was on leave, a FIR was lodged against him for charge of committing dacoity. After expiry of leave, husband of the applicant joined his duty on 08.02.1984. In September 1984, husband of the applicant came on leave and he was arrested by local police under Section 395 IPC which culminated in his conviction in the year 1987 and was sentenced to undergo five years R.I. Husband of the applicant preferred an appeal before Hon’ble High Court, and he was enlarged on bail vide order dated 07.02.1995. After retirement from

army, husband of the applicant was granted provisional pension under the provisions of Regulation 4 of Pension Regulation 1961. Husband of the applicant was not granted retiral dues and service pension as appeal against the conviction was pending disposal in High Court. He preferred T.A. No 21 of 2012 before this Tribunal which was dismissed vide order dated 04.05.2017. Husband of the applicant approached respondents for grant of retiral dues except the final pension which was withheld due to pendency of criminal case. Husband of the applicant preferred representation for payment of retiral dues but till date nothing has been paid to him. Being aggrieved, applicant has filled instant O.A. for grant of retiral dues.

3. Learned counsel for the applicant submitted that applicant's husband while on leave was falsely implicated in a case of dacoity and was awarded punishment of 5 years RI under Section 395 IPC. Against the order of conviction, the applicant preferred appeal No 2171 of 1987 before Hon'ble High Court, Allahabad. He was enlarged on bail vide Hon'ble High Court, Allahabad order dated 07.02.1995 and he joined his duty and the matter is subjudice before Hon'ble High Court. He retired from service on completion of normal terms of service on 13.09.1993. Husband of the applicant is getting provisional pension regularly but retiral dues have not been paid to him. He preferred representation for grant of regular pension

and retiral dues but of no use. He preferred T.A. No 21 of 2012 at this Tribunal which was dismissed vide order dated 04.05.2017. He preferred representation dated 16.11.2019 for grant of retiral dues. He was informed that retiral dues shall be granted to him on finalisation of Court case subjudice before the High Court. Learned counsel for the applicant submitted that law is well settled that on account of pendency of any criminal case, there is no provision to withhold all pensionary benefits i.e. GPF, AGI, Leave Encashment, Insurance, Gratuity, NPA and other admissible retiral dues except final pension and commutation of pension.

4. Learned counsel for the applicant further submitted that husband of the applicant died on 25.03.2021 during pendency of the case leaving behind the applicant and two sons as his legal heirs. Due to death of the sole applicant the criminal case became abated and now does not remain in nature of subjudice. In the changed circumstances the punishment against the crime committed cannot be extended to his dependents. Learned counsel for the applicant submitted that directions be issued to the respondents to release retiral dues to the applicant so that her family may survive.

5. On the other hand, learned counsel for the respondents submitted that husband of the applicant was enrolled in the army on

23.09.1976 and was discharged from service on 30.09.1993 on completion of normal terms of engagement and rendered 17 years and 08 days of qualifying service. Husband of the applicant while in service with 1 Air Formation Signal Regiment was arrested by Civil Police at Basti, Uttar Pradesh on 30.11.1985 under Section 395/397 of Indian Penal Code and was sent to District Jail Basti. Later on husband of the applicant was released on bail on 06.12.1985 by Court of Session Judge, Basti. Later the applicant was convicted for the offence committed under IPC Section 395/397 vide order dated 24.08.1987. The applicant filed Appeal No 2171/87 before Hon'ble High Court of Allahabad against the order of conviction and was released on bail vide order dated 25.08.1987. The matter is still subjudice in the Hon'ble High Court, Allahabad and progress of the case is not known. Applicant was discharged from service on completion of service limit before finalization of criminal appeal. Under the provisions of Para 38 (a) (i) of Pension Regulation for the Army 1961 (Part-1) his pensionary terminal benefits were not paid to him. However, the husband of the applicant was granted provisional pension vide PPO dated 18.07.1996.

6. Learned counsel for the respondents further pleaded that applicant filed Writ Petition No 3954/1996 before Hon'ble High Court, Allahabad which was further transferred to this Tribunal and

renumbered as TA No 21 of 2012. Hon'ble Tribunal had dismissed the TA vide order dated 04.05.2017. Thereafter, the applicant filed application dated 16.11.2019 for grant of retiral dues. Applicant was informed vide letter dated 25.01.2020 that her husband's pension will be restored on finalization of Court Case which is still subjudice. Thereafter applicant submitted legal notice through her counsel for grant of retiral dues and pension. She was asked by the respondents to forward certain documents to process the case for payment of retiral dues. Since, appeal filed by husband of the applicant is pending before Hon'ble High Court, Allahabad, hence the soldier was granted provisional pension and retiral dues were not paid to him. Learned counsel for the respondents prayed that instant O.A. lacks substance and is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the material placed on record.

8. Paragraphs 29 and 29.1 of the Pension Payment Instructions, 1973 deal with the forfeiture of pension which is reproduced as under:-

"29. Forfeiture of Pensions of Class I, II and V Pensions;

The above classes of pensioners are liable to forfeiture of pension if convicted by any Criminal Court of serious crime including political offences or guilty of grave misconduct, should the Pension Disbursing Officer become aware of any case in which a pensioner is sentenced to

imprisonment or is found guilty of grave misconduct, he should forthwith report the matter to the Controller of Defence Accounts (Pensions) with a copy of the order of conviction and sentence and suspend the pension provisionally pending receipt of instructions from the Controller of Defence Accounts (Pensions) as to whether the pension should be withheld, reduced or continued in full. Any permanent deduction of pension that may be decided upon, will be notified to the Pension Disbursing Officer who should note the reduced rate on the pensioner's papers and the payment/Check Register."

"29.1. Forfeiture of Pensions of Class VI and VII pensions;

*Should the Pension Disbursing Officer become aware of any case in which a pensioner is sentenced to imprisonment, he should forthwith suspend the payment of his pension and report the fact to the Controller of Defence Accounts (Pension) for keeping a note in his records. **On release of the petitioner from imprisonment, the Pension Disbursing Officer will obtain an application from the pensioner for restoration of pension and submit it to the Controller of Defence Accounts (Pensions) with a report in IAFA-401 together with the following documents:-***

- i) A copy of the judgment of the Court by which the pensioner was tried and convicted and if an appeal was made a copy also of the judgment of the appellate court;*
- ii) A memo showing the dates from and to which the pensioner was actually in prison, to be obtained from the Superintendent of the jail from which the petitioner was released.*
- iii) A list giving particulars of previous conviction, if any, against the pensioner to be obtained from the Deputy Commissioner or Collector of the District.*
- iv) A memo showing the character on discharge from service, length of service and the date from which petitioner as well as regimental number of the pensioner as shown in the descriptive roll;*

v) A memo showing the date of arrest and the period the pensioner was under police custody as an under-trial pension prior to the date of conviction."

9. It is evident from the above, that in terms of Para 29 or 29.1 of the *ibid* instruction, pension can be forfeited if the pensioner is convicted by any criminal **court** in a serious crime. However, pension can be again restored on **release** of the pensioner from imprisonment. Admittedly, the husband of the applicant was granted provisional pension during his life time while he was enlarged on bail vide order dated 07.02.1995. Husband of the applicant expired on 25.03.2021. After death of her husband, applicant applied for retiral dues and the respondents vide letter dated 22.09.2020 have asked the applicant to submit required documents for grant of retiral dues.

10. The existing rules which apply for the grant of an ordinary pension shall also apply in respect of a gratuity or retiral dues. On an identical issue, the relevant provisions of Pension Regulation for the Army Part I (1961) in ***Smt. Kamla Rani v. Union of India and others*** (OA 504 of 2011 decided on 13.2.2013 by AFT, Chandigarh) observed that the pension has to be restored after the "release" of the pensioner from custody. The word used in the Regulations is "release" and not "acquittal". If word "release" is to be equated with "acquittal" then if the hearing of appeal remains pending for years, in

that event the pensioner would remain without any subsistence during release on bail, which could not be the intention of the framers of the Regulation. The word 'release' has been consciously used and that in the case of release on bail his pension would be restored.

11. In the case of **Major G.S. sodhi Vs. Union of India**, reported in (1991)2 SCC 371 the Court has held that Army Officer was dismissed from service by court martial, no punishment of forfeiture of pension or other service benefits was inflicted by court martial, it was held that dismissed officer was entitled to entire pension, gratuity and provident fund under the Rules. The Court considered Army Act, Rules and Regulations. The Court has held that no order of forfeiture of pension and gratuity was passed by the competent authority.

12. The husband of the applicant, was convicted under Section 395 of the Indian Penal Code but after release on bail, he was allowed to continue his service and after discharge, he was granted provisional pension also. After the death of an employee, he cannot be punished either for the act of misconduct or having been convicted in criminal trial for offence under Section 395 of the Indian Penal Code or on other reasons. The applicant after the death of her husband cannot be denied retiral dues.

13. For the reasons aforesaid, we are of the view that the action of the respondents in not granting retiral dues after release on bail and on death of husband of the applicant is wrong and illegal. After death of the husband of the applicant, the rules make her entitled for grant of retiral dues.

14. In such a situation, we are of the opinion that urgent action is required to be taken by the respondents to provide immediate relief to the widow so that she can survive in the last days of her life. Therefore, the respondents are directed to grant retiral dues which had been withheld for so many years (i.e. from 1993) to the applicant after completing necessary formalities. Retiral dues include any pending one time dues related to Provident Fund, Group Insurance, Leave Encashment, Gratuity e.t.c.

15. In view of the above, the Original Application deserves to be allowed, hence **allowed**. We direct the applicant to submit required documents asked by the respondent within one month from today. On receipt of documents, respondents shall grant retiral dues to the applicant as per rule. The respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to

pay interest @ 8% on the amount accrued from due date till the date of actual payment.

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 27 April, 2022

Ukt/-