

RESERVED
COURT NO 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No 403 of 2022

Friday, this the 03rd day of May, 2024

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"

No JC-700415F Ex Subedar (Clerk) Dipak Kar, S/o late Amar Kumar Kar, R/o-C/o Hafizul Hasan, Subhani Khera, P.O.-Dilkusha, Distt-Lucknow, PIN-226002 (UP).

...Applicant

Counsel for the applicant: **Shri KP Datta**, Advocate

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, AMC Records, Lucknow, Pin-226002.
4. O/o PAO (OR) AMC, Lucknow, Pin-226002 (UP).
5. O/o PCDA (Pension), Draupadi Ghat, Allahabad-211014.

.... Respondents

Counsel for the: **Shri GS Sikarwar**, Advocate
Respondents Central Government Counsel

ORDER

1. Bring aggrieved by wrong fixation of basic pay, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:-

- (a) *To issue/pass an order or directions to the respondents to re-fix/revise his band pay and pay matrix from 50,500/- to Rs 52,000/- similar to his batchmates and juniors as per directions issued by Govt of India on 26.02.2019 and relevant orders passed in similar cases by the Hon'ble Tribunal.*
- (b) *To issue/pass an order or direction to the respondents to grant him enhance rate of service pension and other retiral dues after correct fixation of band pay alongwith arrears and interest @ 18% on arrears accrued to the applicant after revision of his band pay and pay matrix alongwith due drawn audit report w.e.f. 29.02.2020.*
- (c) *To issue/pass an order or directions to the respondents to refund the amount of Rs 2,86,892/- wrongly deducted in the FSA before discharge from service w.e.f. 29.02.2020 alongwith interest @ 18% duly adjusted his HRA and increment from time to time.*
- (d) *To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*
- (e) *To allow this application with cost.*

2. Facts draped in brevity are that the applicant was enrolled in the Army on 26.02.1990. During the course of his service, he was promoted to the rank of Subedar w.e.f. 01.12.2016. He was discharged from service w.e.f. 29.02.2020 (AN) in terms of Rule 13 (3) I (i) (a) of Army Rules, 1954 after completion of 30 years and 03 months

service. He was granted service pension @ 27,850/- per month vide PPO No 185202000618-0100 dated 20 Feb 2020. Final Settlement of Accounts (FSA) of the applicant was issued in the month of February, 2020 by which an amount of Rs 2,86,892/- was deducted from his ledger account. In regard to this, applicant had submitted dispute form on 29.02.2020 (Annexure A-6 to O.A.) mentioning therein that his basic pay was wrongly fixed and house rent allowance was illegally recovered/not paid as per entitlement. This anomaly was projected to PAO (OR) AMC by AMC Records on 03.03.2020 to which reply was received mentioning therein that 'reduced HRA means rate of HRA applicable reduced by 5 percent. However, the reduced amount cannot be less than the lowest rate of HRA applicable to class z cities/towns. Allowance is available provided employee is required to stay in barracks, as a functional requirement accommodation is not available for the dependents at SPR. If employee is staying in barracks by choice or government accommodation is available at SPR, no HRA is payable. Requisite Appendix 'E' i.e. non availability certificate (NAC) for claiming HRA from SPR station'. The applicant was required to submit requisite documents for adjustment of HRA, but the same seems to have not been submitted by

the applicant. This O.A. has been filed for re-fixation of correct basic pay, adjustment of HRA and refund of amount deducted through FSA.

3. Learned counsel for the applicant submitted that batch mates and personnel junior to the applicant are getting band of pay of Rs 52,000/- p.m. whereas applicant's band pay has been fixed to Rs 50,500/- thus making a huge difference of Rs 1,500/- p.m. He further submitted that Ex Subedar (Clerk) Pabitra Kumar Hazra and Ex Subedar (Clerk) Madan Mohan Mishra, who are close to applicant's seniority, have been granted grade pay of Rs 52,000/- p.m. It is thus submitted that applicant's service pension has been fixed less compared to his colleagues.

4. Learned counsel for the applicant further submitted that a huge amount of Rs 2,86,892/- has been wrongly deducted in the form of increment, HRA and other pay and allowances in the FSA 02/2020 before discharge from service and till date the amount has not been refunded. Learned counsel for the applicant argued that as per SAI 1/S/2008, the pay of the applicant was to be fixed in a manner which was more beneficial to him irrespective of giving an option or not. The learned counsel further submitted that even if the applicant did not submit option

certificate for shifting to new pay scale, it was incumbent on the respondents to fix it in the manner beneficial to him as per the SAI. The learned counsel, therefore, prayed that the respondents be directed to correctly fix the applicant's pay which is more beneficial. He pleaded for correct fixation of band pay/pension, refund of amount deducted through FSA and grant of his due HRA.

5. In support of his contention, learned counsel for the applicant has relied upon order dated 04.01.2018 passed in O.A. No. 156 of 2016, **Hav Jog Dhyan Sharma Vs UOI & Ors**, order dated 19.02.2021 passed in O.A. No. 194 of 2018, **Anil Kumar Singh vs UOI & Ors**, order dated 23.02.2021 passed in O.A. No. 368 of 2019, **Ex Hav Ajeet Kumar vs UOI & Ors** and order dated 23.02.2021 passed in O.A. No. 37 of 2020, **Hav (AA) Shiv Saran & Ors vs UOI & Ors**. Learned counsel for the applicant has also relied upon order dated 10.12.2014 passed by AFT (PB), New Delhi in O.A. No. 113 of 2014, **Sub Chittar Singh & Ors vs UOI & Ors** and decision of the Hon'ble Supreme Court in **UOI & Ors vs P Jagdish & Ors**, 1997 (3) SCC 176.

6. Per contra, learned counsel for the respondents submitted that band pay of the applicant has been revised to Rs 52,000/- on the basis of Part-II Order No

0/0550/001 dated 07.08.2019 and the difference of amount has been paid to the applicant in the month of April, 2022. He further submitted that LPC-cum-Data sheet duly vetted by PAO (OR) AMC in respect of the applicant has already been uploaded on the web portal of SPARSH which is developed by PCDA (P), Allahabad for issuance of Corrigendum PPO. The same has been approved by PCDA (P), Allahabad. The entire process will take few months as the multiple agencies are involved in the process for issuance of Corrigendum PPO.

7. Learned counsel for the respondents further submitted that in response to applicant's online grievance dated 22.07.2020, representation dated 18.09.2020 and 30.01.2022, matter was referred to PAO (OR) AMC who submitted reply dated 26.05.2022 intimating all details. In the reply, the applicant was advised to submit mandatory documents for processing of house rent allowance claim, which have still not been received from the applicant. He pleaded for dismissal of O.A. stating that applicant's pension has already been revised and documents with regard to claim pertaining to house rent allowance have not been received from the applicant.

8. Heard learned counsel for the parties and perused the record.

9. The controversy involved in this case is related to deduction of HRA and other allowances at the time of discharge from service through Final Settlement of Account (FSA). The applicant was enrolled in the Army on 26.02.1990 and he was discharged from service on 29.02.2020 (AN) in the rank of Subedar. He was granted service pension vide PPO No 185202000618-0100 dated 20.02.2020. The grievance of the applicant are of three folds i.e. applicant's basic pay is to be fixed to Rs 52,000/- instead of Rs 50,500/-, amount deducted through FSA is to be refunded and HRA should be granted as per prevalent rate.

10. During the pendency of O.A. respondents have filed supplementary affidavit in which it is stated that applicant's basic pay has been revised from Rs 50,500/- to 52,000/- on the basis of Part-II Order No 0/550/001 dated 07.08.2019 and amount of Rs 63,534/- has been paid to the applicant in the month of April, 2020 which learned counsel for the applicant conceded.

11. On 23.12.2023, respondents have filed supplementary affidavit annexing Appendix 'A' in which details of recoveries have been reflected. On perusal of the appendix, we find that the recoveries are of old period, which the respondents should not have recovered

at the time of discharge. These are required to be refunded to the applicant in view of the Hon'ble Supreme Court judgment in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer)**, 2015 AIR SC 696 and **Thomas Daniel vs State of Kerala & Ors**, Civil Appeal No 7115 of 2010 decided on 02.05.2022.

12. The respondents have disallowed difference of HRA (19%-8%=11%) amounting to Rs 1,60,842/- due to non production of Appendix from SPR Station (Station Headquarters Pune). While filing supplementary rejoinder affidavit, learned counsel for the applicant in para 6 of the affidavit has stated as under :-

“6. That, as per Appendix 'E' to IHQ of MoD (Army) letter ZNo |A/20038/Appx 'J'/MP-9 (I to R) dated 16 Mar 2018 for HRA for the periods from 01 Jul 2017 to 29.02.2020, application for claiming HRA and NAC has been issued by Stn HQs, Pune is being annexed as Annexure No SA-3 to this affidavit, and the HRA for the periods has been adjusted by PAO (OR) AMC in monthly pay slip-12/2018 and 01/2020 as per the Part-II Order published by AFMC Pune duly signed and obtained sanction from Stn HQ Pune as per Appx 'E' to IHQ of MoD (Army) letter dated 16.03.2018.”

13. In supplementary rejoinder affidavit, learned counsel for the applicant has categorically stated that the requisite documents have already been submitted to the respondents duly signed by Station Headquarters, Pune. In the circumstances, when the requisite documents are stated to be with the respondents, we are of the view that

balance percentage of HRA may be granted to the applicant based on documents available on record.

14. In view of the above, applicant is directed to provide requisite documents to the respondents, if not already submitted. The respondents are directed to refund Rs 1,60,842/- to the applicant which was deducted through FSA on account of HRA. Respondents are also directed to refund other amount (as per Annexure 'A' to CA) which was deducted at the time of FSA. Respondents are further directed to comply this order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% p.a.

15. The O.A. is **allowed**, accordingly.

16. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 03.05.2024

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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 403 of 2022

Ex Subedar (Clerk) Dipak Kar

Applicant

By Legal Practitioner for the Applicant : Shri KP Datta, Advocate

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents :Shri GS Sikarwar, Advocate

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="578 1596 716 1626"><u>03.05.2024</u></p> <p data-bbox="578 1631 1187 1669"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="578 1674 1187 1712"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="675 1768 951 1803">Judgment pronounced.</p> <p data-bbox="675 1822 1057 1857">O.A. No. 403 of 2022 is allowed.</p> <p data-bbox="675 1876 1471 1911">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="597 2018 948 2088">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="578 2088 662 2115"><i>rathore</i></p> <p data-bbox="1235 2018 1536 2088">(Justice Anil Kumar) Member (J)</p>