

Reserved
Court No.1

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

O.A. No. 149 of 2018

Wednesday, the 10th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Sep Pani Ram (No. 1289447) S/o late Shri Daulat Ram
R/o Village-SANGER, PO-NAIL (Via Jalna) Tehsil- JAITI,
Distt: ALMORA (UTTARAKHAND).

.....Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Additional Dte Gen Territorial Army General Staff Branch IHQ of MoD (Army) 'L' Block, Church Road New Delhi-110001.
3. Station Commander, Pithoragarh Military Station, Pithoragarh (Uttarakhand)
4. Officer-in-Charge Records, the Kumaon Regiment Ranikhet (Uttarakhand)
5. Commanding Officer 130 Infantry Battalion PO: BHARKATIA, Distt: PITHORAGARH (UTTARAKHAND)
6. PCDA (Pensions) Allahabad (UP)

.....Respondents

Ld. Counsel for the Respondents: **Shri R.C.Shukla,
Advocate**

ORDER

Per Justice SVS Rathore, Member (J)

1. By means of this O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

“(i) to grant disability pension to the applicant @ 80% to be rounded off to 100% for life with effect from 1st January 2012 (the date of his discharge from service)

(ii) to grant interest @ 12% p.a. on the arrears of disability pension with effect from 1st January 2012 till the date of the actual payment of the same.

(iii) to award the cost of this O.A.

(iv) to award the adequate compensation to the applicant as against the respondents for the pain and agony suffered by him for last six years and

(v) to grant any other relief or reliefs which the Hon’ble Tribunal; may deem fit and just proper in the facts and circumstances of the case and in the interest of justice.”

2. In brief, the facts of the case, as averred by the applicant in his OA, may be summarized as under:

After serving for about 25 years in Infantry of the Regular Army, the applicant got re-enrolled in the Territorial Army as a full time soldier on 1st August, 2007. While serving in Territorial Army, on 05.04.2009 the applicant was granted 10 days’ part of annual leave from April 15 to 24, 2009 to proceed to his home which at a distance of a few kms from his Unit where he was

posted. After availing the said leave, on 24.04.2009 when the applicant was coming back on his scooter to rejoin his duty, he met with a serious accident by a civil truck. Initially, the applicant was evacuated to the District Hospital, Pithoragarh, from where he was shifted to 161 Military Hospital at Pithoragarh. On 25.04.2009, the applicant was evacuated by helicopter to the Base Hospital, Lucknow, where his right leg was amputated up to above knee. The applicant was thereafter shifted to Artificial Limb Centre, Pune. On 14.09.2009 he was discharged and was granted 28 days' sick leave with the instruction to report back to Artificial Limb Centre. After expiry of sick leave, the applicant was re-admitted to Artificial Limb Centre on 11.10.2009. On 21.10.2009, the Medical Board was held at Artificial Limb Centre and it assessed the applicant's disability to be 80%. The Medical Board, however, could not give any opinion about the attributability aspect of the injury. On 07.11.2009 the applicant was discharged from Artificial Limb Centre, Pune with instructions to report back to his Unit. The applicant reported back to his unit on 09.11.2009.

3. As per Regulation 520 of the Regulations for the Army, 1987, a Court of Inquiry (Col) was held from 13.11.2009 onwards to investigate into the circumstances under which the applicant had sustained injury. The finding of Col was that the injury sustained by the applicant was attributable to military service and it was not due to his own negligence. The said finding of the Col was duly approved by the Station Officer

respondent No. 3 on 11.01.2010. On 25.10.2011 a Re-categorization Medical Board was held at Artificial Limb Centre, Pune which maintained applicant's disability at 80% and declared it as attributable to military service. Subsequently, on the basis of opinion of Invaliding Medical Board (IMB) held on 01.01.2012, the applicant was invalided out of service with 80% disability, which was attributable to military service.

4. The claim of the applicant is that as per Regulation No. 292 of the Pension Regulation for the Army, 1961, grant of pensionary award to the members of Territorial Army is governed by the same general regulations as are applicable to the corresponding personnel of the Army and consequently, Regulation 173 of the Pension Regulations for the Army, 1961, which governs the grant of disability pension to the personnel of the regular Army, would apply to the applicant also. Accordingly, the applicant is entitled to disability pension and also the benefit of its rounding off.

5. **Per contra**, it has been pleaded by the Respondents in their counter affidavit that the applicant after discharge from mechanized infantry as a pensioner was re-enrolled in 130 Infantry Battalion (Territorial Army), Ecological Task Force, Kumaon on 01.08.2007 as an ESM. At the time of enrollment, he was explained about the terms of engagement as applicable to a person enrolled in Ecological Battalion as laid down in TA Enrollment form and it was signed by the applicant. The facts

regarding the applicant suffering disability in the incident and the finding of Col are admitted by the Respondents. The Respondents have also pleaded the reason for non-holding of Release Medical Board (RMB) of Territorial Army personnel. According to them, the discharge of the TA personnel is controlled by the concerned authority and not by the Record Officer and the medical authority does not hold RMB of TA personnel for want of release order issued by the Record Officer. The Respondents have further pleaded that the applicant is not entitled for any pensionary award for the services rendered by him in 130 Infantry Battalion (TA) Ecological Kumaon as clarified in GoI, MoD letter dated 31.03.2008, hence holding of RMB was of no avail. It has also been averred that against the order passed in Writ Petition No.979 of 2012, the applicant had filed Special Appeal No. 228 of 2014 in Uttarakhand High Court at Nainital, which has been finally dismissed as withdrawn on 13.11.2017.

6. We have considered the rival submissions and perused the record.

7. Learned counsel for the applicant has submitted that since the applicant, after availing the leave granted to him, was coming back on his scooter to rejoin his duty when he met with a serious accident by a civil truck, he has to be treated to be on duty. This point has been considered by Hon'ble Delhi High Court in the case of **Hav Rohtas versus Union of India and**

others, reported in *2006 SCC Online Del 1280*, wherein on similar facts, the applicant therein was held to be on duty. This fact, however, will not assume much importance in this case because in the present case, a Col has also given a finding that the injury sustained by the applicant was attributable to military service. At this stage, we would like to reproduce the finding of the Col, as under:

“OPINION OF THE COURT

1. *No. 12898477 Sep Pani Ram was gtd 10 days PAL wef 15 Apr to 24 Apr 2009.*

2. *The Court is of the opinion that the indl Sep Pani Ram sustained the injury Amputation Above Knee (Rt)” due to accident with civ truck while he was on his way to Coy loc for joining after lve. Injury of the indl is attributable to Military Service.*

Presiding Officer : Sd/-
TA-42618A
Maj Pawan Rauthen

Members: (1) Sd/-
JC-540008X
Sub Basudev Singh

(2) Sd/-
JC-5400395X
Nb Sub Bhagwan Singh”

The Commanding Officer agreed with the opinion of the Col. The opinion of the Commanding Officer is reproduced below:

OPINION OF THE COMMANDING OFFICER

1. *I agree with the opinion of the Court.*

2. No. 12898477 Sep Pani Ram was sustained injury "AMPUTATION ABOVE KNEE (RT)" in road accident while he was en route after expiry of 10 days Part of Annual Leave. The injury sustained by the individual while enroute for rejoining mil duty is attributable to military service.

3. The injury sustained by individual is not due to negligence and nobody is to be blamed for the same.

Station: C/o 56 APO

Date: 24 Nov 2009

Sd./-

(Rakesh Singh)

Col

Commanding Officer"

8. Thus, the point that remains to be considered is whether the applicant being a member of Territorial Army, Ecological Task Force, Kumaon is entitled to pensionary benefits or not. Learned counsel for the applicant has drawn our attention towards Regulation 292 of the Pension Regulation for the Army, 1961, which reads as under:

"292. The grant of pensionary awards to members of the Territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of regulations in this chapter."

9. In Pension Regulations for the Army (2008) Part-I, similar Regulation No. 186 exists, which reads as under:

"186. All Territorial Army personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15

years in the case of Personnel Below Officer Rank, shall be eligible for service pension.”

10. This aspect has been considered by the Hon'ble Apex Court in the case of **Santosh Devi versus Union of India and others**, reported in AIR 2016 SC 2213. The Hon'ble Apex Court has observed as under:

“13. A plain reading of the aforesaid provision makes it clear that the grant of pension award to personnel of the Territorial Army is governed by same general pension regulation as applicable to regular army personnel except wherever it is dealt with differently in the said regulations. Therefore, unless an exception has been carved out in the case of personnel of the Territorial Army, the Pension Regulations for the Army 1961 would govern the field in the matter of grant of various pensionary awards. This is made further clear from paragraph 3 (ii) of Government of India, Ministry of Defence Circular No.68699/221/GSITA-3(a)/1131/B/D(GS-VI) dated 11th June 1985 which reads as under:-

“3.(ii).Death-cum-retirement-Gratuity and ordinary Family Pension will be admissible, as applicable to the Regular Army.”

This has also been further reiterated in the circulars dated 03.02.1998 and 12.11.2008 issued by the Government of India, Ministry of Defence which are made applicable to the Territorial Army amongst others.

14. Plea urged by the appellant was that while the wife of a regular army soldier, who dies in harness is entitled to family pension even if the deceased soldier had not put in the minimum qualifying service to earn service pension, the same is denied to wife of a deceased Territorial Army soldier on a specious plea that the deceased soldier was in disembodied state when the death took

place. This according to the appellant is discriminatory. By elaborate reasoning, the tribunal held that a regular army person and a person enrolled in the Territorial Army are governed by different set of terms and conditions of service. They are not similarly situated and therefore they do not form part of the same class in the matter of grant of service benefits and hence, there cannot be a violation of Article 14 of the Constitution of India. We concur with the view taken by the tribunal. It is therefore not necessary for us to refer to number of judgments relied upon by the learned counsel for the appellant as those cases were determined in the light of facts and circumstances of those cases.

15. No doubt, with effect from 01.07.2008, new Pension Regulations for the Army 2008 have come into operation superseding the earlier one. In Section 2-Ordinary Family Pension of the new Regulation of 2008, Regulation 62 lays down that the regulations shall not apply to members of the Territorial Army other than those who died while rendering embodied service or after retirement with pension under these regulations. Learned counsel for the Union of India laid emphasis upon the Pension Regulations for the Army 2008 to contend that, as Raj Singh died while in disembodied state, appellant-wife was not entitled to family pension. In the preface of the said regulations issued by the Government of India, Ministry of Defence dated 01.07.2008, it is specifically mentioned that it is applicable to army personnel who are in service as on 01.07.2008. In the present case, it is an admitted position that the deceased-Raj Singh was disembodied on 31.03.2008 much before the new regulations came into effect. Therefore, he was not in service on 01.07.2008 and hence new regulations cannot be pressed into service. The new regulations are applicable only to those who were in service as on 01.07.2008 or thereafter. Therefore, the claim of the appellant cannot be tested on the new Pension Regulations for the Army 2008.”

11. In this context, the letter of MoD dated 31.03.2008 filed alongwith the counter affidavit is very important. The relevant part of this letter, which deals with the pay and allowances of Territorial Army personnel, Ecological is reproduced as under:

*“(d) **Pay and Allowances.** Territorial Army personnel on the roll of this unit/company will be governed by the provisions as given below:*

(i) All Territorial Army personnel, not on permanent staff, will be entitled to only the minimum basic pay of their rank and service group in which they are employed in Ecological units. Appropriate percentage of dearness allowances as admissible from time to time will also be admissible in addition.

(ii) Under the revised terms and conditions, no increment will be admissible to ex-servicemen irrespective of their length of service in the Ecological Task Force other than TA personnel on perm staff.

(iii) Other allowances like Compensation in lieu of Quarter, Children Education Allowances, Hill compensatory allowance, High altitude allowances, House Rent Allowances and Road Mileage Allowances will continue to be admissible, where applicable as hither-to-fore till further orders.

(iv) Pension entitlement of Territorial Army personnel earned for the earlier regular Army services, will remain untouched and will be ignored in fixing their pay and allowances.

(v) The individual will not be entitled to any pensionary benefits for the service rendered in the Ecological Task Force of Territorial Army.”

12. Before proceeding further, we would like to mention that in the OA, the applicant has not mentioned that he was re-enrolled in Ecological Task Force of TA. The fact of his re-enrollment in Ecological Task Force of TA was mentioned in para 4 the counter affidavit, which reads as under:

“4. That No. 12898447W Ex Sepoy Pani Ram (hereinafter referred to as petitioner) after discharge from Mechanized infantry as a pensioner was re-enrolled into 130 Infantry Battalion (Territorial Army) Ecological Task Force, Kumaon on 01 Aug 2007 as an ESM. The Petitioner was posted to K Company which is being funded by Ministry of Environment & Forest (MoEF). At the time of enrolment, he was explained about terms of engagement as applicable to a person enrolled in Ecological Battalion as laid down in TA Enrolment form and it was signed by the petitioner.”

13. In reply to above categorical averment on behalf of the respondents, the applicant has averred in para 4 of his rejoinder affidavit as under:

“4. That while the first part of Para No. 4 of the CA which relates to the applicant having got enrolled in the Territorial Army on 01 August 2007 is admitted, the second part of the said Para No. 4 of the CA is not admitted. It is denied that the applicant, while getting enrolled in the Territorial Army had signed some papers by which he is alleged to have waived his Fundamental Rights to get pension to which he was entitled as per rules. It may be pointed out that there can be no waiver of Fundamental Rights, even if the applicant was made to sign any such paper. At any rate the authenticity of such paper cannot be accepted by the Hon'ble Court unless a true copy of the same had been produced by them on affidavit, which has not been done.”

14. Thus, from the pleadings, it is clear that the applicant was re-enrolled in Ecological Task Force of TA and this fact was not denied by him. He has impliedly admitted this fact and has also impliedly accepted that certain conditions relating to pension had been signed by him. However, he has challenged the said conditions on the ground that they amount to denial of pension. His submission is that to get pension is a fundamental right and any such condition in violation of fundamental rights is void.

15. We don't find any substance in this submission because to get pension is not a fundamental right but an incidence of service. Had it been so, every employee working in a private company would have claimed pension as a fundamental right. Further, if to get pension had been a fundamental right, then the scheme of pension could not have been withdrawn by the Government of Uttar Pradesh. The submission is, therefore, devoid of merit.

16. That apart, some of the documents filed by the applicant himself show that he was a member of Ecological Task Force of TA. It is true that had he been in regular Army, then the conditions in which he sustained injury resulting in disability to him, would have rendered him entitled to get disability pension, but the claim of the applicant is based on Regulation 292 of the Pension Regulation for the Army, 1961, reproduced above. A plain reading of the said regulation makes it clear that the grant of pensionary awards to members of the Territorial Army shall

be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Army Regulations. Admittedly, the applicant was not a member of regular Territorial Army, but he was a member of Ecological Task Force, which is entirely different from regular Territorial Army. In order to appreciate it in a better perspective, we would like to consider the concept and purpose for which the Ecological Task Force (ETF) came into being.

17. The concept of ETF was first initiated by the Indian government in 1980 to undertake ecological restoration work in terrains rendered difficult either due to remote location, severe degradation or risky law-and-order situations. The other important objective of this project was to promote and provide meaningful employment to local ex-servicemen in the Territorial Army (the country's second line of defence after the regular Army).

The idea behind ETF battalions was to infuse military-like work culture and commitments into high-priority eco-projects. Under this scheme, these battalions would be raised by the Ministry of Defence while their operational expenditure would be reimbursed by the Ministry of Environment and Forests. Raw materials (like sapling, equipment and fencing) and technical guidance would be provided by the state forest departments.

After restoration, the eco-regenerated areas would be handed over to the concerned State department while the self-sufficient ETFs would be redeployed elsewhere in the State. Interestingly, it was Nobel laureate Norman Borlaug who had suggested that the retired soldiers of the Indian Army be utilized to check ecological degradation.

18. Thus, the purpose of establishing ETFs of the TA was entirely different. Their duties and task are also not similar to those which are performed by regular TA personnel. The regular TA personnel have to work also in active service areas and they can be deployed in other operational areas. Their duties are exposed to hazards to human life like regular Army, which is not in the case of ETFs. Therefore, a separate scheme and service conditions have been created for the members of ETF. We have mentioned the said conditions in earlier part of this order, which are contained in the letter of MoD dated 31.03.2008. Sub-clause (x) of Column (d) of the said letter, which deals with the Pay and Allowances of ETF personnel, in unequivocal terms says that individual will not be entitled to any pensionary benefits for the service rendered in the Ecological Task Force of Territorial Army. There is no denying of fact that this service condition was accepted by the applicant while joining ETF. However, he has challenged the same saying that denial of pension is in violation of fundamental rights. We have already considered this point in earlier part of this judgment and our finding is that to get

pension is not a fundamental right, but only a service condition. The applicant, while joining the ETF, must have been aware of the said service conditions of ETF and now he cannot challenge the same on the ground that the same is unconstitutional or in violation of his fundamental rights. As already observed, to get pension is an incidence of service; it has no concern with one's fundamental rights. Applicant is getting normal pension for the service rendered by him in regular army. The said argument of learned counsel for the applicant, therefore, has no substance.

19. Though we have full sympathy with the applicant, who lost his right leg due to injury caused in a serious accident, but keeping in view the specific provisions of law denying grant of pensionary benefits to ETF personnel, we cannot have a liberal view to grant him any pensionary benefits including disability pension.

20. In the instant case, injury sustained by the applicant, which resulted into his 80% disability was found by the competent authority to be aggravated and attributable to military service. The right leg of the applicant was imputed below knee. In the peculiar facts and circumstances of the case as aforesaid, therefore, we hope and trust that the respondents shall consider the case of the applicant for grant of reasonable amount of compensation.

21. Learned counsel for the applicant has placed reliance on certain case laws. After perusal of the same, we find that in all these cases, the entitlement to disability pension in respect of TA personnel has been considered and in none of these cases, right to get disability pension by individuals belonging to ETFs of TA has been considered. Since the applicant was a member of ETF of TA having different service conditions, the said case laws are, therefore, of no help to the applicant.

22. Accordingly, this O.A. lacking in merit deserves to be dismissed and is hereby **dismissed**. The prayer of the applicant for grant of disability pension is hereby rejected.

There would be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Oct 10, 2018
LN/-