

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 262 of 2023

Tuesday, this the 10th day of October, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Lt Gen Anil Puri, Member (A)

Service No. 14424267-X Ex Spr Lal Mani Rai
S/o Late Devi Prasad Rai
R/o Vill – Duhia, Post Office – Tarighat,
Dist – Ghazipur (UP) - 232332

..... **Applicant**

Ld. Counsel for the : **Shri V.P. Pandey, Shri R.K. Singh**
Applicant **& Shri D.K. Dixit, Advocates**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer Incharge Records, The Bengal Engineers Corps, Pin – 908779, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj – 211014.

..... **Respondents**

Ld. Counsel for the : **Shri Arun Kumar Sahu,**
Respondents **Central Govt. Counsel**

ORDER

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

“(a) To issue/pass an order or direction to the respondents to revise the pension as per the existing law on the subject.

(b) To issue/pass an order or direction to the respondents to pay arrears incurred after revision of pension from the date entitled from 01 Jul 2014 for till date.

(c) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(d) Cost of the Original Application be awarded to the applicant.”

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 06.10.1960. On completion of seven years of service, the applicant was transferred to Reserve Service on 06.10.1967. The applicant was recalled to colour service w.e.f. 01.11.1971 and transferred to pension establishment w.e.f. 31.10.1975 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfillment of conditions of enrolment. The applicant was granted reservist pension @ Rs. 15/- per month from 01.11.1975 vide PCDA (P) Allahabad PPO dated 31.03.1976 and pension was revised from time to time as per Govt. orders and instructions. The applicant came to know that his pension has not been revised correctly as per 6th & 7th CPC which should be Rs. 11,420/- granting benefit of OROP but he is in receipt of Rs. 9000/- per month only. In this regard, applicant submitted an appeal dated 06.10.2010 for revision of his pension but the same was rejected by the respondents vide letter dated

16.11.2010. Being aggrieved, the applicant has filed instant O.A. for revision of his pension by enhancing the reservist pension.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Army on 06.10.1960 and discharged from service on 31.10.1975 under Rule 13 (3) III (i) of Army Rules 1954 on fulfilling the conditions of his enrolment after rendering 15 years and 25 days of service. The applicant also participated in 1971 war. The applicant submitted an appeal dated 06.10.2010 for revision of his pension but the same was rejected by the respondents vide letter dated 16.11.2010. The applicant is entitled for revision of pension as per Pension Regulations for the Army, 1961 (Part-1), wherein it is provided that Reservist Pension @ $2/3^{\text{rd}}$ of lowest pension of a Sepoy be granted to a Reservist pensioner. Therefore, the applicant is also entitled to get the enhanced reservist pension @ Rs. 4443/- w.e.f. 01.07.2014.

4. Learned Counsel for the applicant further submitted that applicant deserves parity to the judgment and order of Armed Forces Tribunal (RB), Chennai in OA No. 156 of 2017, **Ex L/Nk Yenumula Sivaramayya vs. Union of India & Others**, decided on 29.01.2019 wherein the issue of reservist pension has been adjudicated and it has been held that as per 6th CPC reservist pension was refixed @ Rs. 3500/- which has been enhanced to Rs. 6665/- w.e.f. 01.07.2014 under OROP scheme and the same has been further revised as per 7th CPC from 01.01.2016, i.e. $\text{Rs. } 6665 \times 2.57 = 17,130/-$ and $2/3$ of 17,130/- comes to Rs. 11,420/- whereas the applicant is in receipt of

reservist pension @ Rs. 9,000/- which is lesser than the entitled amount of pension, i.e. Rs. 11,420/-. As such, the applicant is getting less pension amounting to Rs. 2500/- per month in basic pension.

5. Learned Counsel for the applicant also submitted that there was no change in Circular of PCDA (P) Prayagraj No. 430 and 501 and OROP Circular 555. However, as per 7th CPC the reservist pension would be multiplied by 2.57 and the same has not been done by the respondents in the case of the applicant which is violative to above circulars and principles of natural justice. Hence, he pleaded that applicant should be granted reservist pension @ Rs. 11420/- w.e.f. 01.01.2016 instead of Rs. 9000/-.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 06.10.1960. On completion of seven years of service, the applicant was transferred to Reserve Service on 06.10.1967. The applicant was recalled to colour service w.e.f. 01.11.1971 and transferred to pension establishment w.e.f. 31.10.1975 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfillment of conditions of enrolment. The applicant was granted reservist pension @ Rs. 15/- per month from 01.11.1975 vide PCDA (P), Allahabad PPO dated 31.03.1976 and pension was revised from time to time as per Govt. orders and instructions. The applicant submitted an appeal dated 06.10.2010 for revision of his pension which was suitably replied by BEG Records Roorkee vide letter dated 16.11.2010.

7. Ld. Counsel for the respondents further submitted that as per Para 3 of Special Army Instruction (SAI) 2/S/54, an individual who is transferred to reserve before earning a service pension, will be eligible, on satisfactory completion of prescribed combined colour and reserve qualifying service, for a reservist pension or a gratuity in lieu thereof irrespective of his pay group and category. Since, applicant fulfilled conditions as prescribed in SAI, he has been granted reservist pension w.e.f. 01.11.1975. Consequent on revision of policy by Govt. of India, Ministry of Defence vide letter dated 03.02.2016 and PCDA (P) Allahabad Circular No. 555 dated 04.02.2016, OROP has been made applicable but benefit under this scheme has not been made applicable to reservist pensioners. The applicant has rendered only 11 years of colour service and 04 years service as reserve, therefore, he is not entitled to service pension equivalent to a regular Sepoy who put in 15 years of qualifying colour service. He further submitted that in a similar case, AFT (RB), Lucknow has dismissed OA No. 610 of 2017, Ex Sep Jagbir Singh vs. Union of India & Others, decided on 04.01.2022.

8. Ld. Counsel for the respondents further submitted that Regulation 155 of the Pension Regulations for the Army, 1961 provides that reservist pensioners would be eligible for $2/3^{\text{rd}}$ of the lowest pension admissible to a Sepoy. Consequent to pay revision, the pension admissible to the reservists stood less than $2/3^{\text{rd}}$ till 2009, accordingly, revision was granted. However, after 2009, the minimum pension prescribed for reservists was always more than

2/3rd of the lowest pension due to a retired Sepoy. As per 5th, 6th & 7th CPC, the revision effected on the pension of reservists worked out to more than 2/3rd of the lowest pension drawn by a superannuated Sepoy. In the 7th CPC, pension due to a reservist pensioner was enhanced from Rs. 3500/- to Rs. 9000/- which is more than 2/3rd of the minimum pension of a Sepoy. After implementation of OROP to defence pensioners, Circular No. 555 dated 04.02.2016 was issued in which benefits were not made applicable to the reservist pensioners.

Para 4 of Circular is reproduced as under :-

“4. Non Applicability

4.1 The provisions of this circular do not apply to UK/HKSRA/KCIOs pensioners, Pakistan and Burma Army Pensioners.

4.2 These orders do not apply to Reservist Pensioners.

4.3 These orders also do not apply to Pensioners in receipt of Ex-Gratia payments.”

From the aforesaid, it is clear that benefit of OROP was not made applicable to the reservist pensioners, therefore, there is no reason to interfere with the Govt. rulings/policy especially when the reservist cannot claim any parity with those who had minimum qualifying service of 15 years to earn pension. Therefore, benefit granted to the reservists is a matter of policy which cannot be tinkered by this Tribunal especially when the statutory regulations provide for a specific rate of pension to the reservists, which they are now being paid in practice. He pleaded that Original Application being devoid of merit, be dismissed.

9. We have heard learned counsel for the parties and perused the documents available on record.
10. The question before us to decide is whether the applicant is entitled for enhanced rate of reservist pension from 01.07.2014 i.e. 2/3 pension of the rank of Sepoy which includes benefit of OROP?
11. In the instant case, applicant was retired from service on 30.09.1976 on completion of 15 years of combined colour and reserve service and he is in receipt of revised reservist pension @ Rs. 9000/- plus DA with effect from 01.01.2016 on implementation of 7th Pay Commission.
12. Regulation 155 of the Pension Regulation for the Army, 1961 (Part-1) provides that reservist pensioners would be eligible for 2/3rd of the lowest pension admissible to a Sepoy. Regulation 155 is reproduced as under :-

“Rule 155. An OR reservist who is not in receipt of service pension may be granted on completion of the prescribed combined colour and reserve qualifying service, of not less than 15 years, a reservist pension equal to 2/3rd of the lowest pension admissible to a Sepoy, but in no case less than Rs. 375/- per month on his transfer to pension establishment either on completion of terms of engagement or prematurely, irrespective of period of colour service”.

13. In practice, till 2009, on consequent pay revisions, the pension admissible to the reservists stood less than 2/3rd and accordingly, revision was granted to the reservist pensioners. However, after 2009, the minimum pension prescribed for reservists was always more than 2/3rd of the lowest pension due to a retired Sepoy. As per

the 5th, 6th and the 7th Central Pay Commissions, the revision effected on the pension of reservists worked out to more than 2/3rd of the lowest pension drawn by a superannuated Sepoy. In the 7th Pay Commission, pension due to the reservists was enhanced from Rs. 3,500/- to Rs. 9,000/- which is more than the 2/3rd of the minimum pension of a Sepoy.

14. After implementation of OROP to defence pensioners, Circular No. 555 of 04.02.2016 was issued by the PCDA (P), Allahabad. We find that benefits of aforesaid provisions were not made applicable to some categories including reservist pensioners as per para 4 which for convenience sake is reproduced as under:-

“4. NON-APPLICABILITY

4.1 The provisions of this circular do not apply to UK/HKSRA/KCIOs pensioners, Pakistan and Burma Army Pensioners.

4.2 These orders do not apply to Reservist Pensioners.

4.3 These orders also do not apply to Pensioners in receipt of Ex-Gratia payments.”

15. From the aforesaid, we find that benefits of OROP were not made applicable to reservist pensioners, therefore, we do not find any reason to interfere with the Govt. rulings especially when the reservists cannot claim any parity with those who had minimum qualifying service of 15 years to earn pension. Admittedly, they are persons who did not have the minimum qualifying service of pension but were permitted pension at the rate of 2/3rd of the lowest pension

due to a duly retired Sepoy only because they were allowed reservist pension coupled with the period of colour and reserve service totaling to 15 years. In the period when they were placed in reserve, there was no ban on them from getting other employment also. Taking all the above into consideration, we are of the opinion that the benefit granted to the reservists is a matter of policy which cannot be tinkered with by this Tribunal especially when the statutory regulations provide for a specific rate of pension to the reservists, above which they are now being paid, in practice.

16. Thus, keeping in view the aforesaid findings, we are of the view that applicant is not entitled to reservist pension equivalent to $2/3^{\text{rd}}$ of service pension of a regular Sepoy, hence, applicant is not entitled for any further revision of his reservist pension.

17. The Original Application being devoid of merit is accordingly, **dismissed.**

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : October, 2023
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