

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 635 of 2017****Friday, this the 30th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ayodhya Tiwari S/o (Late) Ex Sub Brij Behari Tiwari, R/o Uttimapur, PO
– Sita Kund, District – Balia (UP).**.... Applicant**Ld. Counsel for the: **Shri Shiv Kant Pandey**, Advocate.
Applicant

Versus

1. The Defence Secretary, Ministry of Defence, Govt of India, South Block, New Delhi 110010.
2. Chief of Army Staff, Sena Bhawan, Army HQ, New Delhi-110010.
3. The Principal Controller of Defence Account (Pension), Draupadighat, Allahabad-211014.

... RespondentsLd. Counsel for the **Shri Namit Sharma**, Advocate
Respondents. Central Govt Standing Counsel**ORDER (Oral)**

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) *This Hon'ble Tribunal may graciously be pleased to set aside final order date 08.03.2010 passed by respondent no.*

1 [A-2] to the extent it relates to cut off date as 01.07.2009 and fix cut off date as 01.01.2006.

(b) This Hon'ble Tribunal may graciously be pleased to pass an order directing respondent no. 3, 4 to pay basic pension Rs 11970/- pm +DA, for the period 01.01.2006 to 30.06.2009. And issue direction accordingly to PDA SBI Ballia (city) to pay the same to applicant

(c) This Hon'ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstance of the case.

(d) This Hon'ble Tribunal may award the cost of petition to applicant.

2. Brief facts of the case giving rise to this application are that the father of applicant was enrolled in the Indian Army on 17.04.1951 and discharged from service on 30.04.1979 and granted service pension vide PPO No. S/040197/1979. The service pension was revised from time to time as per Vth and VIth pay commission recommendations. In all letters issued with regard to payment of pension it was held that incumbents should be paid pension in the way that is more beneficial. There have been enormous complaints and representations in relation to cut off date as mentioned in MoD letter dated 08.03.2010 though this order was issued to remove anomaly w.e.f. 01.01.2006. PCDA (P), Allahabad issued Circular No 430 dated 10.03.2010 in compliance of order dated 08.03.2010 which suffers from many infirmities and noticed by the respondents. These infirmities have been removed by issuing orders dated 15.11.2011 and 27.03.2012 and PCDA (P), Allahabad issued further circular No 482 dated 19.04.2012 in compliance of order dated

27.03.2012. Thereafter, a number of policy letters were issued by MoD and PCDA (P), Allahabad issued Circulars in compliance of policy letters. Thus, it is apparent that cut off date-01.07.2009 as fixed by the aforesaid MoD letter dated 08.03.2010, has been changed to cut off date as 01.01.2006 by MoD itself.

3. Submission of learned counsel for the applicant is that applicant has not been paid revised service pension for the period 01.01.2006 to 30.06.2009 in terms of various MoD letters and PCDA (P), Allahabad Circulars on the subject. In support of his contention, learned counsel for the applicant has relied upon ***Deokinandan Prasad vs State of Bihar***, 1971 (sup) SCR 634, ***DS Nakara vs Union of India & Ors***, 1983 (2) SCR 165, ***Chairman Railway Board vs CR Rangadhamayih***, 1977) 3 UPLEBC 2217, ***Jai Narayan Jakhar vs Union of India & Ors***, (CWP No 15400/2006) decided on 14.01.2008, ***Gurmail Singh Dahdli & Ors vs Union of India & Ors***, (CWP No 6223/2007) decided on 26.05.2008, ***Ex Nk Badri Prasad vs Union of India & Ors***, O.A. No. 5 of 2010 decided on 29.07.2010 and ***Ex Hav Hardayal Yadav vs Union of India & Ors***, O.A. No. 4 of 2010 decided on 04.08.2010 by AFT, Regional Bench, Jaipur. The learned counsel pleaded for grant of revised pension to applicant for the period 01.01.2006 to 30.06.2009 in light of aforesaid pronouncements.

4. Per contra, submission of learned counsel for the respondents is that as per Para 2 of Govt of India, Min of Def letter No 10(1)/2009-D(Pen/Pol) dated 08.03.2010 and para 3 of Govt of India Min of Def letter No 1 (13)/2012/D (Pen/Policy) dated 17.01.2013, applicant was entitled

for revision of service pension only w.e.f. 01.07.2009 and 24.09.2012. Accordingly, his pension was revised vide PCDA (Pension), Allahabad PPO No. S/Corr/6th CPC/118687/2014 dated 08.05.2014. His further submission is consequent upon the issue of Govt of India, Min of Def letter No. 1 (2)/2016-D (Pen/Policy) dated 30.09.2016 (circulated vide PCDA Circular No 568 dated 13.10.2016), the consolidated revised pension/ordinary family pension of all pre-2006 Armed Forces Pensioners w.e.f. 01.01.2006 shall not be less than 50% and 30% respectively of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalided out/died including MSP and X gp pay, if any, without pro-rata reduction of pension even if they had rendered qualifying service of less than 33 years at the time of retirement. His further contention is that applicant is entitled to revised rate of pension as per Circular No 568 issued by PCDA (P), Allahabad. He, however, submitted that applicant ought to have approached his PDA prior to filing of the present O.A.

5. Heard learned counsel for the parties and perused the records.

6. It is not disputed that father of applicant was in receipt of pension w.e.f. 01.05.1979 vide PPO No. S/40197/1979 and the said pension was revised from time to time. Consequent upon issuance of various Govt orders, PCDA (P), Allahabad has issued Circulars for implementation of aforesaid policy letters. It appears that the impugned order dated 08.03.2010 has been clarified by Govt of India, Min of Def letter dated 15.11.2011 which reads as under:-

“The said anomaly has been considered by the Govt and the President is pleased to decide that where the amount of pension indicated in the above said Annexure-II, IIA & III of a senior rank happens to be less than the pension of a lower rank (and group in case of PBOR) with same qualifying service, the pension of senior rank shall be stepped up to the level of their junior counterpart.”

7. It was further clarified by Govt of India, Min of Def letter dated 27.03.2012 as under:-

“The above said anomaly in the rates of revised pension has been considered by the Government and the President is pleased to decide that where the amount of revised pension, determined in terms of this Ministry’s above quoted letter dated 08 March 2010 as amended, of a higher rank happens to be less than the pension of a lower rank of same group with same qualifying service, the pension of higher rank (with same group) shall be stepped up to the level of his junior counterpart.”

8. Consequent to issuance of letter dated 27.03.2012, Circular No 482 dated 19.04.2012 was issued by PCDA (P), Allahabad for implementation of revision of pension. Later the Govt of India, Min of Def has issued another order dated 28.01.2013 changing the cut off date from 24.09.2012 to 01.01.2006. Thereafter, vide letters dated 30.07.2015 and 03.09.2015 the cut off date was changed from 01.07.2009 to 01.01.2006 which is prevalent at present.

9. Thus, it is apparent that the cut off date 01.07.2009 as fixed by the aforesaid MoD letter dated 08.03.2010, has been changed to cut off date as 01.01.2006 by the Min of Def itself, but respondents are still treating

the cut off date as 01.07.2009 to implement order dated 08.03.2010, which seems to be arbitrary.

10. It is worthwhile to mention that the respondents have admitted the above fact while filing counter affidavit (para 5) that applicant is entitled to revision of pension w.e.f. 01.01.2006 as per PCDA (P), Allahabad Circular No. 568 dated 13.10.2016.

11. In view of the above and the fact that respondents have conceded that applicant is entitled to revision of pension w.e.f. 01.01.2006 vide PCDA (P), Allahabad Circular No 568 dated 13.10.2016, O.A. is liable to be allowed. Impugned orders are set aside.

12. Accordingly, O.A. is **allowed**.

13. In view of the above, applicant is held entitled to revised service pension with effect from 01.01.2006. Respondents are directed to pay revised service pension w.e.f. 01.01.2006 to 30.06.2009 in terms of PCDA (P), Allahabad Circular No. 568 dated 13.10.2016 to applicant within a period of three months from today. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 30th July, 2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)