

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

O.A. 201/2014

**Ex Hav Jehan Singh
(Since Dead) through LRs**

.....Applicant

Versus

Union of India and Others

.....Respondents

For Petitioner	:	Mr VS Kadian, Advocate
For Respondents	:	Mr SP Sharma, Advocate

CORAM:

**HON'BLE MR JUSTICE SUNIL HALI, MEMBER (J)
HON'BLE MR JUSTICE R.C. MISHRA, MEMBER (J)
HON'BLE AIR MARSHAL J.N. BURMA, MEMBER (A)**

**OPINION
15.12.2015**

As per Justice R.C. Mishra, Member (J)

1. This is a reference, under Section 28 of the Armed Forces Tribunal Act, 2007 (for brevity "the Act"). The questions to be answered are: -

1) Whether the Army personnel, who retired from the service prior to the coming into force of the Pension Regulations for the Army 1961, Part - 1, are entitled to the disability benefit and other benefits, under the Pension Regulations for the Army 1961?

2) Whether the Pension Regulations for the Army 1961 have retrospective operation, covering the period, for which the Pension Regulations for the Army 1961 were not in force?

2. The applicant filed this OA on 21.04.2014 seeking Special Pension under paragraphs 164 and 165 of the Pension Regulations for the Army, 1961 as well as reservist pension by taking in to account his colour service of 9 years, 07 months and 24 days and 10 years' service as reserve as per initial terms of engagement together

with interest @ 12 % per annum on arrears from the date of his discharge with all consequential benefits including issuance of ECHS Card for him and his family.

3. The applicant (since expired on 28.03.2015) joined the Indian Army in ASC (Army Supply Corps) on 04.12.1943 and served up to 27.07.1953. During the service tenure the applicant had the occasion to fight war of 1947. His initial term of engagement in the Army was for 20 years (10+10) ie. 10 years as regular colour service plus 10 years as reserve. After completion of 09 years, 07 months and 24 days of service he was discharged from service being surplus. Having learnt that various Benches of this Tribunal have allowed similar claims, he made representations for grant of special pension under paragraphs 164 and 165 of the Pension Regulations for the Army, 1961 or reservist pension but the same remained un-responded.

4. It transpires from the record that the reference was necessitated in view of the following observations made by Chennai Bench of this Tribunal in **Ex- Sep G. Hariappa Vs. UOI & Ors** (OA No.1/2011 decided on 28.06.2011):-

"... it is clear from the letter No. 5503001/A1 dated 28.10.1954 (that replaced the provisions of Rules 316 to 318, Pension Regulations, for the Army in India, 1940 Part II and other orders on the subject) that the above said Special Pension/gratuity granted to the combatant and non-combatants as per letter No. F/51/9/D(PP)/53, dated 21.06.1954, will not be applicable to the applicant since he was discharged from service on 01.04.1955 (after completing 10 years and 15 days of service only in the Army.)

6 (a) Under such circumstances, once the applicant is not governed either by Pension Regulations for the Army 1940 Part – II, or under the Special Pension/Gratuity granted under letter No. 5503001/A1, dated 28.10.1954, that too after the removal of Rules 316 to 318 from the Pension Regulations for the Army 1940, Part II, the

relevant provision which will govern the applicant is Regulations 164 of the Pension Regulation for the Army 1961, Part I. At this juncture it is to be noted that there is no reference in the Pension Regulations for the Army 1961, Part I as to the effect that the same has got only prospective effect and no retrospective effect. Section III to the Pension Regulations for the Army 1961, Part I reads as follows: -

Section – III – Special Pension and Gratuity

Special Pension & Gratuities to Junior Commissioned Officers, Other Ranks & Non Combatants (Enrolled) – When admissible: -

164. Special Pension or gratuity may be granted at the discretion of the President to individuals who are not transferred to the reserve and are discharged in large numbers in pursuance of Govt's policy—

(i) of reducing the strength of establishment of the Armed Forces;

OR

(ii) of re-organisation, which results in a disbandment of any unit/formation.”

Regulation 167 deals with Scale of special pensions and gratuity as follows: -

Length of actual qualifying service rendered (without weightage)		Scale of Special Pension/ gratuity
A. Combatants		
(a) Special Pension		
(i)	15 years or more	Equal to normal service pension at the rates specified in Regulation 136.
(ii)	10 Years or more but less than 15 years	Equal to the service pension as determined as per Regulation 136.
(b) Special Gratuity		
(i)	5 years or more but less than 10 years	Equal to 1 1/3 month's emoluments (Pay + Classification pay, if any last drawn) for each completed year of qualifying service.
(ii)	Less than 5 years	Equal to 3 month's emoluments (Pay + Classification pay, if any last drawn)
B. Non-Combatants (Enrolled)		
(a) Special Pension		
(i)	20 years or more	Equal to normal service pension
(ii)	15 years of more but less than 20 years	Equal to the service pension determined as Regulation 146
(b) Special gratuity		
(i)	5 years or more but less than 15 years	Equal to 1 1/3 months emoluments (Pay + Classification pay, if any last drawn) for each completed year of qualifying service.
(ii)	Less than 5 years	Equal to 3 month's emoluments (Pay + classification pay, if any last drawn)

Admittedly, the applicant had a total service of 10 years and 15 days as confirmed by the respondents in their reply statement and also as seen from the discharge certificate. Under such circumstances, we are of the considered view that the applicant is entitled to his pension as per Regulation 164 r/w Regs 136 of the Pension Regulations for the Army 1961, Part – I."

5. A bare perusal of the common order dated 23.02.2012 passed by the Supreme Court in **Union of India & Others vs. Hoshiar Singh** (Civil Appeal No. 2942 of 2009) and connected appeals would reveal that no direction was considered to be necessary in the light of the decision taken by the Govt. of India that the respondents and other similarly placed persons would be entitled to the benefit of service element of pension with effect from 1.1.1973. The corresponding letter dated 10.02.2014 governing grant of Service Element of Disability Pension to pre 01.01.1973 invalided out JCOs, ORs and NCs (E)/ Sailors/ Airmen when the accepted degree of disablement re-assessed as less than 20 %, issued by the Govt of India, Ministry of Defence, Department of Ex-Servicemen Welfare has also been placed on record. Accordingly the condition prescribed prior to 01.01.1973 for continuance of service element with reference to minimum stipulated qualifying service have been dispensed with from 01.01.1973 or the date from which the accepted degree of disability fell below 20%, whichever is later. The NOK of such invalided out personnel who at the time of invalidment were in receipt of disability pension and whose disability subsequently fell below 20 % and died with no Disability/ Service Pension, shall also be entitled for family pension from the date following the date of death of individual. Thus, the reference so far as it relates to the question No.1 above has become redundant.

6. Coming to the second question, it may be observed that law is well settled on the point that that unless there is an express intention to make a provision retrospective, the same is to be construed as

prospective in nature. Further, there is no such rule that all benevolent measures are retrospective. For this reference may be made to decision of the Supreme Court in **Shyam Sunder vs. Ram Kumar AIR 2001 SC 2472**. Since there is nothing in the Pension Regulations for the Army 1961 to suggest to the contrary, we have no hesitation in holding that the regulations do not have any retrospective effect. On the question as to when retired employees are entitled to the benefit of revised pension scheme, the Court after considering earlier decisions in **V. Kasturi Vs Managing Director, State Bank of India, Bombay VIII (1998) 8 SCC 30** has specified two categories as under:

"Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of *Nakara case*¹ would cover this category of cases.

Category II

23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a

new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep."

7. The Pension Regulations for the Army 1961 squarely falls in the second category of cases as there is nothing to suggest that the same have any retrospective effect. In other words, the Pension Regulations do not have any retrospective operation.

8. To sum up, we are of the considered opinion that the second question deserves to be answered in the negative whereas the reference with regard to the first question has become redundant.

The reference is answered accordingly.

(Sunil Hali)
Member (J)

(R.C. Mishra)
Member (J)

(J.N. Burma)
Member (A)

15/12/15/RAO