

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI
CIRCUIT BENCH AT HYDERABAD

(Through Video Conferencing)

OA No.308 of 2018

With

MA No.356 of 2018

Thursday, the 12th day of August, 2021

46.

CORAM :

HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

S.No.1215848 Ex Gnr Sunde Papi Reddy, aged 75 years,
s/o Late Veera Reddy,
R/o H No.7-8-74 (Old) No.7-8-110 (New)
Srinagar Colony, Panagal Road, Nalgonda,
Telangana State 508 001

.. Applicant

For Applicant : Shri M.K.Sikdar, Advocate

Vs

1. Union of India rep by the Secretary,
Ministry of Defence, New Delhi 110 001
 2. The Chief of Army Staff,
South Block, IHQ of MoD (Army)
New Delhi 110 011
 3. The Officer-in-Charge
Topkhana Abhilekh, Artillery Records,
Pin 908802 c/o 56 APO
 4. The Principal Controller of Defence Accounts
(Pension), Draupadi Ghat, Allahabad, UP 211 014
 5. The Assistant General Manager,
SBI (CPPC 4472), 1st Floor, SCAB Building
Telangana LHO Compound,
Bank Street, Koti, Hyderabad-500095
- .. Respondents

For Respondents 1 to 4 : Shri Namavarapu Rajeshwar Rao, CGC

For Respondent 5 : Shri Y.Ranjeeth Reddy & VN Ramachandra, Advocates

ORDER

M.A. No. 356/2018

1. Keeping in view the averments made in the Miscellaneous Application and finding that the claim for Pension being a recurring cause of action as laid down by Hon'ble Apex Court in UOI & Ors Vs. Tarsem Singh, reported in (2008) 8 SCC 648, MA is allowed condoning the delay in filing the OA.

O.A. No. 157/2018

1. By way of this Application under Section 14 of the Armed Forces Tribunal Act 2007, the Applicant has prayed

- (i) to restore pension in the rank of Gunner (Sepoy),
- (ii) not to recover the over-payment of Rs.5,46,373/- in the order passed by 5th Respondent

In alternate

(iii) to grant Reservist Pension at enhanced rate of 2/3 Pension of a Sepoy rank wef 01.07.2014 (OROP) and 01.01.2016 (7th CPC) with an interim prayer to stay further operation of the Impugned Orders No.1215848/SR/6th CPPC/PPO/PEN-4A (PPO Cell) dated 04th Dec 2017 passed by the 3rd Respondent and Lr No.CPPC/HYD/AO-SEC/REG-4/504 dated 20th Dec 2017 passed by the 5th Respondent.

2. The brief facts of the case are that the Applicant was enrolled in the Indian Army on 20.11.1962 with terms of engagement for 7 years Colour Service and 8 years Reserve Service. After 10 years and 328 days of service, he was transferred to Reserve Establishment on 10.10.1973 and called back into service. He was discharged from service on 30.11.1977 under Army Rule 13(3) III (ii) on completion of period of Qualifying service of 15 years, 11 days and was granted Service Pension of combined colour and reserve service.

3. The Respondents filed a detailed reply to the Application and have submitted that the Applicant was enrolled on 20.11.1962 and was discharged from service on 30.11.1977 under clause "on completion of period of engagement with colours there being no vacancy in Reserve" after 15 years and 1 days of combined colour and reserve service. The Respondents submit that the Applicant was granted Reservist Pension vide PPO dated 17.6.1978. The Reservist Pension was revised to Rs.3500/- wef 1.1.2006 with DA and further revised to Rs.9000/- as per 7th CPC. The Respondents further submit that the Applicant was granted service pension. The Pension Disbursing Agency i.e. State Bank of India, CPPC, Nalgonda, Andhra Pradesh, on receipt of Corr. PPO No.S/Corr/6th CPC/00100/2017 dated 05.06.2017, for revision of Reservist Pension had erroneously revised Pension @ Rs.3500/- per month wef 1.1.2006, Rs.4603/- per month wef 1.7.2009 and Rs.5102 per month wef 24.9.2012 instead of Reservist Pension. During the Internal Audit verification by PDA, the above fault was found out and the Pension Disbursing Agency had intimated to the Applicant before recovering the excess amount of Rs.546373/- paid to him towards Service Pension instead of Reservist Pension, which is not entitled to the applicant being a Reservist. Therefore, the Respondents pray to dismiss the OA being devoid of merits.

4. Heard and considered the submissions of Learned Counsel for the parties and perused the material placed on record.

5. We considered the interim prayer of the Applicant seeking orders to direct the Respondents not to recover the over-payment of Rs.5,46,373/- paid in excess. We perused the letter of CPPC, State Bank of India, in which the Bank has intimated the Applicant that Rs.546373/- has been over paid to him of

which the unadjusted amount will be recovered from his monthly pension @ Rs.3000/- per month.

The Honourable Supreme Court in its order dated 18.12.2014 in Civil Appeal No.11527 of 2014 in *State of Punjab & Others Vs Rafiq Mashih (White Washer) etc.*, observed :

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Xxx xxx*
- (iv) Xxx xxx*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

The Office Memorandum dated 2.3.2016 issued by GoI, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, has dealt with the issue of wrongful/excess payments made to

Government servants in view of the law declared by Courts. In this connection, the relevant portion of the letter is reproduced :

"5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries/Departments are advised to deal with the issue of wrongful/excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No. 11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab & Others Vs Rafiq Mashih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's case No.18/26/2011-Estt(Pay-I) dated 6th February 2014"

6. Considering the above said facts and circumstances, the Respondents are hereby directed to immediately stop recovery of Rs.3000/- p.m. to make good any overpayment which has occurred.

7. Regarding other prayers, the Question that merits consideration is whether the Service Pension in the rank of Gunner be restored to the Applicant? Whether the Applicant is entitled to 2/3rd of minimum service pension of a regular Sepoy as per OROP benefits and thereafter wef 01.01.2016 as per 7th CPC recommendations.

8. Regarding restoration of Service Pension, the Service Pension in the rank of Gunner granted from the date of discharge was erroneously granted by the Respondents and hence, there is no ground for restoration of Service Pension which the Applicant is not entitled to.

9. Regarding revision of Reservist Pension to 2/3rd of minimum pension of a Sepoy, the Learned Counsel for the Applicant contended that the case

is covered under the provisions of Rule 155 of the Pension Regulations for the Army, 1961 (Part-I), relevant portion of which is produced and reads as under :-

"Rule 155. An OR reservist who is not in receipt of service pension may be granted, on completion of the prescribed combined 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."

10. From the above provisions, it is clear that Reservist Pension is equal to 2/3rd of the lowest pension admissible to a Sepoy having 15 years of qualifying service.

11. Moreover, matters for grant of 2/3rd of minimum pension of a Regular Sepoy of the similarly placed personnel have been allowed by Circuit Bench, Jodhpur of AFT, Jaipur in OA No.43/2018 decided on 28.08.2019 (Reservist Balwan Singh Vs UOI & Others) and OA No.10/2017 decided on 29.08.2019 (Ex Sep Ladu Singh Vs UOI & Ors).

12. As regards the benefit of 2/3rd of minimum pension of a Regular Sepoy under OROP Scheme wef 01.07.2014 is concerned, Para 4 of PCDA (P) Circular No.555 dated 04.02.2016 is reproduced as under :-

"NON-APPLICABILITY

- 1.1. The provisions of this circular do not apply to UK/UKSRA/KCIOs pensions; Pakistan and Burma Army Pensioners.
- 1.2. These orders do not apply to Reservist Pensioners
- 1.3. These orders also do not apply to Pensioners in receipt of Ex-gratia payments"

9. Further, on the issue of applicability of Reservist Pension under OROP scheme, Para 4.1 of Govt of India, Ministry of Defence letter dated 03.02.2016 reads as under :-

APPLICABILITY

"4 XXXX

4.1 The provisions of this circular do not apply to UK/UKSRA/KCIOs pensions; Pakistan and Burma Army Pensioners. Reservists pensioners and pensioners in receipt of Ex Gratia payment"

13. Moreover, the issue of applicability of OROP benefits to Reservist Pensioners has been settled by Lucknow Bench of the Armed Forces Tribunal in the case of Smt.Sanjogi Devi Vs UOI & Ors in OA 576/2017 decided on 10.05.2019. Relevant Paragraph of the judgment reads as under :-

"9. Thus we find that on one hand the applicant is pleading for the benefit of OROP as conferred by Circular 555, as mentioned above while on the other hand the applicant is ignoring the fact that this Circular is not applicable to her late husband because he was a reservist pensioner. We don't find any valid reason to interfere with the decision of the respondents for denial of pensionary benefits of OROP to the deceased soldier. Considering all issues specially payment of Life Time Arrears (LTA), we are of the view that the applicant has failed to prove her case and hence we have no valid reason to interfere with the denial of pensionary benefits of OROP to the deceased soldier. In this view of the matter, we are of the considered opinion that that deceased soldier is not entitled to any relief as claimed from this Tribunal"

10. In view of the above, the OA lacks merit and is accordingly dismissed

14. On scrutiny of the above, it is apparent that pensionary benefit of OROP is not applicable to Reservist Pensioners.

15. In view of the above reasons, it is apparent that the Applicant is NOT entitled to pensionary benefits of OROP wef 01.07.2014. However, he is entitled to 2/3rd of minimum pension of a Regular Sepoy wef 01.01.2016 (7th CPC) in terms of Para 155 of Pension Regulations for the Army, 1961 (Part-I).

16. The Original Application is partly allowed with the following directions :-

- (a) To cease recovery of any overpayment made to the Applicant
- (b) Subject to verification of records, the Respondents are directed to revise the Reservist Pension of the Applicant wef 01.01.2016.
- (c) Arrears of the revised pension be paid to the Applicant within a period of four months from the date of receipt of certified copy of this Order by the Learned Counsel for the Respondents, failing which the amount shall carry interest @ 8% per annum from the date of this Order.

17. No order as to Costs.

Sd/--

LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)
Vp

Sd/--

RAJENDRA MENON
CHAIRPERSON