

**COURT No. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

3.

MA 1233/2016 in OA 298/2014

Subedar Chand Ram Dahiya

... Applicant

Versus

Union of India & Ors.

... Respondents

WITH

4.

CA 3/2017 in OA 298/2014

Subedar Chand Ram Dahiya

... Applicant

Versus

Union of India & ors.

... Respondents

For Applicant : Mr. Michael Peter, Advocate

For Respondents : Ms. Barkha Babbar with Ms. Dipanjali Tyagi, Advocates

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT.GEN. PHILIP CAMPOSE, MEMBER (A)

**O R D E R
23.04.2018**

Heard the learned counsels for the Applicant and the respondents as also perused the pleadings and documents on file.

2. The Applicant, who retired from the Indian Army (Army Service Corps) on 01.09.1989 in the rank of Subedar, has been making repeated submissions to various Govt. departments since 2011 that his pension was fixed wrongly at the initial stage itself after his retirement, as it

OA 298 / 2014 – 23.04.2018

was (a) fixed in the rank of Naib Subedar instead of Subedar, (b) Qualifying service was shown as 26 years instead of 26.5 years, and (c) Basic Pay was shown as Rs.1,620/- instead of Rs.1,750/-. The Applicant has been seeking that a new PPO or corrigendum PPO be issued keeping above corrections in view. The respondents, on the other hand, have not issued the new PPO in the rank of Subedar, on the insistence that it would not be beneficial to the Applicant.

3. Vide Order dated 14.01.2016, this Tribunal allowed OA 298/2014 and directed the respondents to calculate and release the benefits including arrears of the petitioner, after issuing a revised PPO, within three months from the date of receipt of that order. Delayed payment would accrue interest @ 8% per annum to the Applicant. Concurrently, the Tribunal disallowed the respondents leave to appeal before the Hon'ble Supreme Court as no substantial question of law of general public importance was involved in the matter.

4. Subsequently, in considering MA 336/2016 filed by the Applicant, vide its Order dated 07.10.2016, this Tribunal took note of the objection raised by the respondents that the re-fixation of pension in the rank of

Subedar would cause prejudice to the Applicant, but directed that, since learned counsel for the Applicant insists for implementation of the earlier order, the respondents to issue PPO in terms of that order, i.e. in the rank of Subedar (and not Naib Subedar).

5. However, the respondents did not comply with the earlier orders and still issued the new PPO in the rank of Naib Subedar. Learned counsel for the respondents asserted that this was being done because the fixation of pension in the new rank (of Subedar) would result in lower rate of pension being given to the Applicant. Consequently, Order dated 30.10.2017 by this Tribunal clearly directed the respondents *“to check the calculation and issued PPO and ensure that the correct amount of pension as due to this Applicant is given. As necessitated, corrigendum PPO may be issued to fulfill payment of the lawfully correct amount to the Applicant. Put up again on 18.12.2017.”*

6. Giving reference to the above, learned counsel for the Applicant has provided the Calculation Sheet attached to Office of PCDA (P) letter No. G-2/111/Impl/Misc./2016/Vol-V dated 11.07.2016, which was issued by Senior Accounts Officer (P), Office of the PCDA(P) Allahabad to justify non-issue of a new PPO Order, on the contention

that “If service pension is to be revised under Modify Parity in terms of MoD letter cited above (IHQ of MoD letter No.PC-79100/3322/Q/ST-12/54/2016/AG/PS-(Pen-Legal) dated 18.04.2016), revised service pension for the rank of SUB will be less than NB-SUB rank already drawn by the individual (calculation sheet of pension w.e.f. 01.01.1996 is enclosed herewith”, as follows :

“CALCULATION SHEET

Name : CHAND RAM DAHIYA
 Regt. No. : JC-115489
 PPO No. : S/010571/1989
 Rank last held : SUB
 Rank for pension : NB-SUB
 Group : B
 Date of enrolment : 28.05.1963
 Date of discharge: 31.05.1989
 Qualifying service : 26 years, 03 months, 04 days
 Qualifying service : 26 years i.e. maximum
 for pension term of engagement in the
 rank of Nb Sub.

Promotion in the
 Rank of corporal : 01.04.1989

Rank Last Held SUB (less than 10 Month)

A. Pension as per the Rank of NB-SUB (held for more than 10 months)

Pay scale of NB-SUB GP-B as on 01.01.1986 is
 1500-40-2100-50-22540

Pension on the basis of GOI, MOD letter dt.
 30.10.1987=

50% of maximum pay scale X (Qualifying service +
 weightage) ÷ 33

= $2250 \times (26+05) \div (2 \times 33) = 225 \times 31 \div (2 \times 33)$
 = 1056.81=1057/-

As per GOI letter No. 1(2)/98/D(Pen/Ser), dt. 14.07.1998 of
 table No. – 49, his pension was fixed in **Rs. 3201/-** w.e.f.
 01.01.1996

B. Pension as per last Rank held by the individual as SUB
 GP-B (held for less than 10 Months)

Pay Scale of SUB GP-B as on 01.01.1996 is 5770-155-8250

Pension on the basis of GOI, MOD letter dt -09.02.2001 =

*50% of minimum pay scale w.e.f. 01.01.96 x
(Qualifying service + weightage) ÷ 33*

*= 5770 x (26+05) ÷ (2x33) = (5770x31) ÷ (2x33) =
2710.15 = **2711/-***

*As consolidated pension of NB-SUB is more, therefore, the
same is beneficial.*

*Sd/- xxx
Sr. Accounts Officer (P)"*

7. Learned counsel for the Applicant avers that, firstly, the above calculation is based on wrong basis, i.e. the Applicant is shown as a Naib Subedar and not a Subedar, on the premise that he did not complete 10 months in his new rank before retirement. This contention is wrong as subsequent Govt. orders vide circular dated 07.06.1999 and 09.02.2001 no longer insists on this minimum period in the last rank before retirement. Secondly, the aforesaid calculation has been selectively manipulated to bring about the wrong conclusion that he will get less amount if he is granted pension as a Subedar. Learned counsel for the Applicant states that whereas the respondents have shown the pension due to a Nb Sub as Rs. 3,210/- and for a Subedar only Rs.2,711/-, in actual fact, pay scale of the Applicant on the basis of his being a Subedar in Group B is Rs. 3,753/- as given in Govt. of India (MoD) letter dated 24.11.1997 of the 5th CPC, which was effective from 01.01.1996. This has been reflected in Table 37 of the 6th CPC which was effective from 01.01.2006 which shows :-

**REVISED PENSION WITH EFFECT FROM 1.7.2009 IN RESPECT OF PRE-1.1.2006
DISCHARGED PBOR-ARMY**

EXISTING PENSION											
Length of Service (in Years)	Subedar GP "B" Discharged prior to 01.01.1996				Subedar GP "B" Discharged between 01.01.1996 & 09.10.1997			Subedar GP "Y" Discharged between 10.10.1997 & 31.12.2005			Revised Pension w.e.f. 01.07.2009
	Pension on 01.01.1996 under Fifth CPC	Improved Pension (without DP) as on 01.01.06	Improved Pension (with DP) as on 01.01.06	Consolidated Pension under Sixth CPC as on 01.01.2006	Pension on the date of retirement under Fifth CPC	Pension (with DP) as on 01.04.04	Consolidated Pension under Sixth CPC as on 01.01.2006	Pension on the date of retirement under Fifth CPC	Pension on the date of retirement on or after 1.4.2004 (with DP)	Consolidated Pension under Sixth CPC as on 01.01.2006	
1	2	3	4	5	6	7	8	9	10	11	12
XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
26.5	3753	3938	5907	8901	3938	5907	8901	4449	6674	10056	11426
XX	XX	XX	XX	XX	XX	XX	XX	Xx	XX	XX	XX

8. Learned counsel for the Applicant states that the aforesaid calculation has been validated in details collected on 06.07.2017 vide RTI application, which states :-

BY POST
Seva Seva Corps Abhilekh
(Dakshin)
ASC Records (South)
Bangalore – 560 007

JC-115489/CC-2/Legal Cell

JC-115489 Ex Sub
Chandram Dahiya
RZ-93/284, Gali No. 2,
Geetanjali Park, West Sagarpur,
New Delhi – 110 046.

PROVISION INFORMATION UNDER RTI ACT 2005

- Reference to your petition dated 22' Jun 2017
- A photocopy of this office letter No. JC-115489/CC-2/Legal Cell dt 18 March 2017 is fwd herewith as desired.

Sd/- xx
Maj
Senior Record Officer
For OIC Records

BY FAX/E-MAIL
Seva Seva Corps Abhilekh
(Dakshin)
ASC Records (South)
Bangalore – 560 007

JC-115489/CC-2/Legal Cell

18 Mar 2017

JC-115489 Ex Sub
Chandram Dahiya
RZ-93/284, Gali No. 2,
Geetanjali Park, West Sagarpur,
New Delhi – 110 046.

IMPLEMENTATION OF ORDER DATED 07 OCT 2016
PASSED BY THE HON'BLE AFT (PB) NEW DELHI IN
MA 336/2016 IN OA NO. 298/2014 FILED BY JC-
115489 EX SUB CHAND RAM DAHIYA VS. UOI AND
OTHERS

1. Refer your letter No. G-2/III/Impl./Misc/2016/Vol-VII dt 11 Jul 2016 dt 11 Jul 2016 and letter No. G-2/III/Impl./Misc./2016/Vol-VII dt. 09 Jan 2017.

2. It is initiated that the respondents had raised an objn that the re-fixation of pension would cause prejudice to applicant. However, Hon'ble AFT vide its order dt. 07 Oct 2016 has directed the respondents to issue PPO in terms of its order dt. 14 Jan 2016 as the counsel for the applicant insists for implementation of the order.

3. It is pertinent to mention here that the applicant was discharged from service on completion of 26 years, 03 months and 04 days on 31 May 1989 in the rank of Sub. Consequent to his promotion to the rank of Sub his terms of engagement had been changed from 26 years. The service of applicant in the rank of Sub is wef 01 Apr 1989 to 31 May 1989.

4. Further it has already been clarified vide Govt. of India, Min of Def letter No. B/39013/AG/PS-4 (a&c)/ 131/A/D (Pension/Services) dt 09 Feb 2001 that pension of all pre-1996 retiree Armed Forces Personnel will be revised on the basis of the rank/group was held by individual and the revised pay scale connected thereto even if the rank/group was held for less than 10 months before retirement.

Thus the applicant is entitled for pension in the rank of Sub for his qualification service of 26 years, 03 months and 04 days. Furthermore, as per Govt. of India Min of Def letter No.B/38076/AG/PS-4(a)/2190/A/D(Pension/Services) dt 06 Aug 1984 and Office of the PCDA (P) Important Circular No. Gts/Tech/0149/X II dt. 10 Dec 1984, **a fraction of a year equal to three months and above shall be treated as a completed one half year** and reckoned to qualifying service to determining the amount of pension and service/DCRG. The order came into effect wef 28 June 1983.

5. In view of the above, it is amply clear that the applicant is entitled for Service Pension in the rk of Sub for qualifying service of 26 years and six months. Therefore, the calculation sheet fwd vide your letter No. G-2/III/Impl/Misc/2016/Vol-VII dt. 11 Jul 2016 seems to be incorrect. Your office is therefore requested to re-examine the case in the light of existing provisions for grant of service pension in the last rank held even if for a pd of less than 10 months as well as prevailing policy for calculating length of service pension and issue revised PPO to avoid in financial loss to the applicant and adverse order by Hon'ble AFT in confirmation with revised policy and in difference to Hon'ble AFT order.

6. Furthermore, it has been observed in the calculation sheet attached with your office letter No. G-2/III/Impl/ Misc./2016 that the service pension in respect of the JCO in the rank of Nb Sub has been calculated based on Pay Scale of Nb Sub Gp B as on 01.01.1986 and revised as per table No. 49 of GOI letter No. 1(2)/98/D(Pen/Ser) dated 14 Jul 1998. Whereas, the service pension in the rank of Sub has been calculated based on Pay Scale of Sub Gp B as on 01.01.1996 and also not given the revised rate as per

ibid GOI letter dated 14 Jul 1998 which is not understood. Here it is submitted that the JCO was discharged from service wef 31.08.1989 and hence his service pension in the rank of Sub Gp B is required to be calculated as per pay scale of Sub Gp B as on 01.01.1986 which was 1750-50-2300-6-2600. As per Table 56 of GOI letter No. 1 (2)/98/D (Pen/Ser) dated 14 Jul 1998, the service pension in respect of a Sub Gp B who was discharged from service between 01.01.1986 and 01.01.1996 for QS of 26 years is Rs.1,222/- which has been revised with effect from 01.01.1996 @ Rs. 3693/- p.m. **Moreso the service pension in respect of a Sub for QS 26.5 years has been revised @ Rs. 3,753/- p.m. vide Table 56 of ibid GOI letter. Hence, it is crystal clear that the JCO will be benefitted with the revised service pension in the rank of Sub Gp B for his QS of 26.5 years.**

7. It is therefore requested to consider the above submissions while notifying the revised PPO in the rank of Sub Gp B in respect of the above said JCO.

8. It is pertinent to mention here that the Hon'ble Tribunal vide its order dated 07 Oct 2016 has passed specific orders to the respondents to notify PPO in terms of Hon'ble Tribunal Order 14 Jan 2016 in OA No. 298/2014 filed by the said JCO. The same has also been emphasized by the CGC in the legal opinion dated 10 Feb 2017. Copy of the Legal Opinion is enclosed herewith for your info and necessary action please.

Encl. : _____ sheets.

Sd/- xxx
(AK Sengupta)
Maj
Senior Record Officer
for OIC Records"

9. Learned counsel for the Applicant submits that Respondent No. 1,2 & 3 from CDA(P) Allahabad is misguiding the Tribunal by referring to the GOI (MoD) letter dated 09.02.2001 instead of issuing the correct PPO/Corrigendum PPO as per the actual service details of the JCO and Rules/Regulations on the subject.

10. Learned counsel for the Respondents reiterates the earlier stand of the Respondents that the Applicant would get more pension in the rank of Naib Subedar as compared to Subedar and avers that there is no clarity in the submissions of the Applicant with regard to what he is actually seeking and thus, it has not been possible for the respondents to take necessary action on the orders of the Tribunal in this case.

Consideration :

11. The Court finds that despite clear orders by the Tribunal to the respondents to work out the Applicant's pension correctly and issue a fresh PPO/Corrigendum PPO reflecting his rank for pension in rank of Subedar and his reckonable service as 26.5 years, the Respondents have failed to take necessary action by citing apparently wrong details and particulars.

12. Hence, the Respondents are directed to issue fresh PPO/Corrigendum PPO for the Applicant within four weeks as Subedar in Group B with service of 26 years and six months. Arrears to be calculated correctly and paid to the Applicant with

interest @ 8% within three months of issue of this order.
Respondent (Senior Accounts Officer CDA (P) Allahabad dealing
with instant Case) to be present in the Court on the date of next
hearing, with details of execution of this order.

13. List on **13th August, 2018.**

[JUSTICE SUNITA GUPTA]
MEMBER (J)

[LT.GEN. PHILIP CAMPOSE]
MEMBER (A)

/ng/