

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

3.

OA 4952/2024 with MA 5144/2024

Sgt Sri Bairagi Charan Das (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Jitendra Kr Deo, Advocate
For Respondents : Mr. Vijender Singh, Advocate

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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS RASIKA CHAUBE, MEMBER (A)

ORDER
03.01.2025

MA 5144/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 396 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 5144/2024 is allowed despite opposition on behalf of the respondents and the delay of 396 days in filing the OA 4952/2024 is thus condoned. The MA 5144/2024 is disposed of accordingly.

OA 4952/2024

The applicant vide the present OA makes the following prayers:-

“(a)Quash the impugned order and direct the Respondents to stop any further deduction on account of recovery of commuted value of pension; and/or

(b) Direct the Respondents to refund the extra instalments recovered from the Applicant wef 01 Apr 2024 ie after 11 Years and six months of recovery or any other earlier date as decided by the Hon'ble Tribunal;

(c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.”

2. At the outset, it is essential to observe that the reliance has placed in the present proceedings qua the relief prayed seeking the refund the stated extra instalments recovered from the applicant wef 01.04.2024 i.e. after 11 years and 6 months of recovery for any earlier date as decided by the Tribunal is based on the orders dated 03.05.2023 in CWP 9426/2023 in *Shila Devi & Ors. vs. State of Punjab and others* and in 15.04.2024 in CWP 8222/2024 in *Om Parkesh Aneja vs. State of Punjab and others* , both of the Hon'ble High Court of Punjab & Haryana as well as the order dated 22.07.2024 of this Tribunal in OA 2366/2024 in *AVM (Retd) S K Gagneja Accts vs. Union of India and Ors.*, it is further essential to observe that the order dated 22.07.2024 in OA 2366/2024 is based on the orders of *Shila Devi & Ors. vs. State of Punjab and others* on which reliance was placed on behalf of the applicant, the attention of the learned counsel for the applicant is drawn to the judgment dated 27.11.2024 of the Hon'ble High Court of Punjab & Haryana in CWP 9426/2023 whereby the petition *Shila Devi & Ors. vs. State of Punjab and others* whereby the several connected petitions have thereby been dismissed by the Hon'ble High Court of Punjab & Haryana vide observations in Paras-26,27,28,31 thereof to the effect:-

26. It is pertinent to note at this stage that the 7th Central Pay Commission did not recommend any

change in respect to commutation of pension including the period of restoration. The 6th Punjab Pay Commission on considering the report of the 7th Central Pay Commission as well as the representations of the Employees Association did not find any reason to differ and did not recommend any change. The observations and recommendations as reproduced in affidavit dated 04.11.2024 read as under:-

"Observations and recommendations

8.11.3 Employee Associations have represented that the commuted pension needs to be restored after 12 years and the commutation be allowed @ 40% of the pension as was previously the case. Moreover, the existing rate of commutation is 40% for Central Government pensioners.

8.11.4 The 7th CPC has not recommended any change either in maximum percentage of commutation or in the period of restoration. It has in this context referred to the Supreme Court judgment of 09.12.1986 wherein the hon'ble court specifically observed that though the amount is recovered in 12 years yet since there is a risk factor and some of the States are restoring pension after 15 years, the existing period of restoration should be retained.

8.11.5 The Commission has no reason to differ and recommends that the rate of commutation be raised to 40% with no change in the period of restoration of the commuted amount."

27. It is a matter of record that all the petitioners before us are retired employees who have admittedly availed of the benefit of commutation of pension. Admittedly, pension of some of the employees also stands restored. All the petitioners were in service at the time of issuance of notification dated 21.07.1998. They never raised any objection to the stipulated period of 15 years for restoration of pension. Having availed of a benefit which is clearly voluntary in nature, it is not open to the petitioners to raise the grievances as noted above, at this stage, to seek a variation in the terms and conditions accepted by them with open eyes. They are not entitled to seek recovery of the amount so deposited by them in accordance with the accepted terms and conditions.

28. In this factual matrix, the argument that it is a continuing cause of action as it pertains to pension, is clearly unacceptable. There is no question of any direction to the State to restore pension on expiry of 11.5 years or 12 years as prayed for or to refund the amount so recovered. It is necessarily for the State to take a considered decision thereon after delving into the complex questions and underlying parameters which would be involved for assessment of the issues. Admittedly, matters related to commutation of pension are complex affairs involving vexed issues traversing diverse field which calls for application of specialized expertise. It is a settled position that in such matters the Court would venture only in case of manifest and apparent arbitrariness. Learned counsel for petitioners were unable to point out any material on record to indicate that the formula adopted is per se and ex facie irrational or arbitrary which calls for interference by this Court.

31. Keeping in view facts and circumstances as narrated and discussed in foregoing paras, all the 808 writ petitions are dismissed with no order as to cost. It is clarified that the State is entitled to effect recoveries which were stayed by way of interim orders in the writ petitions. Such recovery however be made in a staggered manner to obviate any hardship to the pensioners.”

3. However, vide Para-29 of the said judgment, it has been directed to the effect:-

“29. At this stage, we take note of the specific stand of the State as projected before us that it would be ready to examine the scheme/period of commutation while taking into consideration changes, if any, in underlying parameters and that an Expert Committee would be constituted in this respect which would be assisted by Recognized Expert Agency or Institution(s) which possess requisite knowledge and competence in assessing such matters. In this process the Committee would also invite and consider submission and representations in the matter from Associations of pensioners in the State.”

4. In view thereof, learned counsel for the applicant seeks to withdraw the present OA seeking liberty to seek such redressal in accordance with law in future. In view of the said submissions, the

OA 4952/2024 is dismissed as withdrawn with liberty granted as prayed.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(RASIKA CHAUBE)
MEMBER (A)**

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