

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

131.

OA 1865/2021

Hav Devi Dayal (Retd)

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate

For Respondents : Mr. Y.P Singh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
10.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the direction for the purpose of granting weightage on the basis of certain Government of India letters in the matter of grant of pensionary benefits. It is the case of the applicant that while settling his post-retiral claim, payment of left over amount on account of leave encashment and certain other benefits could not given.

2. The applicant was enrolled in the 126 Infantry Battalion Territorial Army (JAK RIF) on 15<sup>th</sup> December, 1997 while in service he was promoted as Nk on 1<sup>st</sup> May, 2012 and Hav on 1<sup>st</sup> August, 2014. As per the record, the applicant

had total 142 days of non qualifying service in his credit (141 days disembodied service and 01 day leave without payment). The applicant was discharged from service on 31<sup>st</sup> December, 2017 on completion of terms of engagement under the provisions of Rule 14(a) of Territorial Army Regulations 1948 after rendering 19 years 07 months and 25 days and qualifying service. On being discharged from service the applicant was granted service pension @ Rs. 19,737 per month vide PCDA (P), Allahabad PPO No 195201800651 dated 27<sup>th</sup> April, 2018.

3. On the date of his discharge as the respondents failed to pay leave encashment for the purpose of commutation it should have been 300 days but he was only paid for 266 days for leave encashment thus for the remaining 35 days leave encashment which remained unpaid, this application has been filed.

4. It is the case according to the respondents after retirement the claim of the applicant was settled in the following manner:-

(a) Terminal Credit Balance	Rs. 4,37,914
(b) Retirement Gratuity	Rs. 4,10,149
(c) Capitalized Value of Commuted Pension	Rs. 10,70,481

(d) Regular Maturity Benefits under AGIF Rs. 1,58,562  
Scheme

(e) Closing Balance of AFPP Fund Rs. 1,37,375

5. However, applicant after discharge submitted a representation complaining that he has not been granted payment of 35 days' leave encashment by Pay and Account Office.

6. Respondents submitted a reply and clarified that there was no anomaly, with regard to the HRA also the anomaly was clarified. Further the grievance put forth before us today is to the effect that the applicant is getting less pension and the respondents have explained the same in Para 4, 5 and 6 of the counter affidavit in the following manner:-

"4. However, as far as the applicant's another contention that he is getting less pension is concerned; it is submitted that grant of service pension/gratuity to Territorial Army(TA) personnel is governed by the provisions of Government of India, Ministry of Defence letter No 68699/221/GS/TA-3(a)/1181/B/D (GS-VI) dated 11 Jun 1985. As per the ibid policy letter, the minimum qualifying service has been specified as under:-

(a) For officer - Aggregate 20 years of embodied service.

(b) For JCOs/OR - Aggregate 15 years of embodied service.

5. Furthermore, the *ibid* policy letter also stipulates that "the qualifying embodied service as mentioned above, may be continuous or rendered in broken spells, calculating the total embodied service, the breaks in embodied service due to disembodiment, will be treated as condoned but the period of breaks itself will not be treated as qualifying service for pension where qualifying embodied service has been rendered in broken spells, five percent cut will be imposed on the pension of those JCOs/OR who have completed 15 years or more of aggregate embodied service". Accordingly, as the applicant was having only 19 years, 07 months and 25 days of qualifying service in his credit, hence as per the aforesaid policy a cut of 5% was imposed on his Service Pension. It can be noticed on perusal of the applicant's Service Pension PPO No 195201800651 dated 27 Apr 2018 that the last emoluments drawn by the applicant was 41,550 (forty one thousand five hundred fifty only) and due to imposition of 5% cut as per the policy in vogue the same became 39,472.50. As per the service rules the basic Service Pension is equal to just half of the last emoluments drawn by the pensioner during service. So, as per the *ibid* formula the basic Service Pension of the applicant becomes Rs 19,736.25 (i.e. just half of 39,472.50). The aforesaid PPO depicts the same Basic Service Pension. Therefore there is no anomaly with regard to the applicant's Service Pension.

6. Keeping in view the foregoing facts, it is evident that the applicant has correctly been paid the amount of leave encashment (i.e. 266 days) for the reasons elucidated at Paragraph 2(a) and (b) above and the amount of House Rental Allowance (i.e. Rs 17,232) has already paid to him as intimated by PAO (OR) JAK RIF vide letter No LG-1/Gen Corre/Vol-111 dated 22 Oct 2021. Moreover, he is being correctly getting his service pension after imposing procedural 5 % cut as per the extant policy being having less than 20 years of qualifying embodied service as per calculation explained at Paragraph 5 above.”

7. From the aforesaid, it is clear that by imposing a procedural cut of 5% as per policy on account of the fact that the applicant has less than 25 years of qualified service the calculation is being made.

8. The issue with regard effecting this 5% cut based on the policy have been a subject matter of consideration by a Coordinate Bench of this Tribunal in various cases, particularly, OA 397/2013 Sub Pusha Ram Vs. Union of India and Ors. decided on 31<sup>st</sup> July, 2014. It was the case of the respondents that there being denying the benefit of weightage by Government of India's letters and their cut of 5% imposed is unsustainable in law. The issue was considered by this Tribunal and it has been found that the

employees like the petitioner are entitled to the weightage in accordance to the Government of India's circulars and policies referred to in various judgments particularly, in OA 165/2010 Maj S. D. Singh (ret'd) & anr. Vs. Union of India & others wherein learned Tribunal has held as under:-

“ 12. Hence as a result of above discussion, we allow this petition and direct that Para 6.2 of order dated- 3.12.1998 which reads *“There will be no weightage for officers and PBOR of the Territorial Army”* is struck down. Likewise Note (2) in the order dated 30.10.1987 which reads *“There will be no weightage for officers and personnel below officer rank of the Territorial Army”* is struck down and likewise clause (b) of the Army order dated 11.6.1985 which reads- *“The weightage added to the qualifying service of regular Army personnel will not be allowed in the case of Territorial Army personnel”* is struck down. The respondents are directed to treat the petitioner and likewise all persons similarly situated accordingly, and they should be given the benefit of weightage as is given to the army personnel.”

9. Following these judgments, the Regional Bench, Chandigarh also on 6<sup>th</sup> October, 2015 in OA 4123/2013 Sultan Singh Vs. Union of India and others. has allowed the same benefits and in the matter of payment of lesser pension it has been found that the deduction of 5% of the amount on the basis of order and circulars is unsustainable in law and



from Para 7 onwards a detailed discussion has been conducted and in Para 9-10, the issue has been decided in the following manner:-

“9. Now we take up the second point. The facts are almost uncontroverted. A bare perusal of the PPO filed as Annexure A-2 would show that the average pay for the purpose of pension was fixed at Rs.13420/- and 50% of the said amount comes to Rs.6710 per month while the petitioner is actually getting pension amounting to Rs.6375/-. Although there is no explanation in the written statement/reply filed by the respondents as to why the petitioner is not getting pension 50% of the average pay but, it appears that the respondents are making 5% deduction as the petitioner belongs to Territorial Army presumably in view of the Government of India letters dated 18<sup>th</sup> August, 2010, 18<sup>th</sup> January, 2011 and 17<sup>th</sup> January, 2013. At this juncture, the learned counsel for the petitioner has rightly placed reliance upon judgment of the Principal Bench in *OA No. 397 of 2013 “Sub Pusha Ram v. Union of India and others”* decided along with other connected OAs by the judgment dated 31<sup>st</sup> July, 2014, wherein it has been held that 5% deduction from the pension on the ground that the individual belongs to Territorial Army is unjustified, discriminatory, null and void. For the sake of convenience, paragraph 4 from the said judgment is reproduced below:

“The petitioners are, therefore, entitled to the consequential relief of ‘revised pension’ according to the facts of the individual case. It is also made clear that the said revision of pension shall be made without any cut of

5%, which is sought to be cut by the respondents. Consequently, the Government letter dated 18.08.2010, 18.01.2011 and 17.01.2013, making a discrimination, shall be "null and void". It is also not in dispute that In OA 387 of 2013, counting of past service for Regular Army has been done for 4 years 41 days. The petitioner shall also be entitled to the interest at the rate of 12% per annum over the period from the date it became due."

10. The learned counsel for the respondents could not point out any fact which may justify payment of lesser amount than 50% of the average pay. There is no denial by them in the written statement. In this view of the matter, we are of the view that the petitioner is not being paid the pension correctly and the pension is being paid at a lesser amount. Therefore, it is held that the petitioner is entitled to get pension @ Rs.6710/- per month. He is also entitled to receive the arrears."

10. Keeping in view the aforesaid, we see no reason as to why the benefit of fixing the pension after deducting the 50% of the average pay should not be allowed and respondents be restricted from deducting 5% from such petitioner who belongs to the Territorial Army based on the Government of India's letter be held as unsustainable.

11. Accordingly, the petition is allowed. Respondents are directed to grant benefit to the applicant after calculating the pension without deducting 5% as has been done and grant



arrears and consequential benefits within three months failing which these shall carry interest at the rate of 6% per annum.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

Priya

In view of the OA having been allowed, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

Priya