

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

138.

OA 4187/2023 WITH MA 2953/2024 AND MA 5479/2023

Ex PO (UW) Devraj Singh

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

ORDER
12.12.2024

MA 2953/2024

Counter affidavit has been filed. There being some delay in filing the same, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

MA 5479/2023

3. Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the delay in filing the OA is condoned.

OA 4187/2023 WITH MA 5479/2023
Ex PO (UW) Devraj Singh

Page 1 of 9

4. MA stands disposed of.

OA 4187/2023

5. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has challenged tenability of the impugned order dated 15.07.2022 by which the disbursement of pensionary benefits, namely, service pension and disability pension, has been withheld on account of pendency of a Court case against him. The relief claimed by the applicant in Para 8 reads as under:

- (a) *Quash the impugned letter No. Pen/S/600/138965F dated 15.07.2022.*
- (b) *Direct the respondents to release the disability element of pension to the applicant, duly rounded off to 50%, w.e.f. the date of discharge.*
- (c) *Direct the respondents to pay the due arrears of disability element of pension with interest at 12% p.a. from the date of retirement with all consequential benefits.*

6. The applicant was enrolled in the Indian Navy on 30.01.2004 and after serving for 15 years he was discharged from service in a Low Medical Category on 31.01.2019. He suffered two disabilities while in service, i.e., (i) Crush Injury to the Right Foot with Multiple Metatarsal Fractures (ICD No. S92.3, V20) @ 40%, and (ii) Fracture of the 5th Proximal

Phalanx (Right Foot) with Soft Tissue Defect (Optd) (ICD No. S48.1, S87.8, V20) @1%-5%. The composite assessment of both these disabilities was made at 43% with net assessment qualifying for a disability at 40% and based on the injury report, the disabilities were deemed to be attributable to military service.

7. Consequently, the applicant's disability pension claim was processed for both disabilities and forwarded to the PCDA (N). The applicant was granted disability pension, as communicated to him on 07.12.2018, after approval by the PCDA (N). However, the grievance of the applicant now is that on account of the pendency of a criminal case under Sections 147, 148, 323, 504, 506, 498A, and 114D of the IPC, along with a divorce case filed by his wife, which is pending before the Civil Court of Muzaffarnagar, his pensionary claims, including the disability pension, have been withheld. The applicant contends that the respondents cannot withhold his entire pensionary benefits and he is entitled to grant of disability pension assessed @ 40% and rounded off to 50%. As the respondents have

withheld the pension despite settlement by the PCDA (N), hence, this OA.

8. The facts, as on record, are admitted by the respondents. However their contention is that at the time of discharge, the applicant was subjected to a release medical board which found him in low medical category as S3A2 (P) PMT for the disabilities indicated hereinabove. The respondents admit in their counter affidavit that the disability was attributable to military service and was approved by the PCDA (N) for grant of disability pension. However, in view of the pendency of the criminal case, the respondents are relying on Regulation 5-A of the Navy Pension Regulations, 1964, which reads as under:-

“5-A. Grant of provisional pension. (1) Where any departmental or judicial proceedings are in progress or are instituted after retirement for an event which took place not more than 4 years before such institution against service personnel (including a commissioned officer) who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension:

Provided that no gratuity or Death-cum-Retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon;

Provided further that no commutation of provisional pension shall be allowed.

9. The respondents submit that the disbursement of pensionary benefits has been withheld and it can be granted to the applicant only after the settlement of the criminal case pending against him.

10. Having heard learned counsel on both sides, the only question that needs to be answered for deciding the OA is whether the entire pensionary benefits can be withheld on account of the pendency a criminal case against the Armed Forces Personnel, which arises out of a matrimonial dispute between the applicant and his wife. The payment of pension to the applicant is governed by the Navy (Pension) Regulations, 1964. These regulations have been notified by virtue of the powers conferred on the Central Government under Section 184 of the Navy Act, 1957 (Act No. 62 of 1957). Regulation 3 of the Pension Regulations stipulates various kinds of pension and benefits and the said Regulation reads as under :-

3. Kinds of pensionary etc., benefits.- Subject to the other provisions of these regulations, the following kinds of retiring

and other benefits are admissible to whom the regulation are applicable, namely:-

- (a) service pension,*
- (b) Service gratuity,*
- (c) Disability pension,*
- (d) constant attendatn allowance,*
- (e) Family pension which may be either ordinary or special*
- (f) family gratuity*
- (g) children allowance, and*
- (h) education allowance to children*

11. Regulation 5 and 5-A of the Pension Regulations which are also relevant for the purpose of deciding the issue, reads as under:-

5. Full rates not always admissible.- The full rate of pension or gratuity under these regulations shall not be granted to a person unless the service rendered by him has been satisfactory.

“5-A. Grant of provisional pension. (1) Where any departmental or judicial proceedings are in progress or are instituted after retirement for an event which took place not more than 4 years before such institution against service personnel (including a commissioned officer) who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension:

Provided that no gratuity or Death-cum-Retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon;

Provided further that no commutation of provisional pension shall be allowed.

12. A perusal of Regulation 5-A clearly indicates that where any departmental or judicial proceedings are ongoing, after the retirement of an employee, a provisional pension is to be paid. This provisional pension should not exceed the maximum pension which would have been admissible based on the employee's qualifying service up to the date of retirement. The proviso further clarifies that only the gratuity (death-cum-retirement gratuity) can be withheld until the conclusion of the proceedings.

13. Thus, it is clear that the provisional pension, including service pension, must be paid during the pendency of judicial or departmental proceedings. The question, therefore, is whether Regulation 5-A permits withholding of disability pension. A perusal of the Regulation shows that pension is not specifically defined, but Regulation 3 lists various types of pension, including service pension, service gratuity, disability pension, and others.

14. Regulation 5-A uses the term "**pension**" in a general sense and does not specifically differentiate between the types of pension as classified under Regulation 3. The term "**provisional**

pension” in Regulation 5-A(1) should, therefore, be understood to encompass all the different types of pension listed under Regulation 3, excluding gratuity, which is specifically addressed in the proviso. Therefore, provisional pension under Regulation 5-A would include service pension, disability pension, and other pensions.

15. Consequently, the respondents cannot withhold the disability pension and under Regulation 5-A disability pension has to be given to the applicant.

16. Accordingly, in view of the above, the disability pension has to be paid to the applicant assessed @40% and rounded off to 50% from the date of his discharge, subject to the final outcome of the judicial proceedings.

16. In view of the above, we allow this OA to the extent that the impugned order dated 15.07.2022 which denied disability pension to the applicant is quashed. The respondents are directed to release to the applicant provisional disability pension, rounded off to 50%, from the date of discharge and to continue to the pay the same in accordance with Regulation 5-A(1). The provisional disability pension must be

paid within three months from the receipt of a copy of this order.

17. Accordingly, the OA is disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/Ps/