

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

8.

OA 5264/2024 with MA 5504/2024

Col Akhilesh Kumar Das (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. B L Verma, Advocate
For Respondents : Ms. Sunanda Shukla proxy for
Mr. Jagdish Chandra, Advocate
Capt. Abhishek Kumar, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
19.12.2024

MA 5504/2024

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 412 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 5504/2024 is allowed and the delay of 412 days in filing the OA 5264/2024 is thus condoned. The MA is disposed of accordingly.

OA 5264/2024

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

(a) *Direct the respondents to calculate the excess amount. As per the applicant, the commuted value Rs. 16,095 plus interest on commuted pension that time; as Hon'ble Court-2 of this Tribunal has passed an order in the matter of AVM (Retd) SK Gagneja Accts v/s UOI oa 2366/2024 order dated 22.07.2024*

for stay of further recovery of commuted value and accepted for refund of excess commuted recovered amount. And/or

(b) Direct respondents to refund the extra instalments with interest as applicable so recovered from the applicant wef 01 Apr 2020 i.e after 11 years and six months of recovery or any other earlier data as decided by the Hon'ble Tribunal by this Hon'ble Tribunal in the facts and circumstances of the present case.

3. At the outset learned counsel for the applicant in reply to a specific Court query submits that in view of the orders of the Hon'ble High Court of Punjab and Haryana in *Shila Devi vs. State of Punjab and Others* (CWP No. 9426 of 2023 order dated 27.11.2024), and the directions in Paras 28, 29, 30 and 31 thereof which read to the effect:-

"28. 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.

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.

30. *Keeping in view the fair stand on the part of the State, we do not find any ground for issuance of any particular direction in this regard except to CWP No. 9426 2021 (0631) and connected petitions 38 observe that in terms of the stand as projected before us, it is expected that necessary steps in this regard would be taken expeditiously by the State.*

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.”,*

the applicant seeks to withdraw the present OA seeking liberty to seek redressal if any available in accordance with law.

4. In view of the said submissions the OA 5264/2024 is dismissed as withdrawn with liberty granted as prayed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)