

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.60 of 2014

Friday, the 16th day of January 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Ex-Sgt, Name-T. Alavandar

Service No.233206

S/o Late D.Pillai Govindan,

aged about 72 years

"Brindavan", No.13, Avvai 2nd Cross Street

I.O.B. Colony, Selaiyur

Chennai-600 073.

.. Applicant

By Legal Practitioners:

Mr. M.K. Sikdar & S.Biju

vs.

1. Union of India,
Rep. by the Secretary
Govt. of India, Ministry of Defence
New Delhi-110 011.

2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
New Delhi-110 106.

3. The Air Officer Commanding
Air Force Record Office, Subroto Park
New Delhi-110 010.

4. The JCDA (Air Force)
Subroto Park
New Delhi-110 010.

.... Respondents

By Mr. S. Haja Mohideen Gisthi, SCGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. This application is filed by the applicant for the reliefs to quash the impugned order dated 23.11.2009 and issue a direction to the respondents to grant service pension for the rank of Sergeant (Sgt) from 01.03.1977 with consequential monetary benefits and with interest and costs.

2. The factual matrix of the applicant's case would be as follows:-

The applicant submits that he was enrolled in Indian Air Force on 13.02.1962 and promoted to the rank of Sergeant (Sgt) on 06.09.1976. He was discharged from regular Air Force Service on 28.02.1977 after 15 years and 16 days of service and was put into Regular Air Force Reserve Service with effect from 01.03.1977 to 28.02.1979 and thereafter discharged from the Regular Air Force Reserve on 28th February 1979. He was granted service pension for the rank of Corporal (Cpl) and denied pension for the rank of Sergeant on the ground that he has not served for 10 months in the rank of Sergeant but served only for 5 months and 25 days. The applicant submits that as per the implementation of New Pension Code, pension to Armed Forces pensioners was granted with reference to the rank last held for 24 months preceding retirement and subsequently it was

reduced to 10 months emoluments or average of last 10 months emoluments from 01.04.1979 and as per latest rules, pension is straightaway granted at 50% of emoluments last drawn or average of last 10 months emoluments, whichever is beneficial. The applicant is entitled for pension for the rank of Sergeant as per Regulations 121 and 122 of Pension Regulations for the Air Force, 1961 and the respondents may condone the deficiency of service in a particular rank not exceeding three months. The applicant therefore requests that this application may be allowed.

3. The contentions raised in the Reply Statement of the respondents would be as follows:

The applicant's enrolment and the service particulars are not denied by the respondents. As per Regulation 122 of Pension Regulations for the Air Force 1961 (Part-I) and GOI MOD letter dated 22.11.1983, pension to an Army person is assessed in the lowest acting paid rank or substantive rank and lowest group held by him during the last ten months of his service qualified for pension. Further as per Regulation 123, a competent authority can condone a deficiency of service in a particular rank not exceeding three months except on voluntary retirement. The applicant did not complete the minimum requisite period of seven (7) months in the last rank to make him eligible for condonation in the last rank service. The respondents

further submit that as per the letter of Government of India dated 7.6.1999, the pensioners who had completed ten months of service in the rank last held and discharged prior to 01.01.1996, their revision of pension under V CPC orders with effect from 01.01.1996 is based upon consolidation method of pension as on 01.01.1996. As per Para 4.1.1 of MOD Letter dated 24.11.1997, this revised amount shall not be less than 50% of minimum of pay in Revised Pay Scale in the rank/group last held and such pension will be reduced proportionately, if the qualifying service is less than 33 years. Therefore, the respondents request that this application may be dismissed.

4. On the above pleadings, the following points were framed for consideration in this application :-

(1) Whether the applicant is entitled to a revised pension in the rank of Sergeant on and from 01.03.1977 or at the rank of Corporal as contended by the respondents ?

(2) If so, whether the applicant is entitled for interest on the payment of arrears of pension ?

(3) To what relief the applicant is entitled for ?

5. Heard Mr. M.K. Sikdar, learned counsel for the applicant and Mr. S.Haja Mohideen Gisthi, learned SCGSC assisted by JWO M.Tiwari, Legal Cell, Air Force, Chennai appearing for the respondents.

6. **Point No.1:** The indisputable facts are that the applicant was enrolled in the IAF on 13.02.1962 and was discharged on 06.09.1976 after completing 15 years and 16 days of qualifying service and he was sanctioned service pension at Rs.124/- per month with effect from 01.03.1977 for the rank of Corporal (Group-I) vide PPO No.S/27632/77. The issue of such pension was based upon Regulation 122 of Pension Regulations for Air Force 1961 Part-I coupled with Government of India MOD letter dated 22.11.1983 on the last acting paid rank or substantive rank and lowest group held by him during the last 10 months of the applicant's qualifying service for pension.

7. Now the applicant would claim that the said period of 10 months stipulated lastly for the purpose of assessing the pension has been waived in the subsequent letters of Government of India MOD, New Delhi dated 7.6.1999 and 9.2.2001 respectively. According to the applicant, the recommendations of V Central Pay Commission introduced a new pension policy and the anomaly in revision of pension of PBORs has been removed by virtue of the letter of GOI MoD letter No.1(1/99/D(Pen/services) dated 7.6.1999.

8. According to the said provisions of the Government letter, the pension of all the pre-1.1.1996 retirees in the rank of PBOR in all the three services for 33 years of qualifying service was directed to be fixed at not less than 50% of the maximum pay in the revised scale of

pay introduced with effect from 1.1.1996 including the 50% of highest classification allowance, if any, of the rank and group held preceding retirement.

9. However, the Government of India, Ministry of Defence issued another letter No.B/39013/AG/PS-4 (a&c)/131/A/D(Pen/sers) dated 9.2.2001 and clarified certain anomalies that had cropped up due to enforcement of policy vide Government letter No.1(1)/99/D (Pen/services) dated 7.6.1999, which caused loss to the pensioners. According to the said provisions of the letter, the pension of pre-1.1.1996 retirees from the three Armed Forces will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension was directed to be reduced proportionately, if the qualifying service is less than 33 years, but other criteria to earn pension were allowed to be continued. The Government of India letter No.B/39013/AG/PS-4(a&c)/131/A/D (Pen/sers), dated 9.2.2001 would run as follows :-

"I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen)/Sers) dated 7-6-99 and amended wherein the government has decided that w.e.f. 1-1-96 pension of all armed forces pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1-1-96. PCDA (P) Allahabad has not been giving

the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However there is no such stipulation on the government order under reference.

The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected there to, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years, other criteria to earn pension will continue to apply.

This issues with the concurrence of the Ministry of Defence (Finance/Pension) vide their UO No.148/Pen/01 dated 12-1-2001.”

(Emphasis supplied)

10. The aforesaid letter has thus clarified that the requirement of minimum 10 months' service in the rank or group to earn pension of that rank or group was taken away and it is sufficient for a pensioner to hold the post even for one day at the time of his discharge to earn the pension for that rank.

11. In similar facts and circumstances, the Armed Forces Tribunal, Kochi Bench, has also decided about the rank to be

considered for the assessment of revised pension with effect from 1.1.1996 as per the letters dated 7.6.1999 and 9.2.2001, and Paras-122 and 123 of Pension Regulations for the Air Force, 1961 (Part-I) made in O.A.No.20 of 2012 dated 20.3.2013 in between **Ex Sergeant Vasudevan. K.** and **Union of India and Others.** The following passage is relevant for the purpose of this case :-

"10. In our view, the respondent No.2 as also the respondent No.4 while passing the order Annexure A8 overlooked the terms and conditions of the Government letter dated 9th February, 2001 whereby the requirement of 10 month's service in a particular rank or group had been taken away, therefore, there was no question of invoking the provisions of Regulations 122 and 123 of the Pension Regulations for the Air Force, 1961 for the condonation of the deficiency in service. According to the Government of India letter dated 9th February 2001, the pensions of all pre 1.1.1996 retirees were required to be revised according to the group/rank last held by them. Therefore, the question of denying pension to the applicant of the rank of Sergeant only on the ground that he had not rendered 10 months service on the rank of Sergeant was not proper. Had the respondents No.2 and 4 perused the Government letter dated 9th February 2001 (Annexure A2) they would not have taken the decision Annexure A8. More so, the second contention of the respondents that the pension of the rank of Sergeant was not

beneficial to the applicant also has no substance. In this connection reference may be made to para 2.2 (b) of the Government letter dated 7th June 1999 (Annexure R2) whereby a provision has been made for grant of pension on the maximum pay for 33 years of qualifying service, subject to a minimum pension of Rs.1913/- per month. In case the qualifying service is less, the pension is to be reduced proportionately. Therefore we are unable to understand as to how the respondents contend that the pension of the rank of Sergeant was not beneficial to the applicant. It appears that the respondents intended to calculate the applicant's pension of the rank of Sergeant on the minimum of the pay of that rank against the true spirit of the letter dated 7th June, 1999, which virtually requires to fix the pension on the basis of the maximum of the pay, therefore, this contention of the respondents has no substance."

As far as the applicant is concerned, he was discharged on 28.02.1977 which is prior to 1.1.1996 in the rank of Sergeant and therefore, the applicant should not have been denied the revision of pension in the rank of Sergeant and the said denial is contrary to the guidelines issued by the Government of India, Ministry of Defence, in its letter dated 9.2.2001. Therefore, the contentions raised by the learned Senior Central Government Standing Counsel that the said period of 10 months as stipulated in Para-123 of Pension Regulations for the Air Force, 1961 (Part-I) has not been waived so far, cannot be correct.

Similarly, the calculations arrived at by the respondents both in their pleadings and arguments for the rank of Sgt (Group-I) of the applicant, cannot be sustained. The applicant should have been given revised pension on and from 01.03.1977 in the rank of Sergeant as per the relevant Table given, for 15 years and 16 days of pensionable service plus weightage for the purpose of calculating the revised pension as on 1.1.1996. Accordingly, this point is decided in favour of the applicant.

12. **Point No. 2:** In the above point, we have found that the applicant is entitled for the revised pension with effect from 1.1.1996 in the rank of Sergeant lastly held by the applicant as per the letter of Government of India, Ministry of Defence, dated 9.2.2001. The said benefit is given to the applicant by virtue of the letters of the Government dated 7.6.1999 and 9.2.2001. The respondents ought to have acted upon the intention of the letters and a revised pension should have been paid to the applicant with effect from 1.1.1996. But it was not revised accordingly by the respondents. Therefore, the arrears of revised pension payable to the applicant as directed by us with effect from 1.1.1996 shall be paid by the respondents with a simple interest at 6% per annum on the arrears from 9.2.2001 till the date of payment. However, it was submitted on the side of the respondents that the revision of pension in the rank of Sergeant will

not be beneficial to the applicant since he was getting more pension than a pension for the rank of Corporal (Group-I) on the quantum of maximum scale of pay in that rank and the calculation of pension in the rank of Sergeant will be less than the quantum of pension already received by the applicant in the rank of Corporal (Group-I). He would also submit that the applicant would be required to submit an undertaking to receive less pension in such an event and therefore the applicant would not be benefitted even otherwise the pension is ordered as prayed for by him. The submission placed on the side of the respondents could not be accepted towards the rejection of pension even if it is found to be less than the previous lower rank held by the applicant. The Hon'ble Apex Court repeatedly laid down the principle that the pension is an earned right of an individual and it is not a charity or bounty to which the employer can refuse to pay. The judgments of the Hon'ble Apex Court are as follows: The judgment in **1992 Supp (1) SCC 664** in the case of **All India Reserve Bank Retired Officers Assn. v. UOI** runs as follows:

" 5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whims or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a

social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. "

Yet another judgment of the Hon'ble Apex court was cited by the learned counsel for the applicant reported in **(2011) 11 SCC 702** in the case of **PEPSU RTC vs. Mangal Singh**. It has been laid down as follows:

"39. Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. "

In the said judgments it has been held that the earned pension cannot be deprived to an individual for which he has already rendered his service. As far as this case is concerned, the applicant had earned the pension at the rank of Sergeant already and therefore, is entitled to be paid pension in the rank of Sergeant. Even if, for some reason, such a pension is found to be less, the applicant is entitled to receive the highest pension he earned already. The said statutory right for pension already earned by the applicant cannot be reduced even after

an undertaking executed by him for the receipt of any lower pension in the rank of Sergeant. The said claim of the respondents to pay lesser pension cannot be appreciated even if it is reducible as per rules. Accordingly, both the points are decided in favour of the applicant.

13. **Point No.3:** From the discussion held above and the decisions reached thereon in the previous points, we are of the considered view that the applicant is entitled for the revised pension in the rank of Sergeant with effect from 1.1.1996 as per the Government of India MoD letters dated 7.6.1999 and 9.2.2001, and the arrears of pension shall be paid by the respondents with simple interest at 6% per annum with effect from 9.2.2001 as indicated above. The said arrears of revised pension shall be paid with interest within a period of three months and the Pension Payment Order shall also be amended and be issued within the said time. In default to comply, the respondents shall pay interest at 9% p.a. on the outstanding amount payable to the applicant from this date onwards.

14. In fine, the application is allowed as indicated above. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

16.01.2015
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

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To:

1. The Secretary
Govt. of India, Ministry of Defence
New Delhi-110 011.
2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
New Delhi-110 106.
3. The Air Officer Commanding
Air Force Record Office, Subroto Park
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New Delhi-110 010.
5. Mr. M.K. Sikdar & S.Biju
Counsel for applicant.
6. Mr. Haja Mohideen Gisthi, SCGSC
For respondents.
7. OIC, Legal Cell,
Air Force, Avadi, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

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Dt:16.01.2015