

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: T. A NO. 147 OF 2010 {WP (C) No. 18732 of 2008}}

THIS 31st DAY OF JULY, 2014

CORAM: HON'BLE JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Rangadhar Mohapatra,
S/o Late Gadadhar Mohapatra,
Hony Lieutenant (Retd.)
R/o Vill. Janaradanpur, PO Ghasipure,
Dist. Keonjhar, Orissa.

.....Applicant

-VS-

1. Union of India through
The Defence Secretary, M/o Defence
South Block, New Delhi-110 011.
2. The Director (Pension),
Addl. Directorate General (Personnel Services),
Adjutant General Branch, Army Headquarters,
New Delhi
3. Principal Controller of Defence Accounts,
(Pension), PCDA (Pensions), Allahabad, UP
4. Controller General of Defence Accounts,
New Delhi-110 066
5. Officer-in-Charge,
ASC Records (Supply)
Bangalore-7

.... Respondents.

For the Applicant : Mr. Ashok Kumar Ghose, Advocate

For the respondents : Mr. D.K.Mukherjee, Advocate

ORDER**PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)**

This matter was initially filed before the Hon'ble Orissa High Court as Writ Petition No. WP(C) No.18732 of 2008 by the applicant being aggrieved by order dated 21-10-2008 passed on behalf of respondent No.3, i.e. PCDA (P) in pursuance of a direction of the Hon'ble Orissa High Court dated 4-8-2008 passed in WP (C) 3526 OF 2007, filed earlier by the same applicant, whereby the claim of the applicant for enhanced pension was rejected. The aforesaid Writ Petition, after establishment of the AFT, has been transferred to this Bench under the provisions of Section 34 of the AFT Act 2007 and renumbered as TA 147/2010.

2. Briefly stated the facts of the case are that the applicant was enrolled in the Army on 22-8-1953. After completion of 28 years of service he retired in the rank of Subedar on 31-8-1981. However, he was granted Honorary Commission of Lieutenant on 15th August, 1981, i.e. while he was in service. However, after his retirement, the applicant was also granted Honorary rank of Captain.

3. At the time of his retirement, his basic pay was Rs 1000 + 27% thereof treated as pay subject to a maximum of Rs243/-, i.e. Rs. 1243/- (annexure-3). His pension was fixed at Rs 497/- per month as per PPO No.S/C/24520/81. The applicant was not satisfied with his pension being fixed at Rs497/- and according to him, his pension ought to have been fixed at Rs 610/- per month in accordance with Government of India, Ministry of Defence Policy letter No.B/38027/AG/PS4 (a)1733/C/D(Pension/ Services) dated 21-6-1979 (Annexure A1). As per this Government Order slab system of determination of pension was introduced. According to this system, the amount of monthly pension is to be fixed at the rate of 50% of average emoluments up to Rs1000/- and then 45% for the rest Rs 500/- onwards. If calculated on the basis of this formula, the applicant claims that his pension should be Rs610/- per month instead of Rs497/- as fixed by the respondents. He has also submitted that his gratuity was paid on the basis that his pay was Rs1243/- per month. The

applicant made representations to various authorities for re-fixation of his pension properly but to no effect. He therefore filed a Writ Petition before the Hon'ble Orissa High Court being No.WP(C) 3526 of 2007 which was disposed of on 4-8-2008 by directing the PCDA (P) to scrutinise the service records of the petitioner and examine whether the pension fixed was just and proper (Annexure A4). Pursuant to this order of Hon'ble High Court, the PCDA (P) has issued an order on 21-10-2008 (Annexure 5) which inter alia states as follows:

“That you were enrolled in the Army on 22 August 1953 and discharged on 31-08-81 after rendering 28 years 10 days qualifying service. You have been granted pension for the rank of Sub 'B' (a) Rs 431/- pm vide PPO No.S/C 24520/81. Subsequently, on grant of Hony Lt. your pension has further been revised to Rs 497/- PM per annexure IV to MOD letter No.B/38031/AG/PS-4 (a)/109/C/D (Pens/Sers) dated 15 Jan 1980. Further, your pension has correctly been revised w.e.f. 1-1-86 @Rs1136/- PM and Rs 5250/- w.e.f. 1-1-96 vide PPO No.S/R/MODP/9159/2000.”

4. Being aggrieved by this order he once again approached the Hon'ble High Court by filing the instant writ petition for a direction upon the respondents to fix his initial pension to Rs 610/- per month on the basis of his last pay as Rs1243/- per month with subsequent revisions as per Govt. orders issued from time to time.

5. The respondents have contested the application by filing a counter affidavit in which they have submitted as follows:

“It is humbly submitted that Para 3 of the Government of India, Ministry of Defence letter No.B/38031/AG/RS4(a)/109/C/D(Pens/Sers) dated 15-01-1980” is reproduced below :

“That Government have issued orders separately vide Ministry of Defence letter No.B/38027/AG/PS4(A)/1733/C/D (Pens/Sers) dated the 21st June, 1979 for determining pension of personnel below officer rank of the regular Army on a slab system. Consequent upon the introduction of the slab system and also treating a portion of dearness allowance as dearness pay for the purpose of terminal benefits, the President is pleased to decide that JCOs granted honorary commission as ICOs while on the effective list, who became/become non-effective on or after 1st April, 1979, will be entitled to the revised rates of service pension as given in Annexure-III and IV to this letter, in lieu of the awards already granted under Army Instructions 3/5/75.”

It is crystal clear from the above that JCOs, who were granted Honorary Commission on active list, were entitled to award in terms of Army Instruction 3/S/75. However, with the introduction of the slab system, the JCOs granted honorary commission as ICOS, while on effective list, who retired on or after 01 April 1979, will be entitled to the revised rate of Service Pension as given in Annexure-III and IV. Since the petitioner had retired on 31st August, 1981, he is entitled to revised pension as per Annexure-IV of letter dated 15-01-1980. The petitioner having 28 years of service and granted honorary commission as lieutenant on active list has correctly been granted Service Pension of Rs497/-.

As already submitted the Government of India, Ministry of Defence letter dated 21-06-1976 (sic – 1979) is not applicable to those JCOs granted Honorary Commission on active list. The same has no relevance with the petitioner's case. It is also stated by the respondents in Para 7 of CA that,

“as already submitted at Para 3 above, the service pension of the JCOs who were granted Honorary Commission on active list as Lieutenant and Captain has been fixed based on the length of service rendered by the individual (Annexure VI of letter dt. 15-01-1980). Para 7 of Annexure-2 is in connection with grant of death-cum-retirement gratuity as admissible under Army Instruction 8/5/70 to be read with Para 3 of Army Instruction 1/S/75 and has no relevance with grant of service pension to the JCOs granted Honorary Commission on active list.”

6. After transfer of the application to this Tribunal, supplementary affidavits and counter supplementary affidavits have been filed by both parties. The matter was also heard at length on several dates and the applicant has also filed written notes of argument reiterating his prayer for fixing his pension at Rs. 610/- pm and not at Rs. 497/- as has been done.

7. We have heard Mr. Ashok Ghosh, Id. Adv. for the applicant and Mr. D.K.Mukherjee, Id. Adv. for the respondents at length.

8. The applicant is now aged more than 80 years old and the matter pertains to the year 1981 when he retired and pension was granted. The controversy regarding fixation of proper pension is pending for a long time. In order to settle the dispute early, apart from hearing the submissions of the Id. Advocates for the parties, we directed the respondents to depute senior officers from PCDA (P), Allahabad and PS Directorate to be present to explain the position. Accordingly, Mr. Anil Arora, Dy. Director, PS-5 from PS Directorate and Mr. Amit Kumar, AAO with Mr. Ashutosh Srivastava, Sr. Auditor from the office of PCDA (P), Allahabad were present on 4.6.2014. They very ably and lucidly clarified the position. In our order dt. 4.6.14, we have also recorded our observations after hearing all parties.

9. Having heard the Id. Advocates for both sides and having taken into account various Govt. orders as annexed regarding fixation of pension, it appears to us that the main grievance of the applicant is two-fold :-

- (a) His pension as a Subedar has been inadequately fixed and he prays for revision in fixation of his pension to include all the Pay Commissions and the latest Government orders on the subject; and
- (b) The benefit of honorary Lieutenant which he received prior to his retirement while in service and honorary Captain which he received after five months of his retirement must also be taken into account in his pension as per rules which have not been adequately taken into account.

10. In his written note of argument dt. 16 June 2014, the applicant has stated in para 10 that his total pension as it stands at present after enjoying the benefits of successive pay commissions as also additional pension due to attaining the age of 80 years, is Rs. 37416/-. Thus, so far as benefits of subsequent pay commissions are concerned, he has already got it. So far as benefit of honorary commission is concerned, we have already held in our order dt.4.6.14 that "the applicant's grievance with regard to the additional fixation of pension because of grant of honorary commission of

Captain after retirement stands settled.” It was observed therein that such double benefit is not admissible.

11. But his main grievance is that his pension should be fixed in terms of the Govt. order dt. 15 Jan 1980 (annexure-2) according to which the pension of individuals who have already become non-effective on or after 1st April 1979 shall be re-calculated on the basis of procedure laid down therein and arrears, if any, paid to them subject to such adjustment as may be necessary. According to the applicant, this means that the pension has to be fixed on the basis of last ‘emoluments’ which has been defined as under:-

(a) Pay of the rank last held.

(b) Portion of dearness allowance (27% subject to maximum of Rs. 243/-) treated as pay.

12. A careful perusal of the ibid circular dt. 15.1.80 which is at Annexure-2, it is quite clear that pension is to be calculated as per method as indicated in Para 3 of the ibid Govt. order. The said Para is quoted below:-

“3. That Government have issued orders separately vide Ministry of Defence letter No.B/38027/AG/PS4(A)/1733/C/D (Pens/Sers) dated the 21st June, 1979 for determining pension of personnel below officer rank of the regular Army on a slab system. Consequent upon the introduction of the slab system and also treating a portion of dearness allowance as dearness pay for the purpose of terminal benefits, the President is pleased to decide that JCOs granted honorary commission as ICOs while on the effective list, who became/become non-effective on or after 1st April, 1979, will be entitled to the revised rates of service pension as given in Annexure-III and IV to this letter, in lieu of the awards already granted under Army Instructions 3/5/75. (emphasis added)”

13. It is evident that this Para has two parts – first part is the method of calculation of pension of personnel below officer rank of the regular army on a slab system i.e. based on last emoluments treating basic pay and 27% of DA as part of pay while the second part relates to determination of pension based in respect of those JCOs granted honorary commission while on effective list based on annexure-III or IV to Govt. order dt. 15.1.80.

14. The applicant admittedly falls in the category of those who became non-effective after 1st Apr 1979; because he retired on 31.8.1981 as Subedar with honourary rank of Lieutenant. Therefore, his service pension is to be determined in accordance with Annexure-III and IV to the ibid letter. The contention of the applicant that his last pay having been fixed at Rs. 1243/- vide annexure-3, his pension ought to have been fixed on that basis; but it does not find support from this Govt. order. According to this order, pension has to be calculated on the basis of annexure-III and IV appended to this Govt. order. The respondents have followed this order and fixed the pension of the applicant at the rate of Rs. 497/- as per table at annexure-IV to this Govt. order, which is applicable for Honourary Lt. A complete copy of this order has been produced before us subsequently. The respondents in their supplementary affidavit filed on 4.6.14 have clarified the position at Para 6 as under:-

“6. As per ibid letter dated 15th January 1980, Annexure-IV the pension of a Sub/Hony Lt. with qualifying service of 28 years was fixed at Rs. 497/-. The working sheet prepared at the time of issue of the MoD letter dated 15th January 1980 showing as to how the revised rates of service p[pension in respect of Risaldar/Sub granted Hony commission as ICOs while on effective list have been arrived at is enclosed. As per the working sheet the pension of a Subedar, Group ‘D’ with 28 years of service wef 1st April 1979 works out to Rs. 497/- wherein Rs. 415/- is the pension for 28 years of service and Rs. 82/- is the fixed amount payable in addition to pension on grant of Hony rank of Lieutenant.”

15. According to the applicant, his pension ought to have been fixed at Rs. 610/- taking into account his last pay of Rs. 1000/- plus 27% of DA which was treated as part of pay for the purpose of pensionary benefits subject to maximum of Rs. 243. Thus, his last pay was Rs. 1243/- which is also indicated in annexure-3 while revising his pension from 1.1.1986. The applicant relies on annexure-1 which is a copy of MoD letter dt. 21st June 1979, reference of which has also been given in the ibid Para 3 of Jan 1980 letter quoted above. According to Para 3 of this letter it is provided as follows:-

“3 The Government has issued orders separately vide Ministry of Finance (Department of Expenditure) OM No. F 19(3)-EV/79, dated 25th May 1979 for determining pension of the Central Government civil servants on slab system given below :-

Amount of monthly pension

(a) Up to 1 st Rs. 1000/- of average emoluments reckonable for pension	50% of average emoluments
(b) Next Rs. 500/- of average emoluments	45% of average emoluments.
(c) Balance of average emoluments	40% of average emoluments.”

16. According to the applicant, his pension has to be calculated on the basis of ‘average emoluments’ as defined i.e. last pay plus 27% of pay treated as pay. Calculated on this basis, his monthly pension, which would be as follows:-

(a) Up to 1 st Rs. 1000/- of average emoluments	: 50% i.e. Rs. 500/-
(b) Balance of Rs. 243/-	: 45% i.e. Rs. 110/-
<hr/> <hr/> Total = Rs. 610/-	

17. However, it is apparent that first part of the ibid Para is applicable to civilian Govt. employees and not for army personnel because in the next part of this particular Para, it is also provided as under:-

“ Consequent upon the introduction of the slab system for determining pension as above and also treating a portion of dearness allowance as dearness pay for the purpose of terminal benefits, **the President is pleased to decide that JCOs, Ors and NCs(E) of the regular Army who became/become non-effective on or after 31st March 1979, will be entitled to the revised rates of service pension as given in Annexure-II to this letter, in lieu of the awards already granted under AI 1/S/75.**” (emphasis supplied).”

18. The applicant has not enclosed annexure-II of this letter as mentioned in the above Para which was the basis for calculation of pension for army personnel in terms of this slab system. However, this particular order of 1979 was also referred to in the subsequent MoD letter dt. 15th January 1980 (annexure-2) on which both parties have placed reliance.

19. Be that as it may, when the particular Govt. order clearly stipulates that for army personnel like the applicant i.e. those became non-effective after 31st Mar 1979 after having conferred with Hony Lt. rank while in service, in their case annexure-IV will be the relevant calculation for service

pension, then the applicant cannot obviously claim that he should be treated differently at par with civilian Govt. staff.

20. We, however, appreciate the underlying reasons for the grievance of the applicant because if his pension is calculated on the basis of 'average emoluments' last drawn, then he would have got more pension i.e. Rs. 610/-. But annexure-IV to the ibid Govt. order applicable to army personnel with hony. Rank, like the applicant, the calculation is based on length of service and rank and not on last emoluments drawn while in service. For applying such different yardstick, the army personnel like the applicant are at disadvantageous position so far as their basic pension is concerned.

21. The respondents in their supplementary affidavit dt. 4.6.14 at Para 5 have stated as under:-

"5. Govt. vide letter No. B/28027/AG/PS-4(a)/1733/C/D(Pen/Service) dated 21st June 1979 revised the rates of service pension in respect of JCO, OR and NC(E) of the regular Army by way of incorporating the benefits of slab system and treating a portion of dearness allowance as dearness pay for the purpose of retirement benefits. **However, JCOs granted Hony Commission were not granted this benefit and orders to this effect were issued vide Govt. letter No. B/38031/AG/PS-4(a)/109/C/D (Pen/Service) dt. 15th January 1980.**"

22. Obviously, this is an anomalous position. The JCOs,OR, NCOs, who did not get honourary rank while in service, get the benefit of June 1979 order, i.e. their pension is fixed in terms last average emoluments; but the same is denied to those who got honourary Commission. In case the pension of the JCO, conferred with honourary rank while in service, is governed by Govt. order dt. January 1980 and such pension is fixed at a lower stage in terms of annexure-IV thereof, whereas the pension of a JCO who did not get such honourary rank, is fixed in terms of June 1979 order at a higher level based on last emolument drawn, then nobody would want to fix his pension in terms of Jan 1980 order only because he got hony rank; in that event he would get less pension, as is the case of the applicant. Therefore, it would have been proper for the authorities to give an opportunity for exercising option by such persons for fixing pension in terms of 1979 order or in terms of 1980 order. Obviously, in such case, 1979 order would be more beneficial. Only by getting honurary commission,

the Govt. cannot take away the right of a person to receive pension at higher rate based on last emoluments which is admissible to other Govt. employees including army personnel. This would give rise to an anomalous position offending equality principle enshrined in our Constitution because pension of all Subedars with 28 years of service should be same for all; if one has got honourary rank, he may be given some extra monetary benefit. If getting the award of a honourary rank, the pension of the applicant becomes less than a Subedar who has not got such honourary rank, and then it certainly amounts to discrimination violating Art. 14 and 16 of the Constitution. It is, however, explained in Para 7 that such JCOs who are granted honory. Commission are also getting additional relief @ 20% subject to a maximum of Rs. 100/-. Whatever may be position, prima facie it appears that had the applicant's pension been fixed in terms of 1979 order, he would have got Rs. 610/- as pension calculated on the basis of slab system on average emoluments. Only because he was granted honourary commission rank 15 days before his retirement, his pension has been fixed by a different method at lower stage of Rs. 497/- as per annexure-IV to the ibid letter dt. 15.1.80 which is based on length of service and rank. Even if Rs. 100/- is added as stated by the respondents in Para 7 of their counter affidavit, then also it is less than Rs. 610/-. This position needs to be carefully examined by the Govt. as also PCDA (P) in its proper perspective and to set right if any wrong is done.

23. Therefore, without waiting for any further clarification from Govt. and adjourning the matter unnecessarily, it will be fit and proper to dispose of the application in the light of our above observations and keeping in view our order dt. 4.6.14 within a certain period of time because the applicant is more than 80 years of age now and may not survive for long to enjoy the benefit if decided in his favour by the Govt.

24. Accordingly, the application is disposed of on contest by issuing the following directions:

- a) The impugned order dt. 21.10.2008 at annexure-5 stands quashed.

- b) The respondent are directed to re-examine the issue of fixation of pension of the applicant, who retired on 31.8.81 as Subedar with honorary rank of Lt, and ensure that his pension should be enhanced in a manner that he is not disadvantaged by getting less than those with same span of service in the same rank of same grade, keeping in view the observations made by us above including in Para 22 and 23.
- c) The decision in this regard be taken and implemented within two months from the date of receipt of this order by the PCDA (P).
- d) No costs.

25. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of usual formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER (JUDICIAL)