

SEE RULE 102(1))**ARMED FORCES TRIBUNAL , KOLKATA BENCH****APPLICATION NO : O. A NO. 112 OF 2011**
(ALONG WITH OA 42 of 2015)**ON THIS 14TH DAY OF DECEMBER, 2015****CORAM :HON'BLE JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)**
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

Jaydev Konar, Son of Late Bhakti Bhusan Konar, worked as
CHELR (Chief Electrical Radio) No.148837 T under Naval
Officer of I.N.S. 22, Hastings, Kolkata – 700 001, residing at
Village and Post Office Khaunal, Dist. Hooghly

.....Applicant

-VS-

1. Union of India service through
The Secretary, M/o Defence,
Sainik Bhawan, New Delhi-1100011
2. The Chief of the Naval Staff,
MHO (DAPO Pension Cell)
New Delhi – 110 001
3. Staff Officers, Pension Commodore
Bureau of Sailors, Cheetah Camp, Mankard,
Mumbai-400 088
4. Naval Officer-in-Charge, Calcutta I.N.S. 22, Hastings,
Calcutta – 700 001

.... Respondents

For the Applicant : Mr. Timir Kanti Biswas, Advocate

For the respondents : Mr. Dipak Kumar Mukherjee, Advocate

ORDER

Per Mr. Justice N.K. Agarwal, Member(J)

This application is filed by the applicant for the reliefs to quash the impugned orders dated 29-11-1997 (Annexure A3collectively)and order dated 30-8-2004 (Annxure A5) and issue a direction to the respondents to grant service pension for the rank of CHELR with all consequential monetary benefit, interest and cost.

2. Facts shorn of details are that the applicant was initially enrolled in the Indian Navy on 7-1-1983 and was released from service on 31-1-1998. Before his discharge he was promoted to the CHELR rank on 27-11-1997 with effect from 1-8-1997. He was sanctioned service pension of the PO rank. The applicant filed representation before the respondents claiming CHELR rank pension. However, the same has been denied inter alia on the ground that as per Regulation 84 of the Pension Regulations minimum service to earn rank pension is 10 months . Since the applicant had not completed mandatory service in the present CHELR rank, he was not eligible for same and therefore was sanctioned service pension of the PO rank. Feeling aggrieved therewith the instant application has been filed.

3. By filing the affidavit in opposition, the applicant's claim has been denied by the respondents. According to the respondents, as per Government of India, Ministry of Defence letter No.1(6)/98D (Pensions/Services) dated 3-2-1998, pension shall be assessed on the basis of rank pay actually held continuously for 10 months. Since the applicant did not serve for 10 months was not eligible for CHELR rank pension

4. We have heard the learned counsel for parties and perused the paper book.

5. In our opinion, the question that arises for determination of the Court are as under :

a) Whether the applicant is entitled for revision of pension in the rank of CHELR w.e.f. 1-2-1998?

b) If so, whether the applicant is entitled for interest on the amount of arrear of pension?

6. While denying CHELR rank pension to the applicant, it appears that the instruction/direction issued by the Government of India, Ministry of Defence vide its letter dated 9-2-2001 had been ignored by the respondent authorities, which reads as under:

“No.B/39013/AG/PS-4(a&c)/131/A/D(Pension/Services)
Government of India
Ministry of Defence

New Delhi, dated the 9th February, 2001

I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen/Sers) dated 7-6-99 as 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 thereto, 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 conditions to earn pension will continue to apply”.

7. From the above directions issued by the Government it is manifestly clear that the Government had decided that w.e.f. 1-1-1996 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 with effect from 1-1-1996. It has also been observed that 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.

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

9. The Armed Forces Tribunal, Kochi Bench had occasion to consider the aforesaid Government Orders in OA No.20 of 2012 (**Ex Sergeant Vasudevan. K. and Union of India and Others**). While allowing the applicant's application vide order dated 20-3-2013 it has been held as under :

"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 9 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."

10. The same view was reiterated by the Armed Forces Tribunal, Regional Bench, Chennai in OA No.60 of 2014 (**Rank Ex-Sgt, T. Alavandar vs Union of India and Others**) vide its order dated 16-1-2015.

11. Reverting to the facts of the case though the Respondents have denied applicant's claim in their affidavit in opposition, however, by filing FAX message dated 15-5-2014 the respondents have agreed that the petitioner is eligible for revision of his pension as per his last rank. The FAX message reads as under :

" FAX MESSAGE

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MA No.107/2013 ARISING OUT OF OA No.112/2011 FILED BY SHRI JAYDEV KONAR EX CHELR 148837-T AT AFT KOLKATA

1. REFER TO NOIC (WBG) FAX MESSAGE NL/203/148897-T DATED 22 APR 14.
2. THE GOVT OF INDIA HAS REVISED THE POLICY ON SANCTION OF PENSION AS PER LAST RANK VIDE GOVT OF INDIA, MINISTRY OF DEFENCE, NEW DELHI LETTER NO.B/39013/AG/P-4(A&C)/131/A/D

(PENSION/SERVICES) DATED 09TH FEB 2001 (COPY ENFAXED). AS A RESULT, THE ABOVE MENTIONED PETITIONER IS ELIGIBLE FOR REVISION OF HIS PENSION AS PERsa HIS LAST RANK I.E. CHELR FOR THIS PURPOSE THE PETITIONER MAY BE ADVISED TO APPROACH THIS OFFICE.

(AK MEELU)
CAPTAIN (IN)
SR. STAFF OFFICER (LEGAL)
FOR LOGISTIC OFFICER-IN-CHARGE"

12. On the basis of aforesaid FAX Message, the Counsel for the respondents had submitted that the Revised Pension is likely to be paid to the applicant within 2 months.

13. Pursuant to the submission of respondent's counsel, the Court had passed the following order vide its order dated 18-5-2014 :

" Mr. Timir Kanti Biswas, learned counsel appears for the applicant. Mr. Dipak Kumar Mukherjee, learned counsel appears for the respondents.

Mr. Biswas files a supplementary affidavit annexing a letter from Integrated Headquarters, Ministry of Defence (Navy) which may be kept with the record.

However, at this stage, Mr. Mukherjee, learned counsel for the respondents submits a fax message dated 15.05.2014 from the Naval Pension Office as per which the applicant stands eligible for revision of pension as per his last rank, i.e. CHELR which is the prayer of the applicant in this OA. Mr Mukherjee further submits that the revised pension is likely to be paid to the applicant within two months. Let the said Fax Message be kept with the record. A copy of the same has also been served upon Mr. Biswas in open court this day.

Having received of such a message from the Naval Pension Office, Mr. Biswas, learned counsel for the applicant submits that he would not like to pursue this application any further as his grievance have been redressed.

In view of the above, let the application be dismissed as 'not pressed'.

We, however, record our appreciation to the Naval authorities for their appropriate action redressing the grievances of the applicant even when the applicant's case is pending before this Tribunal.

A plain copy of the order, duly countersigned by the Tribunal Officer, be given to the parties upon observance of all usual formalities.

Sd/-

Lt Gen K.P.D. Samanta
Member(Administrative)

Sd/-

Justice Raghunath Ray
Member(Judicial)"

14. However, as the CHELR rank pension was not paid to the applicant, the applicant had filed OA 42 of 2015. In response to above, several letters have been filed by the respondents, one of them was a letter dated 23-2-2015 which shows that the sanction for payment of CHELR Rank Pension was accorded by the Integrated Headquarters, Ministry of Defence, which is the final competent authority but the implementation part is being carried by CDA (Navy), who in turn denied the claim on the ground:

“the AFT Kolkata has not passed any order to the effect that the pension has to be revised as per last Rank of CHELR. The learned counsel Mr. Mukherjee has informed the AFT that his pension is likely to be revised as per the last rank of CHELR. This is not in order and there has been a misinterpretation of the Government letter dated 9-2-2001 and the revision of pension to the rank of CHELR will be carried out only on receipt of the orders of the AFT clearly stating that the pension has to be fixed as per the last rank held (Annexure A10 in OA 42/2015).

15. The aforesaid denial by the CDA (Navy) is a classic example of apathy being shown to retired Armed Forces Personnel, despite the fact that Government letter dated 9-1-2001 (supra) is applicable to all the Armed Forces Personnel. **If this is the manner in which an Army Personnel is treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities , particularly in respect of their emoluments ,pension and other benefits. (Please see Nand Lal Vs State of Uttarakhand and Anr reported in (2010) 4 SCC 562).**

16. The concept of Pension is now well known and has been clarified by Hon'ble Apex Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whims of 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 12 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. (Please see **All India Reserve Bank Retired Officers Assn. v. UOI** reported in **1992 Supp (1) SCC 664**)

17. Yet in another judgment of the Hon'ble Apex court reported in **(2011) 11 SCC 702** in the case of **PEPSU RTC vs. Mangal Singh**, it has been held:

“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. “

18. From the aforesaid facts it is clear that earlier the respondent has wrongly denied the applicant's legitimate claim of CHELR rank pension. However, during the pendency of the application, the respondents realised their mistake and admitted before the Court regarding payment of revised pension within a period of two months. Despite above admission, revised pension was not paid to the applicant thereby forcing the applicant to prefer separate application, i.e. OA No.42 of 2015. During the pendency of

above application, though the competent authority had sanctioned the applicant's claim, but the same was denied by CDA (Navy) on the reasons, which are neither sustainable in law, nor are within its authority. Once a claim has been admitted, the respondents are estopped from denying the same. It is also a matter of concern for the Government to look into the matter as to how a claim can be denied by CDA (Navy) when the same has been sanctioned by the competent authority. Be that as it may, a contrary stand taken by the respondents cannot be countenanced.

19. In view of above, we are of the considered opinion that the applicant is entitled for CHELR rank pension with effect from 1-2-1998. Accordingly the respondents are directed to pay revised pension as per the Government of India, Ministry of Defence circular dated 9-2-2001 in accordance with the Judgement and Order with all arrears with a simple interest of 12% per annum w.e.f. 1-2-1998 and cost of Rs10000/-. The entire arrears shall be paid to the applicant within a period of three months from the date of receipt of this order and the PPO shall be amended within the same time.

20. Considering the peculiar facts and circumstances of the case, it is also expected of the Government to inquire into the matter and fix the responsibility of payment of interest amount upon the erring officer/officers.

21. Application thus stands allowed.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice N.K. Agarwal)
Member (Judicial)

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