

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : T A 169/2010 (WP-C 12463/2009)

APPLICANT (S)

Prafulla Chandra Behera

RESPONDENT (S)

Union of India & 2 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mrs. Sonali Das

Mr. Anand Bhandari

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u> Order Sl. No. : 13 Dated : 14.03.2014
	<p>Mrs. Sonali Das, Id. adv. appears for the applicant. Mr. Anand Bhandari, Id. adv. appears on behalf of the respondents. The TA is taken up for hearing.</p> <p>Mrs. Das puts forward her case which is briefly that the applicant was enrolled in the Army on 6th Feb 1978 in the Assam Regiment. He was tried by a summary court martial in which he was convicted and awarded punishment of dismissal from service and three months' RI. Accordingly, he was dismissed w.e.f. 24.5.94. Thereafter he remained at home and has not been receiving any pension, although, as submitted by Mrs. Das, the applicant had more than 15 years of qualifying service to make him eligible for pension. She further submits that the applicant was tried by the SCM and punished with the aforesaid punishment for an offence u/s 39(b) of Army Act for overstaying on leave which is not a very serious offence, although she admits that there were two other previous occasions when he had overstayed leave for which he was summarily dealt with and was awarded punishment. Mrs. Das submits that Reg. 113 of Pension Regulations which is quoted below clearly provides for non-grant</p>

of pension, in case an army personnel is dismissed from service but there is also provision that where the President of India could be pleased to sanction him pension.

“113 (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.”

Mrs. Das admits that the applicant was not aware of such provision and, therefore, he made no efforts to apply for pension.

The applicant filed a writ petition before the Hon'ble Orissa High Court being WP (C) 12463/2009 which has since been transferred to this Tribunal under operation of Sec. 34 of the AFT Act, 2007 and has been renumbered as TA 169/2010.

Mrs. Das submits that applicant has no grievance with regard to the punishment awarded to him by trying him through a SCM for an offence u/s 39(b) of Army Act. But his grievance is that as a consequential result, further punishment by way of stoppage of pension by means of a non-statutory regulation like Pension Regulations, as revised (PR 113(a) has also been imposed, which is against the principles of natural justice.

She further explains that as per Army Act 71(h) the Summary Court Martial could have awarded him punishment of forfeiture of service for pension but they decided not to do so because that would have been far more harsh than what is perhaps provided for in Sec. 39 of the Army Act. The point that she has reiterated is that stoppage of pension through an administrative order by invoking non-statutory regulation, which, in fact enhanced the

judicial punishment that has been awarded to him, is not acceptable. Moreover, she submits that no show cause notice was also served on the applicant before such pension was stopped.

To further buttress her points, she has drawn our attention the following citations :-

- i) Sodhi GS Maj –vs- UOI -)1994) Supp (2) SCC 173
- ii) Vohra PS, Col. –vs- UOI, P & H High Court, CWP 5608/91
- iii) Biji Abtar Singh Lt. Col –vs- UOI , 1994(8) SLR 159 P & H
- iv) Kler Hardev Singh Ex Maj Gen –vs- UOI, 1980 SLJ 172
- v) Reg. 3 & 4 Pension Gratuity
- vi) Gangeshwar Baitha (Ex Hav) –vs- UOI, TA 92 of 2010 decided 10 Jan 2011 by Kolkata Bench of AFT(unreported)

Mr. Anand Bhandari, Id. adv. appearing for the respondents while agreeing with the factual aspects, has submitted that in para 12 of the A/O the respondents have very clearly stated that the applicant had rendered 16 years and 86 days of total service of which he has 442 days of non-qualifying service. Therefore, total service that was rendered by the applicant comes to 15 years and 12 days. However, Mr. Bhandari submits that even then the applicant is not entitled to any pension because under the provision of Reg 113(a) of PR, he is ineligible for pension having been dismissed from service by an order of a Summary Court Martial. He further submits that in para 14 of his A/O it has been stated that pension is not a bounty or charity. The applicant must first be eligible for pension as per Pension Regulations to entitle him to receive such pension.

For this purpose, he has annexed a copy of Pension Regulation 113(a) (unrevised) as part of his A/O at Annexure-C3. The revised pension regulation 113(a) has already been quoted above to which Mr. Bhandari has no objection.

Mr. Bhandri has submitted a copy of the the judgement of the Hon'ble Supreme Court reported in AIR 1996 SC 845 (UOI & Ors –vs- R.K.L.D Azad and another decision of Principal Bench of AFT in TA 112 of 2010 (Nand Lal –vs- UOI & Ors) decided on 29.4.2010 (unreported)

Mr. Bhandari's contention is that the applicant was well within his right to apply to the President of India or the delegated authority praying for grant of pension since pension was stopped under the provision of Pension Regulation 113(a). Unfortunately, he has taken no such step. Therefore, at this stage, the respondents cannot be held responsible for stoppage of his pension. Mr. Bhandari further submits that the respondents have acted absolutely in accordance with rules and within the provision of Pension Regulations and have committed no illegality in any manner.

As regards non service of show cause notice before stoppage of pension, Mr. Bhandari submits that there is no provision within the rules and regulations to serve a show cause notice before denying pension to a person who is dismissed from service after conviction through a court martial proceedings, which is the case in this TA.

Mrs. Das, however, has rebutted the submission of Mr. Bhandari by contending that although pension may not be a charity or bounty but it is part of service conditions to receive pension on completion of pensionable service. She also submits that there may not be any provision to serve show cause notice before stoppage of pension under reg. 113(a) of PR, but when such administrative action is taken which actually enhances the judicial pronouncement upon conviction, then in such case, principle of natural justice demands that an opportunity should be given to the affected individual before taking away his right to pension which he has earned after having put in more than 15

years of service. Moreover, as is evident from the original SCM proceedings, that have been submitted before this court, the character of the applicant has been certified as "very good irrespective of the trial".

We have heard both sides in detail. Before we could reserve the matter for final order, Mr. Bhandari pays for some time to go through the judgements that have been cited by Mrs. Das and also to present his case further with regard to the question of necessity of serving show cause notice when pension is stopped on account of dismissal by a court martial as provided for in pension regulations 113(a).

Under such circumstances, let this matter be adjourned till 3.4.14 for further hearing and be listed as specially fixed matter. The Id. advocates for both parties are at liberty to submit written notes of arguments on the next date.

Let a plain copy of the order duly authenticated by the Tribunal Officer be furnished to both sides on observance of due formalities

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)