

FORM NO. – 21

{SEE RULE 102 (1)}

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION NO.: – O.A. NO. - 56/2013

ON THIS 01st DAY OF JULY, 2015

CORAM : HON'BLE JUSTICE MR. DEVI PRASAD SINGH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

IN THE MATTER OF

SMT. NAMITA LAHA, W/O LATE HIRAN GOPAL LAHA, EX
SERVICE NO. 177077 (PPO NO. S/16020/1959 (ARMY)
EX. HAVILDAR/CLERK, RESIDENT OF PLOT NO. 91/92,
SAINIK NAGAR, PO-JAGANNATHPUR, DIST- NORTH 24
PARGANAS (WEST BENGAL) PIN NO. – 700 126

..... **PETITIONER**

VERSUS

1. UNION OF INDIA, SERVICE THROUGH THE SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI – 110001.
2. THE I/C RECORDS,
THE RECORDS OFFICE (ASC/SUPPLY), BANGALORE-560007.
3. THE TREASURY OFFICER, KRISHNANAGAR, DIST–NADIA (WB).
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS
(G-2 SECTION), DRAPAUDIGHAT, ALLAHABAD, UTTAR PRADESH
PIN – 211 014.

.....**RESPONDENTS**

5. THE GENERAL SECRETARY, NATIONAL EX-SERVICEMEN
CO-ORDINATION COMMITTEE (WEST BENGAL), ROOM NO.-
21/1, EZRA MANSION, 10, GOVT. PLACE EAST, KOLKATA-700 069.

.....**PRO-FORMA RESPONDENTS**

For the Petitioner : Mr. Jagdish Ranjan Das, Ld. Advocate

For the Respondents : Mr. Dipak Kumar Mukherjee, Ld. Advocate

ORDER**PER HON'BLE MR. JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)**

1. This application Under Section 14 of the Armed Forces Tribunal Act, 2007 (in short Act) has been moved by the applicant; Smt. Namita Laha, w/o Late Hiran Gopal Laha, Ex. Service No.-177077 (PPO No. S/16020/1959 (ARMY), Ex. Havildar/Clerk, in the Army Supply Corps, Resident of Plot No.-91/92, Sainik Nagar, P.O.-Jagannathpur, District-North 24 Parganas (West Bengal), PIN Code No.-700126; claiming pension and arrears of pension alongwith other service benefits due to her Late Husband; having above service details.

2. The admitted fact on record which borne out from the pleadings and argument of the parties concerned is that Ex. Havildar/Clerk Hiran Gopal Laha has served the Indian Army for 17 years, 03 months and 08 days and after the retirement his pension was sanctioned which could not be given effect till this day.

3. It has been admitted that Late Hiran Gopal Laha joined the Indian Army on 20.02.1942 and retired from the active service on 27.05.1959.

4. After his retirement from the Indian Army, he joined another service from 01.06.1959 in the State of Nagaland. Nagaland was declared disturbed area, due to Naga extremist action.

5. After his service under the Govt. of Nagaland upto the year 1977, Late Hiran Gopal Laha retired and returned to his native place i.e., Plot No. 91/92, Sainik Nagar, P.O.-Jagannathpur, Dist.-North 24 Parganas (West Bengal).

6. Late Hiran Gopal Laha has been paid all service and other benefits by his subsequent employer i.e., Govt. of Nagaland.

7. Aforesaid factual matrix on record has been admitted while filing Affidavit-in-Opposition (Counter Affidavit) by the Respondent No. 4, the relevant portion of which is reproduced as under : -

“4. That before traversing the said application as seriatim I beg to place herein a resume of relevant facts which are set out hereunder : -

(i) Service documents in respect of No. SR-177077 ex Hav Hiron Gopal Laha, husband of the applicant have already been destroyed after expiry of the mandatory retention period in terms of Para 595 of Regulations for the Army. However, as per the IAFK-1172 maintained in ASC Records (South), the husband of the applicant was enrolled in the Army on 20th February, 1942 and he was discharged from service with effect from 27th May, 1959 on fulfilling the conditions under Army Rule 13 (3) item (III) (i). Accordingly he was granted service Pension Vide PPO No. S/16020/59 for life with effect from 28th May, 1959.

(ii) It is seen from the OA that SR-17077 ex Hav Hiron Gopal Laha, husband of the Applicant, after discharged from Army Service, was re-employed with State Govt. of Nagaland as Office Superintendent of Arty & Culture Directorate with effect from 01st June, 1959 and retired with effect from 31st May, 1977. Husband of the applicant was also drawing pension from re-employed agency. However, it was alleged that he had never drawn service pension granted from Army Side. Since, the service documents in respect of the husband of the applicant has already been destroyed, this office at this stage is not in a position to substantiate the issue and to prove whether the service pension granted to the husband of the applicant has been drawn or not.

(iii) Since the documents have been destroyed the respondents are unable to offer comments on subject O.A. including discontinuation / restoration of pension. Since PCDA (Pensions) Allahabad and Pension disbursing agency (PDA) i.e., Treasury Office Krishnanagar are the technical agency for grant and restoration of pension the original application (O.A.) received by ASC Records (South) has already been forwarded to them for their comments, if any.”

8. The Staff Officer, Station Headquarters, Barrackpore vide letter dt. 03.03.2008 made a request to do the needful for payment of pension to the applicant. For convenience, the letter dt. 03.03.2008 is reproduced as under: -

“Col Promit Roy, SM
Staff Offr

Station Headquarters
Barrackpore Cantt
Kolkata – 700 120

1060/19/ESM/HL/DO

03 Mar 2008

Dear Mr. Handa,

1. I am writing to you regarding service pension in respect of SR-177077 Ex. Hav Hiron Gopal Laha, who retired on 27 May 1959 on completion of 17 years, 03 months and 08 days service in Army Service Corps (Sup).

2. The above named ex-serviceman was granted service pension vide PPO No. S/16020/59 dated 23 Nov 1959 issued from the CDA (Pension) Allahabad (Photocopy attached).

3. The above named ex-serviceman was not able to report to his PDA i.e., Treasury Office, Krishnanagar, Distt-Nadia (W.B.) since he was away from his permanent address for resettlement purpose. He returned to his parent native place back (after spending about 18 years outside having about 18 years outside having got re-employment) in 1977. He is now residing at P-91/92, Sainik Nagar (Barbaria), PO-Jagannathpur, Distt-North 24 Parganas (W.B.) for which notification for change of home address has been published/recorded. Immediately on returning to his native place, he met with an accident and weakened his memory. Nobody was there at that time to trace out the case of his said Defence Pension as his children were then minor, consequently, the individual could not draw his entitled Defence Pension.

4. Now the fact has come to light after enquiry from his Record Office (ASC (Sup), Bangalore) that he had been granted service pension from Defence estimate (ARMY) which he has not drawn. The above named Veteran is still alive and was granted pension vide above quoted PPO. Life certificate to this effect issued by Manager SBI Barasat, Distt-North 24 Parganas (W.B.) is enclosed herewith for your ready reference.

5. The above named Veteran is now desirous of drawing his above pension as well his Life Time Arrears, which he was unable to draw till date.

6. *May I request you to investigate the case and take necessary steps to regularize his pension including LTA. If there is any documentary action required from the above named Veteran or this HQ in this regards, please let me know at the earliest.*

With warm regards,

Yours sincerely,

Sd/- x x x x x x x
Col

Mr. DC Handa, IDAS
ACDA (Pension)
Office of the PCDA (Pension)
Drapaudi Ghat
Allahabad (U.P.)

Copy to :-

OIC Records
ASC (Supply)
Bangalore-670 007

9. It appears that service pension was sanctioned vide Pension Payment Order (PPO) No. S/16020/1959 (ARMY) for life with effect from 20.05.1959. In case the pension was sanctioned after completion of necessary formalities, the respondents must have disbursed the pension right from 20.05.1959. They should have forwarded the pension on the recorded address of his family members during his life time. There seems to be inaction on the part of the Respondents while dealing with the matter.

10. The Ld. Counsel for the applicant invited the attention in terms of Para 51 of the Army Instructions which deal to the release of pension by PPO in the event of loss of Pension Payment Order.

“Loss of Pension Payment Order”

51. *When a Pension Payment Order issued by the Pension Sanctioning Authorities is lost in transit or in the Pension Disbursing Authority's Office before payment of Pension, duplicate copy thereof will be obtained from the Controller of Defence Accounts concerned who has originally issued the Pension Payment Order, on furnishing a certificate as per Appendix 4 to these instruction.*

52. *When a Pension Payment Order is lost in the Office of the Pension Disbursing Authority after making payment on the authority, a certified true copy can be obtained on furnishing a loss certificate indicating specifically that the payment has been made and the copy of the Pension Payment Order is required to complete the record. The certified true copy of the Pension Payment Order shall be enfacd by the Pension Sanctioning Authority with the words “PAYMENT ALREADY MADE”.*

11. From the pleadings on records, it appears that the applicant's husband has submitted his first representation and also life certificate vide his letter dated 23.11.2009 along with required documents. He also forwarded a copy of letter dt. 03.03.2008. He also brought on record the letter dt. 03.03.2008.

12. National Ex-servicemen Co-ordination Committee (West Bengal) had also wrote a letter vide No. NEXCC/WB/34/461/11 dt. 09.09.2011 inviting attention of DCDA (Pensions), Draupadighat, Allahabad for ensuring immediate action for the release of pension alongwith copy of documents enclosed by them as per the Rules. A prayer was made to the effect that Late H.G Laha, Hav, who is aged bout 90 years, remain mostly ill due to old age related problems, so he may die with his last wish / satisfaction. The

relevant portion of the above letter is reproduced below :-

“ 3. May I request you to kindly process this case expeditiously since the Retired Havildar is already in his 90s, so that he may die with the satisfaction that his claim for pension has been honoured by the Govt. of India and arrears received by him.

4. *The Death Certificate and Remarriage are not applicable since the individual is still alive. He had married to Smt. Namita Laha vide the Description Roll (Page-21) enclosed herewith and she is still alive. Certificate of PCDA has been enclosed mentioning no disbursement has been made by that office to the individual towards arrear."*

13. From the discussions as made above, it appears that there is no room of doubt that despite sanctioning of pension payment order, the applicant has been deprived the same by the Respondents.

14. The grounds advanced by the Principal Controller of Defence Accounts (Pension), Draupaudighat, Allahabad is that the records have been destroyed is not acceptable since, the applicant had forwarded the copies of the PPO and all other relevant documents to them through various official / agencies several times and that could have been verified..

15. Para 61 of the Pension Regulations for the Army provides that pension sanctioning authority should notify the Pension Payment Order to the pensioner concerned in time directly or through the concerned Record Office to ensure that he or she gets the dues from the Pension Disbursing Authority in time and if any pensioner approaches the CDA (P), Allahabad with regard to the non receipt of PPO, Pension or all other dues in time, the responsibility lies with the **Principal Controller of Defence Accounts (Pensions)** to ensure timely / immediate release of Pension and other dues due to him or her. For convenience, Para 61 of the Pension Regulations for the Army is re-produced as under :-

Manner of payment

“ 61. The general procedure for payment is as follows :

(i) When pension is sanctioned and notified by the Pension Sanctioning Authority, the pensioner concerned is intimated directly or by the H.O.O. / Record Officer of it and he/she is instructed to claim his / her dues from the Pension Disbursing Authority. **If any pensioner fails to claim his dues within 30 days of receipt of Pension Payment Order, the Pension Disbursing Authority should enquire into the circumstances of the non-drawal of pension by issuing Call letter(s) to the pensioner (see Para 17.**

(ii) When a pensioner appears for drawing his / her dues, he / she should be first identified keeping in view of the instructions contained in **Para 63 to 66**. Where a bill form is prescribed for the Class or pensioner, a completed bill for his / her claim will be obtained, checked and the claim passed, if in order, for payment to the pensioner (**Annexure-I to Annexure-15**). Where a payment is to be made on pension payment schedule (**Annexure – II to Appendix – 15**), the schedule will be prepared by the Pension Disbursing Authority and the pensioner’s signatures for the receipt of pension will be obtained on the schedule, before payment is made. Any separate certificate or declaration required in any particular case will also be obtained. The specific points to be observed in checking the bills / completing the schedules generally, are given in **Paras 85 to 86**, as the case may be. These should be kept in view in admitting payment.

(iii) Photographs are obtained and furnished to Pension Disbursing Authorities alongwith other pension documents in respect of all Class I, V and VI pensioners. Where authenticated photographs are furnished in respect of other classes of pensioners through the Pension Sanctioning Authorities, Record Officers / Head of Offices, there is no objection to affixing them in the Payment Registers. Where Joint Photographs of the individual and his / her spouse are furnished, they are intended for use in respect of the individual and later in respect of the spouse in case Family Pension becomes payable to the spouse. Photographs are viewed merely as an additional means of identification. For the proper and correct identification, the marks of identification and other particulars (including the authenticated impressions of the thumb and / or the fingers of the pensioners where available) furnished in the Descriptive Return / Descriptive Roll and other pension documents should be utilized.

(iv) When a pensioner first appears for receiving his / her dues or when he / she is called to appear in person on a date fixed by previous appointment with him / her by the Pension Disbursing Authority, the payment will be made to him / her after due identification and subject to conditions mentioned in the Pension Payment Order. Particular care should be taken to ensure that the claim is not time-barred on that date. If the claim is time-barred the procedure prescribed for getting the requisite sanction vide **Chapter-VI**, should be followed.

(v) As soon as the first payment is made to a new pensioner, an acknowledgement for receipt of Pension Payment Order indicating date of first payment shall be issued to the authority from whom the Pension Payment Order was received.

Similarly, when a Corrigendum Pension Payment Order is received and acted upon for payment an acknowledgement shall be sent.

(vi) The dates for payment of the various Classes of pensioners will be fixed and notified in advance by the Pension Disbursing Authorities for the information and guidance of the pensioners concerned. The dates once fixed and notified should not be altered by the Pension Disbursing Authorities under any circumstances. At the time of each payment, the pensioner's attention may be suitably drawn to the date he is due to be paid next.

(vii) Pension bill forms (**Annexure – I to Appendix – 15**) are to be supplied to pensioners by the Pension Disbursing Authorities. He should, therefore, supply a bill form to the concerned pensioner after each payment, to enable the pensioner to submit the bill for the next payment due. Forms improvised by the pensioners or inappropriate forms are not acceptable in audit.

(viii) When payment is made, necessary notes will be recorded in the Payment Registers and other documents as prescribed in the subsequent paras. The instructions for filling up the payment column in the Payment Registers are detailed in **Appendix - 7**. Paid vouchers / payment schedules are valuable documents and should, therefore, be kept in safe custody by the Pension Disbursing Authority till they are sent to the Principal Controller of Defence Accounts (Pensions) along with the periodical "Accounts" as prescribed in **Para - 125**.

16. From the aforesaid provisions, it appears that no enquiry was conducted by the authorities' concerned in spite of the fact that it was duly informed to all concerned authorities in course of time in accordance with the provisions of the rules for finalizing the required documents. In this connection it is appropriate to state that authorities seem to be suffering from vice of arbitrariness. In case some enquiry would have been held then there would have been no occasion of any omission on the part of the concerned authorities in granting the pension to Havildar Hiran Gopal Laha or Family Pension to the applicant, Smt. Namita Laha. If an inquiry would have been held either by the Records Office or by the PCDA, Allahabad, in that event such lapses would have been avoided in paying the dues of their own brethren.

17. The Hon'ble Supreme Court in a case reported in AIR 1971 SC 1409 (V 58C 290) in a case Deokinandan Prasad v. The State of Bihar held that right of pension flows from rules and not the order granting the pension. Right of petitioner to receive pension is property under Article 31 (1) and by a mere executive order the State had no power to withhold the same.

18. In AIR 1992 SC 767 – All India Reserve Bank Retired Officers' Association and Others, Petitioner – v – Union of India and Others "The Hon'ble Lordships pointed out that Pension – Not Charity, bounty or gratuitous payment – It is earned for rendering long service."

19. In a case State of Punjab – v – Justice SS Dewan (Retd. Chief Justice) and Others – (1997) SCC 569 provides “Service Law – pension – conceptually is a reward for past service”.

20. In a case of D.D. Tiwari (D) Their Lordships v – Uttar Haryana Bijli Vitaran Nigam Ltd & Ors – 2014 (3) SLJ 118 “Employee is interested to interest for wrongful retention of pension / gratuity” held that in the event of wrongful retention of pension and gratuity, employee shall be entitled for the dues with an interest @ 9% on account of non payment of payment & gratuity within the stipulated time of six weeks and the same will carry an interest of 18% beyond the above said stipulated period i.e., 6 weeks.

21. There appears to be flagrant violation of Regulations 61 (Supra) of the Army Rules by the Respondents. Any omission on their part which include with the duty assigned by Rules 61 had resulted irreparable loss and injury to late Sri Hiran Gopal Laha who died waiting outcome of the proceeding after more than 90 years. In case the Respondents would have hold an enquiry then things would have been clear to them with regard to assignment of the applicant Husband Late Hiran Gopal Laha at Nagaland.

22. Enquiry does not mean only a letter dispatched mechanically. It means some effective investigation should have been done to find out the whereabouts of the applicant or otherwise his dependents through revenue or by sending a person to the native place of Late Hiran Gopal Laha for ensuring distribution of pension, gratuity and other benefits legally due to him. Those who have served the Nation at the cost of his/their life should be treated not only fairly but consciously with commitment to provide all his lawful remedies.

Accordingly to OXFORD Dictionary & Thesaurus, Volume – I, Page 339, an enquiry means an act of asking for information or an enquiry investigation. Since, in the present case, question of investigation relates to official action, an interpretation of Rule with regard to word enquiry should have done an enquiry or investigation who has got wider scope.

Since, the pension has been held to be appropriate by catering of Judgement of Hon'ble Supreme Court (Supra) and which rules the right of live with dignity etc., it shall be the duty for the Army to investigate under the Regulations 61 to find out the person's where about to ensure required pensions to be paid.

In the present case nothing seems has been done by the Respondents in pursuance of statutory mandate by Rules 61. Hence, they are liable to pay interest caused on arrears of pension.

Ld. Counsel of the Respondent tried to argue for 3 years of pension to be paid proceeding to the date of application filed in the Tribunal seems to be not applicable in principle because in the present case, Respondents have been failed to discharge their statutory obligations confirmed by Rules 61. Even failure on the part of the State which stood on higher pedestal are sufficient enough to pay the entire pension along with interest to the Armed Forces Person.

23. In all above, the applicant seems to be entitled for payment of interest @ 9% from the date of retirement i.e., 20.05.1959.

24. Applicant seems to be more than 90 years, a widow of Armed Forces Person, Sri Hiran Gopal Laha seems to suffered because of commission and omission on the part of respondents and hence can not see the light of the day in the form of pension inspite of letter dt. 03.03.2015 sent by the Station Headquarters, Baarrackpore, Kolkata.

25. It is the sorry state affairs where an Armed Forces Person suffered from his own brethren at the old age of more than 90 years. The application is deserved to be allowed.

26. Keeping in view the lapses on the part of the respondents in failing to discharge statutory duties, it is a fit case where cost should be imposed to compensate the old lady.

27. Accordingly, the application is allowed with the following directions : -

(a) The entire pensionary benefit be paid to the applicant along with simple interest @ 9% within a period of 3 months and submit a compliance report to the Tribunal.

(b) Since, the applicant seems to be more than 90 years of age, the Respondents should sent their own men to applicant's residence for completion of necessary formalities required under the Rules, if any.

(c) Application is allowed with cost quantified to Rs. 25,000/- (Rs. Twenty Five Thousand) only. Let the cost be deposited in the Tribunal within the aforesaid period of 3 (three) months. Out of the cost deposited, applicant shall be entitled to withdraw an amount of Rs. 20,000/- (Rs. Twenty Thousand) only and the rest Rs. 5,000/- (Rs. Five Thousand) only shall be remitted to Armed Forces Tribunal, Bar Association, Kolkata.

28. The Registry shall list the petition on receipt of the compliance report from the Respondents immediately after four months.

29. A plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of all usual formalities.

Application is allowed accordingly.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE DEVI PRASAD SINGH)
MEMBER (JUDICIAL)

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