

A.F.R**RESERVED****Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****T.A. No. 116 of 2009**Tuesday, this the 4th day of July, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Subedar Safiuddin (JC 92925) Son of late Faizuddin,
R/o 23 Top Khana Bazar, Lucknow, Cantt. (Dead) - Petitioner

Through his legal representatives :

- 1/1. Hamida Bano W/o Sub (Late) Safiuddin,
Gali No. 1415 (Near Masjid) Sadh Nagar, Palam
Colony, South West Delhi, Delhi – 45.
- 1/2. Mohd. Firozuddin, Son of Sub (Late) Faizuddin,
Address as of Serial No.1.

Vs.

1. Secretary, Ministry of Defence,
Union of India, DHQ PO, New Delhi.
2. Chief of the Army Staff,
Army Headquarters,
DHQ PO New Delhi.
3. GOC, MP, B&D Area
Jabalpur (MP).
4. Comander,
HQ Sub Area,
Bhopal.
5. Station Commander,
Station Headquarter,
Jabalpur.
6. Lt Col (TS) A.K. Batcha,
OC, DSC Det,
Vehicle Factory,
Jabalpur.

7. Commandant & OIC Records,
DSC Records, Mill Road,
Cannanore.

... Respondents

Learned counsel appeared - Maj (Retd) R.D. Singh, Advocate,
for the petitioner

Learned counsel appeared - Dr. Shilendra Sharma Atal, Advocate,
for the respondents - assisted by Maj Soma John,
OIC -Legal Cell

ORDER

Per Justice Devi Prasad Singh, Member 'J'

1. Being aggrieved with the punishment of severe displeasure, 'recordable' censure entry, petitioner preferred a writ petition, bearing no. 381 (SS) of 1996 in High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, which has been transferred to the Tribunal and registered as T.A. No.116 of 2009.

2. We have heard the learned counsel for the petitioner Maj (Retd) R.D. Singh, Advocate as well as Dr. Shilendra Sharma Atal, Advocate, assisted by Maj Soma John, OIC -Legal Cell for the respondents and perused the record.

3. The petitioner joined the Indian Army at the age of less than 15 years on 03.11.1962 and later on assigned Rajput Regiment as Soldier. Petitioner participated in 1965 and 1971 in Indo-Pak war and according to him he fought against Pakistan bravely and captured a strategic post in western sector. Because of bright service record, petitioner was

promoted to the rank of Subedar Major in 20 years of initial service. Later on while in service he was also granted the rank of Honorary Lieutenant and Honorary Captain. According to the petitioner's counsel he attained superannuation on 31.03.1989 and normally a person attains the rank of Subedar Major after 28 years of service and retires after 32 years of service. After retiring from regular Army, petitioner was re-enrolled into Defence Security Corps on 15.02.1990 in the rank of Subedar and after necessary training was posted to Vehicle Factory Jabalpur on 08.05.1990.

4. According to the petitioner, respondent no.6 owed from him an amount of Rs.800/-, which he later on declined to return. However, it has been refuted by the respondents while filing response. According to the petitioner being aggrieved with the demand for refund of amount, he was transferred to Bolangir, Orissa in spite of the fact that petitioner's daughter was suffering from tuberculosis. It was done in spite of the fact that newly appointed JCO ordinarily not required to go to newly raised location. In compliance of movement order, petitioner moved to Bolangir in Orissa on 08.03.1991 though in the meantime petitioner's daughter was admitted to military hospital Jabalpur. According to the petitioner, pay book was not given to him, hence he failed to withdraw the salary w.e.f. April, 1991 to September, 1991. On account of non payment of salary, petitioner could not look after his daughter, who was transferred to military hospital Delhi for further treatment. In consequence, petitioner's daughter died. Death certificate and non issuance of pay book have been brought on record through Annexures No. 3 and 4 to T.A. However, pleading to that effect is contained in Para 11 to the T.A

that the petitioner was not paid salary from April to September, 1991 which has not been categorically denied, rather partially admitted. Refusal of pay book is admitted to the extent that it was denied on 11.08.1991, that too without assigning any reason. For convenience Para- 11 of the counter affidavit is reproduced as under :-

“11. That not only this the aforesaid officers unlawfully had detained the salary of the petitioner and had not paid the salary for more than 6 months with ulterior motives (i.e. from April 1991 to September 1991) in consequence thereof the petitioner became penniless due to which the treatment of his daughter, who in the meantime, was shifted to Military Hospital Delhi, could not be taken up properly as a result of which she died. It is relevant to note that unlawful detention of salary is a serious offence under the provision of the Army Act. It is also relevant to note that whenever the petitioner was paid his salary he was paid less from his entitlement. Photostat copy of the death certificate of the daughter of the petitioner and non issuance of his pay book is annexed herewith as **Annexure No. 3 & 4.**”

5. Non payment of salary for about six months i.e. April to September, 1991 and pay book at the time when petitioner's daughter was hospitalized at Jabalpur, later on transferred to military hospital Delhi, seems to be a serious lapse on the part of the Army, which must have resulted in mental pain and agony to the petitioner and his family members, who were under stress and strain on account of serious illness of the daughter, who died at later stage. No justifiable reason has been assigned for non payment of salary (supra) and withholding pay book. Hence seems to be an act of harassment.

6. One startling allegation raised by the petitioner is that while he was in Bolangir, Orissa (supra) on 06.10.1991 Sub Maj J.R. Tripathi, alleged to be at the behest of respondent No.6, visited petitioner's

house at 12 o' clock while petitioner's daughter and wife were all alone. That may have been with ulterior motive. The matter was reported to Joint Director through a complaint by petitioner's wife in consequence to which it is alleged that wife and daughter of petitioner were called in lines, complaint was alleged to be made to Lt Col M. Yaseen, who himself went to the house of the petitioner while petitioner was away on duty and treated family members of the petitioner i.e. wife and daughter in a very harsh manner and forcibly took them in his Jonga to the D.S.C. lines and allegedly compelled them to withdraw the complaint and forcibly got their signatures. As aggrieved, letters were sent, one of the letter dated 20.11.1991 has been annexed as Annexure No.5 to the T.A. A perusal of letter dated 20.11.1991 (Annexure No.5) shows that the grievance of the petitioner was forwarded to Head Quarters M.P. B and O Area.

7. According to averments contained in Para-12 of the counter affidavit, upon the complaint of Smt. Hamida Bano wife of petitioner with regard to incident dated 06.10.1991 (supra), a Court of Inquiry was convened on 30.10.1991 and the allegations were found to be incorrect. A perusal of Court of Inquiry, convened on 29.11.1991, filed as Annexure No.2 to the counter affidavit, indicates that during Court of Inquiry witness No.1 Sep NK Dwivedi, witness No.2 Sub Maj J.R. Tripathi, witness No.3 NK Ram Lakhan, witness No. 4 L/Nk Ram Daroga and witness No.5 Sub Asa Ram were examined.

8. Though certain questions were made by the Court but none of the witnesses was permitted to be cross-examined either by Smt. Hamida

Bano, wife of the petitioner or by Km Jaina Bano, daughter of the petitioner, rather the statement of Km Jaina Bano, daughter of the petitioner was recorded which affirm the allegation. It shall be appropriate to reproduce the examination of Km Jaina Bano as under :-

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9. Even on the cross-examination by the Court, we find that the reply given by the daughter of the petitioner Km Jaina Bano seems to be quite natural and un-rebutted. Visit of a person from the Army at the house when daughter was all alone, seems to be not justified that too without lady officer. From Court of Inquiry reasonably it may be inferred to be suffering from two lapses; (1) Army Rule 180 has not been complied with; and (2) there seems to be no eye witness to testify the visit of Sub Maj J.R. Tripathi at the house of the petitioner, which seems to be foundation of recording of not guilty. In the hierarchy of system of Indian Army ordinarily no subordinate officer may come forward to testify against the superiors. There is no motive on record as to why Km. Jayna Bano would make a false statement.

10. On account of allegations raised by the petitioner and his family and being aggrieved thereon, in October, 1993 Brig Ramesh Bhatia

directed to hold another Court of Inquiry against the petitioner, the copy of which has been filed Annexure No.7 to the T.A. The order ipse dixit establishes that the pay book was not given to the petitioner in spite of the fact that he was transferred to Bolangir, Orissa and he was without salary for six months, resulting into financial hardship and death of his daughter as well as illness of his wife. The letter of October, 1993 filed as Annexure No.7 to the T.A. in its totality is reproduced as under :-

“ **Annexure -7**”

**“DIRECTIONS/RECOMMENDATION OF COMMANDER
MADHYA PRADESH SUB AREA ON THE COURT OF
ENQUIRY HELD TO INVESTIGATE INTO THE ALEGATIONS
MADE BY JC-92925N SUB SAFUDDIN OF 597 DSC PL ATT TO
VEH. FACTORY JABALPUR (NOW TEMP ATT TO DSC DET
ORD FACTORY BOOLANGIR (ORRISSA)”**

1. I agree with the recommendatio0ns of 5th Cdr Jabalpur.
2. I direct that disciplinary action be taken against JC-92925N Sub Safiuddin for levelling false allegations against his superior officer with a view to avoiding/ dalaying his move to DSC Det Ord Factory Bolangir alongwith his platoon.
- 3 I also recommended that action vide para 387 of regulations for the Army volume-1 (revised edition 1987) be taken against IC-19143P Lt Col DVR Nair, OCDSC Det Ord Factory Bolangir for not ensuring that pay book (IAB-64) was issued to JC-92925N Sub Safiuddin, while the letter was given orders for move to another Fmn unit.

Station : Bhopal
Dated : Oct , 93

Sd/-
(Ramesh Bhatia)
Brig.
Cdr.”

11. Keeping in view the contents of the aforesaid letter, which reveals the grounds of Court of Inquiry against the petitioner, there is no doubt in spite of transfer to other place Bolangir, Orissa, the pay book was not given to him, resulting into non payment of salary to the petitioner for about six months (supra), more so when petitioner's daughter was under treatment and succumbed to illness at later stage. An inference may be drawn that the family of the petitioner was ill treated for some unforeseen reason, resulting into mental pain and agony to entire family.

12. In Para-14 of the counter affidavit, it has been stated that the complaint with regard to harassment and mal treatment to the petitioner's family and petitioner himself was forwarded to Head Quarters, Madhya Pradesh B and O Area and found to be incorrect. It is not understandable in what manner inquiry was done, wherein finding is recorded with regard to paucity of fund whereas petitioner suffered without salary for six months, which has resulted in serious ailment of his daughter and also of his wife.

13. A Court of Inquiry was convened on 29.11.1991, a copy of which has been filed as Annexure No.2 to the counter affidavit. According to the Court of Inquiry persons appeared before it, are witness no.1 petitioner Sub Safiuddin himself, who stands by his allegation and witness no. 2 N.K Krishna Nand, who has been cross-examined by the Court but no opportunity seems to have been given to the petitioner to cross-examine the witness though Court of Inquiry was convened against the petitioner himself (supra). Witness No.3 is Maj S.K. Parasar,

who has also been cross-examined by the Court itself and not by the petitioner. The report of Court of Inquiry shows that the Court had not looked into the allegations of petitioner's wife but admitted that she submitted a complaint in the absence of petitioner when he was posted at Bolangir, Orissa. The Court recorded the finding against the petitioner. The Court again re-assembled on 08.03.1993 to record additional finding.

14. We wish to reproduce the opinion of the Court of Inquiry contained in Annexure No.2 to the counter affidavit at pages-19, 20 and 21, which speaks of volume and reveals that the respondents proceeded with pre-decided mind to spoil petitioner's career by holding him guilty, that too without following the provisions contained in Army Rule 180. The opinion of the Court and additional finding of the Court from the aforesaid 3 pages are reproduced as under :-

“OPINION OF THE COURT

1. *The court is of the opinion that the allegations of JC-92925N Sub Safiuddin are false except the one regarding his Pay Book.*
2. *The JCO appears to have had genuine problems in obtaining his pay book from DSC Det of Bolangir.*
3. *The Court is also of the opinion that CC DSC DET VF Jabalpur had gone out of his way to help the JCO to get his daughter treated, and also to enable the JCO to attend to her while she was undergoing treatment at ADHC Delhi Cantt for TB.*
4. *The JCO's claim that his daughter died because of non-payment to him is wrong as she was having the disease and was being treated for same as early as Nov 90 and that she was undergoing treatment at AHDC, Delhi Cantt till the time of her death.*
5. *The court is of the opinion that the JCO is suffering from persecution complex, as he is perceiving threat to his life from all quarters.*

6. *The court is of the opinion that matters relating to use of concession voucher by his step mother and drawing of HRA/rations simultaneously should be dealt by the unit under existing provisions for the same.*

7. *The court is of further opinion that, despite independent court of inquiries/investigations, proving into each incident/allegations, immediate remedial action was not taken, which has resulted into the present complexity of the case.*

Sd/- x x x x x
(PRESIDING OFFICER (IC-27036H Major Joshi

Sd/- x x x x x
MEMBERS No.1 (IC-44399H Captain
ASHOK SHARMA)

Sd/- x x x xx
MEMBER NO 2 (JC-104934K Sub Maj Brij
Bhanu)

The court re-assembled on 09 Mar 93 as per observations raised on certain aspects of court of inquiry proceedings and reexamined the questionnaire and answers to the questionnaire received from Lt Col DBR Nair, the then OC DSC Det Ord Fy Bolangir (att as Appx 'S' and 'T' respectively).

The court also examined the possibility of getting Sub Safiuddin to get evidence on matter relating to the allegation of extortion of money. However the JCO neither was available nor did he send any documents to the Court.

ADDITIONAL FINDINGS OF THE COURT

1. *Allegation of Sub Safiuddin as to extortion of money.*
 - (a) *No evidence was produced nor made available by the JCO.*
 - (b) *Allegation is that OC, DSC Det VF Jalabalpur extorted the amount of Rs 800/- (Rupees eight hundred only).*
 - (c) *The receipt held by the JCO, as apparently signed by No 4156148 Nk Krishanand, and Nk Krishnanand agrees to have signed a receipt for same money taken from the JCO, Sub Safiuddin.*
2. *Allegation of the JCO that he was harassed and not given his pay book.*

- (a) The JCO Sub Safiuddin went to OF Bolangir for collection of his pay book on, 10/11 Aug 91.
- (b) The JCO also met OC DSC Det OF Bolangir personally on 11 Aug at 0700h.
- (c) The JCO Sub Safiuddin later went to the QM's residence and gave a written complaint to the QM that OC DSC Det OF Bolangir was not handing him over his pay book.
- (d) The OC had instructed Hav MP Sharma to hand over the JCO his pay book.
- (e) The OC DSC Det OF Bolangir wanted the JCO to stay till 12 Aug 91 at OF Bolangir to sort out deficiencies of MES furniture of the PI with the MES.
- (f) The JCO returned without pay book from OF Bolangir on 11th Aug 91.
- (g) As per existing policies the pay books were in custody of Pls Cdrs or PI Havs and orders were that the pers while on move either on temp duty or leave would carry their pay books with them.
- (h) The OC DSC Det OF Bolangir failed to ensure that the JCO Sub Safiuddin carried his pay book when he proceeded on temp duty cum leave to VF Jabalpur when the JCO moved to Jabalpur on 02 Apr 91.
- (j) The JCO Sub Safiuddin also on his part failed to ensure that he carried his pay book as he had moved to Jabalpur on temp duty/leave and knew he was going for his daughter's treatment.

ADDITIONAL OPINION OF THE COURT

1. Having considered the additional evidence and also keeping in view the service norms and traditions, and normal unit working procedures, the court is of the opinion that :-

- (a) The allegation of the JCO that Lt Col Kadir Batcha the then OC of DSC Det VF Jabalpur, extorted an amount of Rs 800/- (Rupees eight hundred only) is false as no one in his right sense could sign a 'receipt' as claimed to be held by the JCO for money received as such i.e. extortion.

(b) *The allegation of the JCO, Sub Safiuddin that he was not given his pay book and was harassed is partially true. However, the JCO, Sub Safiuddin is also to be blamed for not carrying it with him in the first instance, when he moved from OF Bolangir to VF Jabalpur, while proceeding on temp duty cum leave during Apr 91 knowing that he had been sent on leave cum temp duty to attend his ailing daughter.*

(c) *OC DSC Det Bolangir failed to ensure that the JCO was given his pay book considering the circumstances under which the JCO had come to collect the same.*

2. *The Court is of the further opinion that JC-92925 Sub Safiuddin was trying to avoid going to DSC Det OF Bolangir along with his platoon, where as unit insisted on sending him there, which has resulted in wild allegation and counter allegations from both sides.*

Presiding Officer Sd/- x x x x
(IC-27036H Lt Col (TS) PR Joshi)

Member 1. Sd/- x x x x
(IC-44399h Capt Ashok Sharma)

Sd/- x x x x
(JC-104934K Sub Major Brij
Bhanu)”

15. A novel method of Court of Inquiry was adopted to hold the petitioner guilty of charges by recording additional finding on subsequent day i.e. 08.03.1993. It appears that after recording the finding a discussion took place and to fill up the lacuna additional finding was recorded. Additional finding shows that the petitioner has neither produced nor made available any evidence. Such fact is missing in the statement of the petitioner. The effort made by the petitioner for the cause of justice seems to be proved. The denial of salary by not furnishing pay book for about six months itself indicates that the petitioner has not been dealt with fairly. Non payment of salary during inquiry itself is fatal to finding recorded & punishment awarded.

16. There appears to be no room of doubt that the provisions contained in Army Rule 180 have not been complied with. A plain reading of the record of the Court of Inquiry shows that the petitioner at no stage was permitted to participate in the Court of Inquiry in compliance of Rule 180 of the Army Rules, which is mandatory in view of law settled by Hon'ble Supreme Court in the case reported in Military Law Journal 2013 SC 1 ***Union of India vs. Sanjay Jethi & Anr.*** A finding has been recorded against the petitioner's conduct which affects his reputation. For convenience sake Rule 180 of Army Rules, 1954 is reproduced as under:

"180.Procedure when character of a person subject to the Act is involved. - Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."

Non compliance of Army rule 180, vitiates the trial.

17. In view of above, we are of the considered opinion that the petitioner was treated unfairly and the Court of Inquiry was held in utter disregard of Army Rule 180. Petitioner was deprived from salary for about six months, finding recorded by the Court of Inquiry suffers from the vice of arbitrariness and petitioner's career seems to have been

spoiled by the respondents on unfounded grounds for extraneous reasons/ arbitrary manner.

18. A perusal of the show cause notice dated 06.04.1995, Annexure No. 6 shows that the foundation of impugned punishment is Court of Inquiry (supra), relying upon which censure entry was awarded by the impugned order. The entry of serious displeasure was awarded in spite of the fact that the petitioner in his reply brought to the notice of the respondents that he suffered high handedness on the part of some officers and the Court of Inquiry was held in contravention of Army Rule 180 and he lost his 17 years' daughter and his wife became a psychiatric patient but his all efforts could not impress the competent authority.

19. It is evident that the petitioner has suffered a lot due to high-handedness of the respondents. He was unnecessarily dragged into a prolonged litigation. He is, therefore, liable to be compensated by awarding exemplary costs. Hon'ble the Supreme Court in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case of ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others***, reported in (2012) 6 SCC 430, wherein the Apex Court considered a catena of earlier judgments for forming opinion with regard to payment of costs; these are:

1. **Indian Council for Enviro-Legal Action V. Union of India, (2011) 8 SCC 161;**
2. **Ram Krishna Verma V. State of U.P., (1992) 2 SCC 620;**
3. **Kavita Trehan V. Balsara Hygiene Products Ltd. (1994) 5 SCC 380;**
4. **Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325;**
5. **Padmawati V. Harijan Sewak Sangh, (2008) 154 DLT 411;**
6. **South Eastern Coalfields Ltd. V. State of M.P., (2003) 8 SCC 648;**
7. **Safar Khan V. Board of Revenue, 1984 (supp) SCC 505;**
8. **Ramrameshwari Devi and others (supra).**

In the case of **South Eastern Coalfields Ltd** (supra), the apex Court while dealing with the aforesaid issue held as under :

“28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation”.

In the case of **Amarjeet Singh V. Devi Ratan, (2010) 1 SCC 417,** the Supreme Court held as under :-

“17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim ‘actus curiae neminem gravabit’, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court”.

20. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law. The case of **Ramrameshwari Devi** (supra) rules that the party, who is litigating, is to be compensated.

21. In view of above, T.A. deserves to be allowed.

ORDER

22. The impugned order dated 19.05.1995 as contained in Annexure No.15 to the petition is set aside with all consequential benefits.

The respondents shall consider petitioner's case for promotion, keeping in view the merit of last selected person of the batch for notional promotion to the next rank for the purpose of continuity in service and post retiral dues. We quantify the cost to rupees one lac, which shall be deposited in the Tribunal within three months and shall be released in favour of the petitioner by the Registry.

T.A. is allowed accordingly.

(Air Marshal Anil Chopra)
Member (A)

JPT

(Justice D.P. Singh)
Member (J)

Dated: July 04, 2017