

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No 162 of 2021

Tuesday, this the 3rd day of August, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 4065142K Time Scale Naik Birendra Kumar Lakhera
S/o Late Shree Leela Nand Lakhera
Vill – Mawwakot, PO – Mawwakot, Tehsil – Kotdwara,
Distt – Pauri Garhwal (Uttarakhand) Zip – 246149

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of MoD (Army), New Delhi-110011.
3. Chief Records Officer Cum Commandant Lansdowne (Uttarakhand) Zip – 246155.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Uttar Pradesh) – 211014.
5. PAO (OR) Garhwal Rifles, Lansdowne (Uttarakhand) Zip – 246155.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following relief:-

“a. Set aside/quash the certiorari impugned order of denial the pension of Nk (TS) dated 01 Nov 2002 issued by respondents No. 3 & 4.

- b. Issue/pass and order and direction to the respondent to pay service pension to the applicant to the rank of Time Scale Naik on the last rank held w.e.f. his date of discharge ie. 01 Nov 2002.
- c. The application for condonation of delay 18 years and 05 months to be allowed in the larger interest of justice and equality being on bonafide cause.
- d. Any other writ/order or discretion which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case, be also passed in favour of the applicant and against respondents.
- e. Allow exemplary cost of the application be awarded against respondent No. 3 to 4.”

2. Briefly stated facts are that applicant was enrolled in Indian Army on 25.06.1982 and was discharged from service on 31.10.2002 (AN) on completion of terms and conditions of the service under Rule 13 (3) III (i) of Army Rules, 1954 after rendering 20 years, 04 months and 06 days of service as a disciplinary case. The applicant sent a letter dated 26.08.2019 to Records, The Garhwal Rifles under RTI Act demanding the copy of medical board proceedings which were supplied to the applicant vide Records letter dated 29.01.2020. After receiving the documents, the applicant sent another application dated 01.09.2020 under RTI and came to know through Records letter dated 15.09.2020 that he has been shown Naik (TS) in all his documents and has been promoted to the rank of Time Scale Naik w.e.f. 21.07.2002 vide Records RO II No. 532/01/2002. On 07.10.2020 applicant sent a legal notice cum representation to Chief Record Officer stating that applicant was promoted to the rank of Naik

(TS) on 21.07.2020 but the financial benefits, pensionary benefits for the rank of Naik (TS) are not being paid to the applicant from the date of discharge from service i.e. 01.11.2002. The applicant has been issued PPO NO. S/038620 dated 29.10.2002 in the rank of Sepoy. Being aggrieved with the decision of the respondents, the applicant has filed the present Original Application for grant of pension of Naik (TS).

3. Learned counsel for the applicant submitted that applicant served with Army for 20 years, 04 months and 06 days and was promoted to the rank of Naik (TS) w.e.f. 21.07.2002 and thereafter, he was discharged from service on 31.10.2002 (AN). Therefore, in view of Govt. of India, Ministry of Defence letter dated 07.06.1999 and 09.02.2001, the applicant is entitled to service pension of the rank of Naik (TS) w.e.f. 01.11.2002 irrespective of length of service in the rank last held.

4. Per contra, learned counsel for the respondents submitted that applicant was enrolled in the Army on 25.06.1982 and was promoted to the rank of Naik on 29.05.2001. However, the applicant was tried by a Summary Court Martial on 23.04.2002 and was charged under Section 49 (b) of Army Act, 1950 for "WITHOUT REASONABLE EXCUSE ALLOWING TO ESCAPE A PERSON WHOM IT WAS HIS DUTY TO GUARD". In consequence, he was awarded two punishments, firstly, to be reduced to the rank and secondly, to suffer rigorous imprisonment for three months. Accordingly, applicant was reduced to Rifleman (Sepoy) w.e.f. 23.04.2002. On being reduced to the rank of Rifleman w.e.f. 23.04.2002, the applicant having

completed his terms of engagement in lower rank of Rifleman, the applicant was to be discharged from service under Rule 13 (3) III (i) of Army Rules, 1954. Accordingly, discharge order of the applicant was issued vide Records letter dated 28.05.2002. Meanwhile the applicant was promoted to the rank of Naik (Time Scale) w.e.f. 21.07.2002 vide RO II No. 0/0532/0001/2002. Thereafter, applicant was discharged from service w.e.f 31.10.2002. The applicant was granted service pension for life in the rank of Sepoy w.e.f 01.11.2002 vide PPO No. S/038620/2002 dtd 29.10.2002. The applicant served a legal notice cum representation dated 07.10.2002 for grant of service pension of Naik (TS). The case was scrutinized and was submitted to Pay Accounts Office, Garwal Rifles for necessary verification/audit vide Records letter dated 21.12.2002 and the same is still under consideration. Learned counsel for the respondents agreed to his entitlement of service pension in the rank of Naik (TS) as per para 20 of counter affidavit, *“That the petitioner is eligible for revision of service pension to that of the rank of Naik (Time Scale). It seems that the petitioner was not aware of the same since the time he became entitled to Service Pension and approached the Hon’ble Tribunal. Hence, the petitioner may be directed to approach the respondents for redressal of his grievances.”*

5. Having heard the submissions of learned counsel of both sides and having gone through records, we observe that applicant is held entitled to service pension in the rank of Naik (Time Scale) from the date of discharge from service i.e. 01.11.2002, as agreed to by the respondents in their counter affidavit as well as Records, The

Garhwal Rifles vide their letter dated 21.12.2020 addressed to Pay Accounts Office, Garhwal Rifles.

6. Accordingly, O.A. deserves to be allowed and is allowed. The impugned order passed by the respondents is hereby set aside. The applicant is entitled to service pension in the rank of Naik (Time Scale) from the date of discharge from service, i.e. 01.11.2002. The respondents are directed to grant service pension to the applicant in the rank of Naik (Time Scale) from the date of discharge from service, i.e. 01.11.2002 by issuing a fresh PPO in the rank of Naik (Time Scale). The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

7. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 3rd August, 2021
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