

Court No. 1 (E-Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 475 of 2017

Friday, this the 27th day of August, 2021

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

Ram Harsh S/o Late S.K. Pandey, Resident of G-II, 104, EWS,
Jairampur Patpar, Near Power House, Kalidipuram, Allahabad-
211011.

..... **Applicant**

Counsel for the : **Shri P.K. Khare, Advocate** and
Applicant **Shri R.K. Saxena, Advocate**

Versus

1. The Union of India, through Secretary, Defence, Government of India, New Delhi.
2. The Chief of Army Staff, New Delhi.
3. The Director General, Medical Services, Army Head Quarters, New Delhi.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, District Allahabad.

.....**Respondents**

Counsel for the : **Dr. Shailendra Sharma Atal, Advocate**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- i. This Hon'ble Tribunal may kindly be pleased to issue a writ, order, rule or direction directing the respondents authorities specially the respondent no. 4 to pay interest @18% per annum on account of delayed payment of pension other retiral dues such as Gratuity, G.P.F., Group Insurance, Commutation of pension, Leave encashment and arrears of pension etc. w.e.f. 08.11.1991 to the date of actual payment of the aforesaid retiral dues.*
- ii. This Hon'ble Tribunal may further be pleased to pass such other and/or further orders as deem fit, proper and necessary in the circumstances of this case.*
- iii. Award cost tot eh applicant.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Army Medical Corps of Indian Army on 06.08.1971 and was discharged from service on 20.04.1997, being deserter. Being aggrieved applicant preferred Civil Misc. Writ Petition No. 16478 of 2001 before the Hon'ble High Court of Judicature at Allahabad which on constitution of this Tribunal was transferred and was renumbered as Transferred Application No. 1469 of 2010. The aforesaid Transferred Application was allowed on 21.04.2016 to the extent that the respondents were directed to pay pension and all other retiral benefits to the petitioner, considering him to be in service upto 06.08.1991, within a period of three months. When the respondents did not comply with the aforesaid order the applicant preferred Execution Application No. 173 of 2016. In execution proceedings on 29.05.2017 the authorities concerned handed over the Pension Payment Order bearing No. 5001122017 dated 28.06.2017 and applicant is being paid pension with effect from 28.06.2017. The applicant has not been paid

any amount towards Gratuity, G.P.S., Group Insurance, Commutation of Pension, Leave encashment and towards arrears of pension with effect from 06.08.1991.

3. Ld. Counsel for the applicant pleaded that since delay occurred on the part of respondents, they are liable to pay interest to the applicant. He relied upon the law laid down by the Hon'ble Supreme Court in the following cases :-

- (i) D D Tewari (D) Vs. Utar Haryana Bijli Vitran Nigam Ltd & Others (decided on 01.08.2014), reported in 2014 LawSuit (SC) 587.
- (ii) H Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Limited (decided on 05.02.2003), reported in 2003 LawSuit (SC) 140.
- (iii) S K Dua Vs. State of Haryana (decided on 09.01.2008), reported in 2008 LawSuit (SC) 40.
- (iv) State of Kerala Vs. M Padmanabhan Nair (decided on 17.12.1984), reported in LawSuit (SC) 343.

4. Per contra, learned counsel for the respondents submitted that in compliance of this Tribunal's order dated 21.04.2016, sanction of competent authority had been obtained vide Additional Directorate General, discipline & Vigilance (DV-5B) sanction No. C/00982/AFT/AG/DV-5(B)/504 dated 24.10.2016 to implement the order. Subsequently, Army Medical Corps Records had processed the case with Pay Accounts Office (Other Ranks), Lucknow to issue of Last Pay Certificate. On being approached this Tribunal had allowed

correction of date of enrolment vide order dated 16.12.2016. Thereafter, respondents obtained Government Sanction and issued fresh sanction dated 16.02.2017. Subsequently, the case was processed with Pay and Accounts Office (Other Ranks), AMC, Lucknow and Principal Controller of Defence Accounts (Pension), Allahabad. The Principal Controller of Defence Accounts (Pension), Allahabad had issued Pension Payment Order with effect from 07.08.1991 vide P.P.O. No. S/00112/2017 dated 26.05.2017. The respondents have paid Death cum retirement gratuity, Credit balance on FSA, Final settlement of AFPP Fund, the details of which have been mentioned in para 16 of the Counter Affidavit. As such the respondents have complied with the order passed by this Tribunal.

5. We have heard learned counsel for both sides and perused the record.

6. On perusal of record we find that in compliance of order dated 21.04.2016 passed by this Tribunal in Transferred Application No.1469 of 2010, the respondents have paid all retiral dues to the applicant and applicant is getting pension with effect from 07.08.1991 in terms of P.P.O. dated 26.05.2017. We also find that in the aforesaid Transferred Application the applicant had also prayed to pay pension with effect from 05.08.1991 along with penal interest at the rate of 18% per annum. This Tribunal while allowing the aforesaid Transferred application did not grant interest. Hence, it is presumed that the prayer for grant of interest was considered by this Tribunal but not granted. Since the prayer for grant of interest was denied, subsequent Original

Application in respect of same relief is barred under Section 11 of Code of Civil Procedure. In case the applicant was aggrieved by the order passed by this Tribunal, he ought to have preferred an application for modification/correction of order or ought to have preferred an Appeal before the Hon'ble Apex Court. In view of above, Original Application is barred by principle of res-judicata.

7. In the case of D.D. Tewari (D) Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others (Supra) the delay in payment of Gratuity was occurred due to shortage of some goods in charge of the Employee and no enquiry was pending, hence, interest was allowed. In the case S K Dua Vs. State of Haryana (Supra), the interest was allowed for the period during which benefit were withheld. In the case of State of Kerala Vs. M. Padmanabhan Nair (Supra) delay in payment occurred by reason of non-production of L.P.C. hence, interest was allowed. In the case of H Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Limited (Supra) the interest on delayed payment of gratuity was allowed since it was not the case of the respondents that the delay in payment of gratuity was due to the fault of the employee. All the above cases referred to above are of continuing nature i.e. Appeal before the Hon'ble Apex Court, but the instant Original Application is second application for the same cause of action which has already been decided by this Tribunal. In view of above, the aforesaid law laid down by the Hon'ble Apex Court are not applicable in the instant case due to Original Application being barred in law.

8. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed** being barred in law.

9. No order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 27 August, 2021

AKD/-