

Court-2
Reserved
(Ser No. 10)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
 LUCKNOW**

Original Application No 575 of 2019

Wednesday, this the 23rd day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Smt Roopa Singh Teveotia, W/o No 14245644M Ex Havildar (late) Aman Pal Singh Teveotia, R/o Village-Adampur (Near Sant Marry School), P.O.-Bijnor, Distt-Bijnor, PIN-246701 (UP).

..... Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Director Gen of Signals (Sigs 4) (b) General Staff Br, IHQ of MoD (Army), New Delhi-110011.
4. Officer-in-Charge, Record Signals, PIN-908770, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
 Respondents Sr. 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 reliefs:-

- (a) To issue/pass an order or direction to set-aside/quash the rejection orders passed by respondent No 4 which is annexed as Annexure No A-1 to the Original Application.
- (b) To issue/pass an order or direction to the respondents to consider the applicant for regular increment/promotion to the rank of Nb Subedar, Subedar and Subedar Major with arrears of pay & allowances, and all consequential benefits, like his batch mates promoted till terms of engagement, alongwith @ 18% interest on it.
- (c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- (d) To allow this original application with costs.

2. Brief facts of the case are that applicant's husband No 14245644M Late Ex Hav Aman Pal Singh Teveotia was enrolled in the Army on 02.07.1982 and was discharged from service w.e.f. 31.10.1999 under Rule 13 (3) III (iv) of Army Rules, 1954 at his own request on compassionate grounds. After discharge from service he was granted service pension vide PPO No. S/037685/99 (Army) dated 31.08.1999.

3. Earlier during the course of his service he was promoted to the substantive rank of Naik w.e.f. 01.06.1992 and paid acting Havildar w.e.f. 13.09.1992. On 19.06.1999 he was punished with 'Severe Reprimand', 14 days pay fine and reduced to lower grade of pay under Army Act Section 48 i.e. intoxication. He had also undergone Senior NCOs course from 10.05.1993 to 03.07.1993 and successfully

completed the ibid course. Applicant's husband was due for promotion to the rank of Naib Subedar w.e.f. 01.08.1993 but he was debarred for the promotion to the rank of Naib Subedar due to lacking disciplinary criteria in accordance with policy letter dated 19.01.1993 as mended vide letter dated 10.10.1997. Statutory complaint dated 26.12.1997 against punishment was preferred by applicant's husband but without waiting disposal of the said complaint he submitted application dated 05.02.1999 for premature discharge on compassionate grounds which was granted w.e.f. 31.10.1999.

4. Chief of the Army Staff decided his statutory complaint on 02.08.1999 setting aside Severe Reprimand awarded on 06.10.1993 and 03.06.1994 with all consequential benefits. In the year 2000 applicant's husband filed CMWP No 48410/2000 before the Hon'ble High Court of Judicature at Allahabad which was disposed off vide order dated 09.11.2000 directing the petitioner to submit representation to Chief of the Army Staff for implementation of order dated 02.08.1999. Accordingly, applicant's husband submitted representation dated 19.01.2001 to Chief of Army Staff which was rejected vide order dated 23.02.2001 and communicated to him vide letter dated 27.02.2001. Thereafter, against order dated 23.02.2001 he filed CMWP No 15786 of 2003 before the Hon'ble High Court of Judicature at Allahabad. During pendency of above petition applicant's husband died on 13.01.2007 and after that substitution application was filed. The case was transferred to this Tribunal and re-numbered as T.A. No. 1312 of 2010. This petition was allowed by

this Tribunal vide order dated 01.04.2011 quashing his discharge order and allowing him to serve till his normal term of engagement as Havildar. Accordingly, he was notionally re-instated into service w.e.f. 01.11.1999 and notionally discharged from service w.e.f. 31.07.2006 (AN) with arrears of salary as well as all consequential benefits and corrigendum PPO No S/Corr/01025/2013 dated 21.08.2013 was issued. After death of applicant's husband she was paid a sum of Rs 5,36,631/- towards grant of pay and allowances for the period 01.11.1999 to 31.07.2006.

5. Applicant had filed M.A. No. 1876 of 2016, 877 of 2016 and 786 of 2017 against outstanding balance of Army Group Insurance Fund for the period 01.11.1999 to 31.07.2006. During pendency of aforesaid M.As., Rs 75,210/- were remitted to the applicant and aforesaid M.As. were dismissed vide order dated 14.05.2019 being infructuous. Applicant submitted a representation dated Nil June 2019 for payment of salary with regular increment/promotion and other consequential benefits to the rank of Naib Subedar, Subedar and Subedar Major with seniority of similar batchmates from the year 1993 to 13.01.2007 (date of death of deceased soldier) which was replied vide Signals Records letter dated 22.08.2019 (Annexure XXIII) stating that since the applicant was notionally reinstated into service w.e.f. 01.11.1999 in the rank of Havildar and notionally discharged from service w.e.f. 31.06.2006 (AN) in the rank of Havildar, he is not entitled for promotion to the next rank. It is in this perspective that this O.A. has been filed for grant of regular increment/promotion to

the rank of Nb Subedar, Subedar and Subedar Major with arrears of pay and allowances in respect of her deceased husband.

6. Learned counsel for the applicant submitted that since punishment awarded to her deceased husband was set aside by Chief of Army Staff vide order dated 02.08.1999, her husband was required to be promoted to further ranks i.e. Nb Subedr, Subedar and Subedar Major as per seniority of his batchmates. His further submission is that T.A. No. 1312 of 2010 being allowed vide order dated 01.04.2011, applicant ought to be promoted to further rank as he was allowed salary and all consequential benefits w.e.f. 01.11.1999 till the date of his term of engagement. The learned counsel pleaded that applicant's husband be granted regular promotion from Havildar to Nb Subedar, Nb Subedar to Subedar and Subedar to Subedar Major with all consequential benefits.

7. Per contra, respondents' submission is that applicant's husband was discharged from service w.e.f. 31.10.1999 (AN) at his own request on compassionate grounds. It was further submitted that he was debarred for the promotion to the rank of Nb Subedar as he was not meeting the discipline criteria in accordance with policy letter dated 19.01.1993 as amended vide letter dated 10.10.1997 which says that 'an individual should not have more than three red ink entries (including recordable censure in the case of a Nb Sub) during the entire service and not more than one red ink entry in the last five years. It further says that an individual will not be considered for

promotion within one year of the award of red ink entry/recordable censure as the case may be.'

8. Learned counsel for the respondents further submitted that even though statutory complaint dated 26.12.1997 of applicant's husband being redressed by Chief of the Army Staff vide order dated 02.08.1999, he could not be promoted to the rank of Nb Subedar as he was still not meeting discipline criteria for further promotion because he was awarded severe reprimand, 14 days pay fine and reduced to lowest grade pay of Nk for an offence under Section 48 of the Army Act, 1950 for intoxication on 19.06.1999 as also he was notionally re-instated in service vide Hon'ble Tribunal's order dated 01.04.2011 and notionally discharged from service w.e.f. 31.07.2006 (AN). Thus, it was submitted that since he was not in physical service, question of his further promotion does not arise.

9. Learned counsel for the respondents further submitted that pay and allowances for the notional re-instatement period from 01.11.1999 to 31.07.2006 amounting to Rs 5,36,631/- and Army Group Insurance Fund amounting to Rs 75,210/- were paid on 06.02.2014 and 13.03.2019 respectively. He pleaded for dismissal of O.A. on the ground of re-judicata stating that similar prayer was also made in the earlier applications which have been allowed/disposed off.

10. The main contention of learned counsel for the respondents is that the O.A. is barred by principles of res-judicata. In this regard learned counsel for the respondents submitted that the same facts

and grounds were raised in Writ Petition No. 15786 of 2003 filed by the applicant in Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal and numbered as T.A. No. 1312 of 2010 and relief sought in that case was quashing the discharge order, re-instatement into service and other consequential benefits. The earlier application of the applicant was allowed by this Tribunal vide order dated 01.04.2011 and following order was passed:-

“In view of the findings recorded above, the petition is allowed. The order approving the discharge dated 21st May, 1999 and the consequent discharge itself effective from 01.11.1999 is quashed. The applicant would be deemed to have been in service till the normal term of his engagement as Havildar and shall be granted arrears of salary as well as all consequential benefits w.e.f. 01.11.1999 till the date his engagement was to continue or till date of death whichever was earlier.”

11. It is further submitted by learned counsel for the respondents that applicant's discharge order was set aside by order of this Tribunal and no appeal was preferred by applicant against the order. Execution Application No. 45/2015 for implementation of order dated 01.04.2011 was filed and after compliance of the order and on full satisfaction of the applicant this execution application was dismissed as rendered infructuous.

12. Learned counsel for the respondents further submitted that same points have been raised before this Tribunal and petitioner wants that Tribunal should set aside the pleas of the petitioner which pertain to relief sought in earlier application.

13. Per Contra, on points raised on res-judicata by learned counsel for the respondents, learned counsel for the applicant argued and

submitted that this issue was not subject matter in earlier case and this O.A. is not barred by res-judicata. It is also submitted by learned counsel for the applicant that if due to fault of learned counsel for the applicant matter could not be raised in earlier petition than execution application No 45/2015 it will not create a bar in filing a fresh O.A.

14. We have considered the rival contentions of the parties and perused the record of this O.A. and of earlier decided T.A. No. 1312/2010.

15. In Section 11 of Civil Procedure Code (CPC), 1908 it is provided that once a matter is finally decided by a competent court, no party can be permitted to re-open it in subsequent litigation. The basic objects and operation of Section 11 has been rightly pointed and observed by the Hon'ble Supreme Court in the case of **Satyadhan Ghosal vs Deorajin Debi**, 1960 AIR 94. The legal maxim "Nemo debet bis vexari pro una et eadem causa" clearly describes that no one should be punished twice for the same clause.

16. Statutory complaint of the applicant dated 14.06.2019 was rejected by respondents vide order dated 22.08.2019 (Annexure A-1) on the same ground that the order passed by the Tribunal in applicant's earlier application has been fully complied with and execution application moved by the applicant has already been dismissed being rendered infructuous in full and final satisfaction.

17. In the case in hand, earlier the applicant had filed writ petition No 15786/2003 which was transferred to this Tribunal and numbered as T.A. No 1312/2010. The present application has been filed on the

same facts and grounds mentioned in earlier petition and relief sought for quashing of discharge order of the applicant and reinstatement into service with all consequential benefits. After hearing the parties, the case was decided on merit and following order was passed on 01.04.2011:-

“The order approving the discharge dated 21st May, 1999 and the consequent discharge itself effective from 01.11.1999 is quashed. The applicant would be deemed to have been in service till the normal term of his engagement as Havildar and shall be granted arrears of salary as well as all consequential benefit w.e.f. 01.11.1999 till the date his engagement was to continue or till date of death whichever was earlier.”

18. In this order it is clearly mentioned that applicant shall be deemed to be in service till the normal term of his engagement as **Havildar** and shall be granted arrears of salary as well as consequential benefits. The applicant was fully satisfied by the judgment and no appeal/review was filed. Order dated 01.04.2011 passed by this Tribunal was fully complied with by the respondents and Execution Application was dismissed in full and final satisfaction of the applicant. Respondents filed affidavit of compliance in execution application No. 45/2015 and the application was dismissed on 14.05.2019 in full and final satisfaction. It is mentioned in order that order has been complied with. At that stage there was no grievance that applicant's husband could have been promoted to the rank of Naib Subedar, Subedar and Subedar Major with arrears of pay and allowances.

19. Thus, we are of the view that matter in issue in this O.A. was directly and subsequently in issue in that case which was earlier

decided and executed by this Tribunal after hearing both the parties, hence we are of the firm view that matter is barred by principles of res-judicata and O.A. is liable to be dismissed only on this ground.

20. Accordingly, O.A. is **dismissed** as such.

21. No order as to costs.

22. Pending Miscellaneous Application (s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: August, 2023

rathore

(Justice Anil Kumar)
Member (J)