

**Reserved**  
**Court No.1**

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

**O.A. No. 271 of 2016**

Monday, the 18<sup>th</sup> day of February, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No. 4082638P Ex-Rect Trilokee Nath Sharma, son of Shri Chandrika Sharma, resident of Village- Chhapari, Post Office- Sikhari, Tehsil- Jakhaniyan, District- Ghazipur (U.P.), Pincode- 275202.

.....Applicant

Ld. Counsel for Applicant : **Shri KKS Bisht, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Major General (ADM), HQ, Central Command, DV Branch c/o 56 APO, LKO
3. The GOC-in-C, HQ, Central Command, DV Branch c/o 56 APO, Lucknow.
4. Brave Heart & Aastha Cell through its lady, Welfare Complex, HQ Central Comnd, Lucknow
5. Officer Command, 5009 Coy ASC (Comp) PIN-905009 c/o 56 APO, Joshimath, Uttarakhand.
6. Umesh Tomar S/o Dharamver Singh, SST/NAIK No 14851417A, 5009 coy ASC (Comp) PIN-905009 c/o 56 APO, Joshimath, Uttarakhand.

.....Respondents

Ld. Counsel for Respondents: **Ms Appoli Srivastava, Advocate**

**ORDER**

**“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

1. By means of this O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

*“(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the order vide letter No. 4082638/LC/CC dated 28 Sep 2016 {Annexure No.A-1(i)} passed by the OIC Records, respondent No.4.*

*(b) Issue/pass an order or direction of appropriate nature to the respondents to re-muster/reinstate the applicant with effect from the date of his discharge i.e. with effect from 01.01.2002 with all service and monetary consequences.*

*(c) Issue/pass an order or direction of appropriate nature to the respondents to pay arrears to the applicant along with interest @ 18% per annum.*

*(d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(e) Allow this application with costs.”*

2. In brief the facts of the case are that the applicant was enrolled in the Indian Army on 16.08.2000 as Soldier Clerk and reported to Garhwal Rifles Regimental Training Centre on 18.08.2000. He successfully completed Basic Military Training of 19 weeks on 20.01.2001 i.e. cleared PPT tests and was scheduled to attend Advance Military Training (Technical) of 32 weeks. While undergoing training, the policy regarding PAT for recruit clerk was revised by Infantry Directorate Army Headquarters and a fresh policy letter dated 13.07.2001 was

issued superseding the policy letter dated 28.02.2001. The new policy letter introduced Proficiency and Aptitude Test (PAT) for Recruit Clerk Course. The applicant appeared in the PAT for recruit clerk's course alongwith other recruits on 17.08.2001, but failed in this examination. On 29.08.2001, the applicant was given warning to improve his competence failing which he may be ineligible for Technical Training in Clerk Training Wing. Applicant again failed in PAT test held on 03.09.2001. Based on the result of these tests, applicant's services were to be dispensed with on the ground that the applicant did not meet the revised criteria for the job of Clerk, upon which the applicant sought for re-mustering/adjustment in some other category/trade except Washer-man and Sweeper.

3. Having failed in PAT in required number of times, as per policy he was given show cause notice dated 07.10.2001 to show cause as to why his services may not be terminated. Applicant submitted his reply to the show cause notice and prayed that his trade may be changed except washer-man and Sweeper. His case was taken up with Infantry Directorate with regard to re-mustering and a decision was taken to discharge all 6 such candidates vide letter dated 29.11.2001. The applicant was discharged from service on 01.01.2002 under Rule 13 (3) (iv) of the Army Rule 1954 along with others. Feeling aggrieved, he preferred a representation to the competent authority to reconsider his case with regard to re-mustering. Since the representation remained pending with the



2. You are requested to report to Garhwal Rifles Regimental Centre forthwith for reinstatement into service in the trade of Chef Community on the following conditions:-

(a) You will be re-instated in the trade of Chef Community with effect from the date, you physically report to Garhwal Rifles Regimental Centre for training.

(b) You will undergo training of your new trade (Chef Community) as prescribed under existing rules, regulations, orders, instruction and policy on the subject.

(c) You will be entitled for pay and allowances from the date you report to Garhwal Rifles Regimental Centre physically and taken on strength of the Regiment.

(d) No pay and allowances with effect from his date of discharge, i.e. 01 January 2001 to date of physical reporting to Garhwal Rifles Regimental Centre for training shall be admissible on the principle of 'NO WORK AND NO PAY.'

(e) However, your past service with effect from 16 August 2000 (date of enrolment) to date of re-instatement shall be treated as dies, non and counted for the purpose of pension in future.

sd/- x x x x x  
(MK Pal)  
Major  
OIC Legal Cell  
for OIC Records

Copy to  
Additional Directorate General –For info please.  
Discipline & Vigilance (DV-3)  
Adjutant General's Branch  
IHQ of MoD (Army)  
New Delhi-110011"

5. It is pleaded on behalf of the respondents that the applicant has been reinstated after the said order. It transpires from the record that since the applicant was not permitted to join in pursuance of the order of this Tribunal dated 28.01.2016 and pursuant to the order dated 28.09.2016 passed by the respondents in compliance of aforementioned order of this Tribunal, in the instant O.A. the Tribunal passed the following order on 26.10.2016:-

“It is stated that the Applicant is yet to report for duty in terms of the order dated 28.01.2016 rendered in O.A. No. 213 of 2012. Thus, respondents are directed to permit the Applicant to resume duty in pursuance of the order passed by the General Officer Commanding dated 16.07.2016 followed by letter dated 28.09.2016 passed by OIC Legal Cell for OIC Records within two weeks from today.

Subject to the above, we admit the O.A. in so far as it relates to Para 2(e) of the letter/order dated 28.09.2016 wherein it has been envisaged that the Applicant will be entitled for pay & allowances from the date he reports to Garhwal Rifles Regimental Centre Physically and taken on strength of the Regiment.

Let counter affidavit be filed within six weeks. Rejoinder affidavit if any be filed within two weeks next thereafter.

Needless to say that the respondents shall clarify while filing counter affidavit whether the past services shall be counted for the purposes of continue of service as well as post retiral benefits or not vis a vis the letter dated 28.09.2016.

List this case on 11.01.2017 for orders.”

6. Since the applicant was not permitted to join, therefore, he also moved an Execution Application bearing No. 225 of 2016 for execution of aforesaid order of the Tribunal. Thereafter the applicant was issued several letters to join his duty but he himself delayed his joining on one or other ground and ultimately he joined on 20.12.2016 at Garhwal Rifles Regimental Centre and rejoined his duty for training. Accordingly, the aforesaid Execution Application No. 225 of 2016 was rejected having become infructuous on 11.01.2017.

7. Now the submission of the learned counsel for the applicant is that since he has been reinstated pursuant to the order passed and as per condition of his re-mustering his entire service along with period of absence ought to have been considered for grant of pension but the applicant has received a letter from the respondents, copy of which has been annexed

with supplementary affidavit dated 11.09.2018, whereby he has been informed that the applicant has only 03 years, 01 month and 25 days of Army service to his credit, hence he is not entitled for pension. The submission of the learned counsel for the applicant is that the denial of the pension of the applicant when he has been reinstated is illegal and is not sustainable under the law. The respondents were supposed to consider the entire period for which the applicant has remained out of service notionally for calculating the pension to the applicant.

8. It appears from the record that the applicant has made a prayer for his voluntary discharge w.e.f. 30.09.2018. During the course of argument it is submitted that the applicant is still in service and has not yet been discharged.

9. On behalf of the respondents it is argued that while re-mustering the applicant several conditions were laid down and one of the condition was that period of absence shall be treated "dies non". Condition no. (e) of the said letter is reproduced as under:-

***"However, your past service with effect from 16 August 2000 (date of enrolment) to date of re-instatement shall be treated as dies non and counted for the purpose of pension in future."***

It is argued that in view of use of words "dies non" the applicant was not entitled for the grant of pension as the said period was treated dies non.

10. In view of the rival submissions, we will have to consider the meaning of word "dies non". Words "dies non" has been

defined in 'ADVANCED LAW LEXICON' 4th Edition by P. Ramanatha Aiyar as under:-

"Dies non. ((Lat.) A day which is regarded by the law as one on which no judicial act can be performed, or legal diligence used (Trayner)

(Shortened form of Dies non juridicious). A day not juridical, a day exempt from Court proceedings, such as a holiday or a Sunday.

A day on which the Courts do not ordinarily sit or carry on business; a day on which general business may not lawfully be transacted.

A day on which a Law-Court is not held.

A day that is not counted for some purpose. For example, Saturday and Sunday are not counted as days of the working week.

The period for which Railways has given continuity of service to its employee in compliance of order made by Central Administrative Tribunal would not be treated as '*dies non*'. Devi Charan Chaturvedi v. Union of India, 2000 (7) SLT 758.

An abbreviation of the phrase "dies non juridious", non-judicial days- days during which the Courts do not transact any business- as Sunday or the legal holidays. (Havens v. Stiles, 56 LRA 736). It is frequently said that Sunday is "*die non juridicus*", but this means only that process cannot ordinarily issue or be executed or returned, and Courts do not usually sit, on that day. It does not mean that no judicial action be had on that day. On the contrary, it is laid down in books of authority that warrants for treason, felony and breach of the peace may be issued and executed on that day. (State v. Ricketts, 74 N.C. 187, 193)"

11. In 'WHARTON'S LAW LEXICON', Fifteenth Edition the word '**dies non**' has been defined as '**not a Court Day**'.

12. The word 'dies non' has been considered by the Hon'ble Bombay High Court in the case of **All India Central Government Health Scheme Employees Association and others vs. Union of India and others** (2006) 1 CLR 175. Para 4.3A of aforesaid judgment reads as under:-

"4. 3A. After hearing both the Counsel, I find that the said word has been defined to mean as "no activity" in Oxford Dictionary. Chambers 20<sup>th</sup> Century Dictionary states word "dies" means "day". Word "dies festi" or "dies profesti" means "days on which judgment could be pronounced on which Court could be held in ancient Rome or lawful days". "Dies fautus" means "lucky day". "Dies non"

is stated to mean “a day on which judges do not sit, or one on which normal business is not transacted.” Use of word “dies non” in settlement dated 11.06.1992, therefore means that said period is to be treated as without any business and therefore, non-existent by both i.e. employer and employees. Employees are therefore, not entitled to any remuneration for such period. The impugned notice dated 22.6.1992, specifically states that the employees were not entitled to any salary during the strike period, and therefore, it proposed to recover the salary for absence on account of strike during May, 1992 and June, 1992, and as such I find no substance in the argument advanced.”

13. Hon'ble Apex Court has occasion to consider the implication of this word “dies non” in the case of **Union of India and others vs. Vijay Pal Singh** (2010) 12 SCC 737. Para-7 of the aforesaid judgment reads as under:-

“In any case, the counsel for the respondent has taken instructions from his client, who is present in Court, that he would not ask for any claim with regard to pay and allowances, seniority and promotion for this period. This period will be treated as dies non, however, with continuity of service permissible under the Rules.”

14. Thus, in view of the aforesaid the meaning of word “dies non” and its interpretation by Hon'ble Bombay High Court and Hon'ble Supreme Court it is clear that the said period ought not to have been calculated for the purpose of back wages, seniority and promotion but so far post retiral benefits, including pensionary benefit is considered the said period was to be calculated. The plain reading of the conditions on which the applicant was reinstated is capable of only one interpretation and that the applicant is entitled to pensionary benefits. The denial of pensionary benefits holding that the applicant had only 03 years, 01 month and 25 days of Army service is based on absolute misreading of the last condition.

15. Accordingly, this O.A. only for the purpose of pensionary benefits deserves to be allowed and is hereby **partly allowed**. Applicant is not entitled for considering the said period for promotion and seniority. The respondents are directed to calculate the service of the applicant from the date of his enrolment till the date of his discharge for the purpose of calculation of pension and other post retiral benefits and pension of the applicant after his discharge shall be fixed accordingly. With these directions this O.A. stands finally **disposed of**. Respondents are directed to complete this exercise within four months from the date of receipt of a certified copy of this order.

No order as to costs.

(Air Marshal BBP Sinha)  
Member (A)

(Justice SVS Rathore)  
Member (J)

Dated : February 18, 2019

JPT