

**Court No 3**  
(Ser No 13)

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

**ORIGINAL APPLICATION No. 513 of 2022**

Thursday, this the 02<sup>nd</sup> day of February, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

JC-539873K Subedar (RT) Dilip Kumar Tripathi, son of Sri Asha Ram Tripathi, resident of village-Bhualpur, PO-Sikhar, Tehsil-Chunar, District-Mirzapur, presently posted in Depot Coy, Adm Bn, Army Medical Corps Centre and College, Lucknow.

..... Applicant

Learned counsel for the: **Shri Rohit Kumar**, Advocate  
Applicant

Versus

1. Chief of Army Staff, DHQ, PO-New Delhi-110011.
2. Commandant cum Chief Records Officer, Army Medical Corps Centre and College, Lucknow-226002.
3. Union of India, through Secretary, Ministry of Defence, DHQ, PO-New Delhi-110011.

.....Respondents

Learned counsel for the: **Ms Appoli Srivastava**, Advocate  
Respondents. Central Govt. Counsel

**ORDER (Oral)**

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

- (i) *To quash the rejection order contained in Army Medical Corps Records Office Manpower Section letter bearing No 490009/MP/JCO/SD/PC dated 09 Jun 2022 with all the consequential benefits to the applicant.*
- (ii) *To direct the respondents to pay the salary of the applicant so that the applicant is able to do alternative arrangements for payments to be made as consequence of reinstatement of the applicant in service.*
- (iii) *To direct the respondents to adjust the dues to be paid by the applicant to the respondents from the dues accrued to the applicant due to reinstatement of the applicant.*
- (iv) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (v) *Award cost of the petition.*

2. The facts, in brief, which are necessary for disposal of this application, are that the applicant was enrolled in the Mechanised Infantry Regiment of the Indian Army on 22.02.1997 as a Soldier General Duty (Sol GD). During the course of his service in the year 2005 he applied for Religious Teacher Junior Commissioned Officer (RT JCO) and got selected. Accordingly, he was promoted to the rank of Naib Subedar (RT) w.e.f. 10.12.2005. He was permanently transferred to Army Medical Corps (AMC) on 13.07.2007 where he was promoted to the rank of Subedar w.e.f. 20.05.2017. During the course of his service he was found to be suffering from 'Primary Hypertension' w.e.f. March, 2017 and in re-categorization medical board held on 04.08.2017 he was placed in low medical category S1H1A1P2(T-24) for two years.

His re-categorization Medical Board was held on 23.02.2018 and he was placed in low medical category (LMC) S1H1A1P2(P)E1. Being placed in low medical category and his ill health, he applied for premature discharge vide his application dated 09.08.2017 which was sanctioned vide letter dated 11.11.2017 with instructions to proceed on premature retirement w.e.f. 01.07.2018 (FN). Prior to his date of discharge, he submitted application dated 06.02.2018 seeking cancellation/withdrawal of his earlier application vide which he sought for premature discharge, which being not recommended, he was discharged from service w.e.f. 01.07.2018 (FN). Prior to discharge from service, he preferred Statutory Complaint dated 23.04.2018 under Section 26 of the Army Act, 1950 which was redressed by the Chief of the Army Staff (COAS) vide order dated 09.12.2021 with direction to re-instate the applicant into service with all consequential benefits. On receipt of order dated 09.12.2021, AMC Record issued letter dated 11.03.2022 (CA-13) for refund of terminal benefits before his re-instatement into service. However, the applicant has been re-instated into service w.e.f. 09.04.2022 and is presently serving in the Army without depositing the amount which was received by him as terminal benefits. Being aggrieved by order dated 11.03.2022 applicant submitted representation dated 30.03.2022 (CA-16) which being turned down vide letter dated 09.06.2022, this O.A. has been

filed to issue directions to the respondents to adjust the amount from dues accrued to him after re-instatement into service.

3. Submission of learned counsel for the applicant is that while serving in the Army on the post of RT JCO the applicant was downgraded to low medical category due to 'Primary Hypertension'. He further submitted that being placed in low medical category and due to misunderstanding the applicant had submitted an application dated 31.07.2017 for premature discharge which was sanctioned vide letter dated 11.11.2017. It was further submitted that on getting to know consequences of premature discharge he submitted another application dated 06.02.2018 for cancellation/withdrawal of his earlier application, which was submitted for premature discharge, well before implementation of discharge order but it was also turned down arbitrarily and he was discharged from service w.e.f. 01.07.2018.

4. Learned counsel for the applicant further submitted that prior to discharge from service Statutory Complaint dated 23.04.2018 preferred by the applicant was redressed by Chief of the Army Staff (COAS) vide order dated 09.12.2021 directing the respondents to re-instate the applicant into service with all consequential benefits. It was submitted that accordingly, the applicant was re-instated into service w.e.f. 09.04.2022 and he is presently serving in the Army.

5. Learned counsel for the applicant further submitted that after re-instatement into service he preferred representation

dated 30.03.2022 for adjustment of amount given at the time of retirement from the amount accrued to him after re-instatement but the respondents have turned down his request vide letter dated 09.06.2022. It was further submitted that the amount, which the applicant received at the time of retirement, has been expended by him and he is not in a position to refund the amount to respondents at this juncture. He pleaded for adjustment of amount given to him from the amount accrued to applicant after his re-instatement.

6. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 22.02.1997. He further submitted that in the year 2005 he applied for RT JCO and was selected. Accordingly, he was promoted to the rank of Naib Subedar (RT) w.e.f. 10.12.2005. Thereafter, he was permanently transferred to AMC w.e.f. 13.07.2007. It was further submitted that in the year 2017 the applicant being placed in low medical category applied for premature discharge which being accepted vide letter dated 11.11.2017, he was discharged from service w.e.f. 01.07.2018 (FN).

7. Learned counsel for the respondents further submitted that before the date of discharge the applicant submitted an application dated 06.02.2018 for cancellation of his earlier application submitted for premature discharge, which on processing was rejected on the ground that once the discharge

has been sanctioned, it is irreversible as per IHQ of MoD (Army) letter dated 17.02.2000. It was further submitted that being aggrieved, applicant filed Statutory Complaint dated 23.04.2018 in which the relief was granted vide order dated 09.12.2021 ordering respondents to re-instate the applicant with all consequential benefits. Meanwhile the applicant was discharged from service w.e.f. 01.07.2018 (FN). It was further submitted that the applicant was re-instated into service w.e.f. 09.04.2022 and is presently serving.

8. It was further submitted by learned counsel for the respondents that the following amounts were paid to the applicant at the time of retirement which are due to be refunded to the Govt, in addition to service pension being paid to him (Rs 31,050/- plus Dearness Relief per month) from 01.07.2018:-

S No	Description	Amount admissible	Amount paid	Deductions
1.	Service gratuity	8,80,432.00	8,13,423.00	67,000.00 (ECHS membership)
2.	AFPP fund	2,12,985.00	2,12,985.00	-
3.	Other adjustments	2,24,572.00	2,24,572.00	-
4.	AGI maturity	4,21,636.00	4,21,636.00	-

9. Learned counsel for the respondents further submitted that though the applicant has been re-instated into service w.e.f. 09.04.2022 but his reinstatement into service cannot be done without deposition of his terminal benefits. It was further submitted that in absence of deposition of amount related to terminal benefits, the applicant cannot be reinstated effectively in the service since necessary documentation for reinstatement is

held in abeyance and at present the pension applicable to him is being disbursed continuously by PDA. It was further submitted that in order to recommence the pay and allowances to the applicant, his pension is required to be stopped as both are not admissible simultaneously for the intervening period from the date of retirement up to reinstatement. He submitted that the applicant being adamant is not willing to deposit his terminal benefits prior to his effective reinstatement into the service. Advancing his arguments, learned counsel for the respondents has cited a case of JC-703740M Ex Subedar (Clerk) Sinachal Dalai whose case is similar to the case in hand and he had deposited the sum in Govt Treasury at the time of his re-instatement into service. It was submitted that precedence exists regarding procedure to be followed in similar cases wherein the process is uniformly applied for service personnel who were discharged from service and later subject to re-instatement, amount disbursed to them was deposited for making effective re-instatement.

10. Concluding his arguments, learned counsel for the respondents further submitted that deposition of the terminal benefits prior to re-instatement is a mandatory procedure wherein similar precedence exists, therefore, this application is liable to be dismissed being devoid of merit.

11. Heard Shri Rohit Kumar, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents and perused the record.

12. Applicant was discharged from service w.e.f. 01.07.2018 (FN) based on his earlier application. Further, being in service when the discharge order was received, the applicant submitted Statutory Complaint dated 23.04.2018 which was redressed by the COAS vide order dated 09.02.2021 directing the respondents to re-instate the applicant with consequential benefits. Meanwhile, the applicant was discharged from service w.e.f. 01.07.2018 (FN). The applicant being re-instated into service w.e.f. 09.04.2022 was asked to deposit the terminal benefits granted to him which he denied stating that the amount which he got was expended by him on account of purchase of house. He submitted a representation stating therein that the amount accrued on account of his re-instatement into service be adjusted against the amount which was given at the time of retirement. The respondents have rejected his request vide order dated 09.06.2022, further stating that applicant's re-instatement shall only be completed after deposition of Rs 37,22,752/- [sub para m (b) of CA)].

13. We have perused the order dated 09.12.2021 passed by the COAS in which a direction was passed to re-instate the applicant into service with all consequential benefits. For convenience sake, the aforesaid order is reproduced as under:-

*"1. JC-539873K Sub (RT) Dilip Kumar Tripathi, AMC (Retd) has submitted a Statutory Complaint dated 23 Apr 2018 for setting aside the PMR order. The main points of complaint are as follows:-*

*(a) The JCO was placed in Low Medical Category P-2 (Permanent) for "Primary Hypertension" for two years with effect from Mar 2017. The JCO contends that due to misunderstanding, he had applied for premature discharge on 31 Jul 2017 and the same was granted to him with effective date of PMR being 01 Jul 2018.*

*(b) Thereafter, the JCO has applied for cancellation of the premature retirement order on 06 Feb 2018 and the same was rejected by the competent authority on 27 Mar 2018 without assigning any reasons. The JCO feels that the same is legally not sustainable in the eyes of law.*

*2. The JCO requests that his case be placed before the COAS for ordering detailed investigation in the matter and quashing PMR order with all the consequential benefits.*

*3. I have perused the Statutory Complaint of the JCO and examined the same against relevant documents and comments of the intermediate authorities. After consideration of all aspects of the complaint and examining it against the redress sought, it has emerged that the denial of cancellation of PMR to the JCO was against the rules and policies in vogue.*

*4. I, therefore, direct that the redress be granted to JC-539873K Sub (RT) Dilip Kumar Tripathi, AMC by way of quashing the order and reinstating him in service, with all consequential benefits as per the extant policy.*

*5. The JCO be informed accordingly."*

14. Perusal of aforesaid order clearly indicates that the applicant was ordered to be re-instated into service with all consequential benefits i.e. with pay and allowances for the period in which he was not in service. Therefore, in our considered opinion the applicant is entitled to pay and allowances for the period he was out of service.

15. The applicant is fully liable to deposit termination pensionary benefits which have been paid to him on his premature discharge

but keeping in view submission of learned counsel for the applicant that due to weak economic position at present he is not in position to deposit the amount, we are of the view that the amount may be adjusted from the pay and allowances and its arrears.

16. In view of the above the O.A. is allowed and impugned order bearing No 490009/MP/JCO/SD/PC dated 09.06.2022 is set aside with directions to the respondents to calculate his pension which the applicant drew and pay allowances which he is entitled to for the period 01.07.2018 to 08.04.2022 (i.e. the period in which he was out of service) and adjust the amount towards the terminal benefits received by him so that the applicant could draw his monthly salary due to him within a period of four months from today. However, after calculation if some amount is outstanding against the applicant, it may be recovered from his monthly salary not exceeding one third of his total pay and allowances per month till liquidation of outstanding dues. Default will invite interest @ 8% p.a.

17. No order as to costs.

18. Miscellaneous application(s), if any, stand disposed of.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated :02.02.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**