

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 680 of 2020**Tuesday, this the 18th day of January 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15367865-K Ex. Sepoy (TER) Anil Joshi, 4 Corps Engineering Signal Regiment, C/o 99 APO, S/o of Shri FD Joshi, Resident of Tanakpur Road, Tigri Chauraha, Post Office-Khatima, District-Udham Singh Nagar (Uttarakhand), Pin Code-262308.

..... Applicant

Learned counsel for the : **Shri KKS Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Discipline and Vigilance (DV-5B) Adjutant General's Branch, Integrated HQ of MoD (Army), New Delhi-110011.
4. Directorate General of Signals (Sigs 4(b)) General Staff Branch, Integrated HQ of MoD (Army), DHQ Po-New Delhi-110011.
5. Officer-in-Charge Records, Signal Records, Pin-908770, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri Namit Sharma**, 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:-

- (a) *Issue /pass an order or direction to the respondents to quash /set-aside the arbitrary and illegal order passed by OIC Records, respondent No.5 vide letter No. P/15367865/LC/T-2/PC-124 dated 10 Aug 2020 {Annexure No. A-1(i)} rejecting consequential benefits to the applicant.*
- (b) *Issue / pass an order or direction of appropriate nature to the respondents to reinstate and promote the applicant along with his service colleagues to the rank of Subedar Major with all consequential benefits in terms of service, pay and allowances, seniority, promotion and revised service pension along with interest.*
- (c) *Issue / pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 04.11.1988. While serving with 4 Corps Engineering Signal Regiment the applicant was attached to SIKHLI Regiment Centre where he was tried by a Summary Court Martial (SCM) for an offence under Section 69 of the Army Act, 1950. The fact was that the applicant was found in possession of a country made pistol given to him by one Signelman Mohammad Zafar of 11 Corps Engineering Signal Regiment. SCM proceedings were initiated against him and he was awarded punishment on 06.07.2002 i.e. (i) reduced to ranks and (ii) Rigorous Imprisonment of 03 months in military custody. Later, he was discharged from service w.e.f. 20.04.2004 under Rule 13 (3) III (v) of Army Rules, 1954. After discharge from service applicant filed writ petition bearing No 4038 of 2004 in the Hon'ble High Court of Judicature at Allahabad which on transfer to this Tribunal was

re-numbered as T.A. No. 635 of 2010 which was heard on 11.01.2018 and allowed on technical grounds. The following order was passed:-

“60. O.A. is allowed. The impugned Summary Court Martial proceedings commenced on 17.06.2002 and thereafter from time to time, show cause notice dated 06.01.2004 and order dated 14.05.2004 passed by the Chief of Army Staff rejecting the statutory petition of the petitioner are set aside with all consequential benefits. Petitioner shall be deemed notionally in service on the rank which he was holding at the time of dismissal and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages. However, keeping in view the facts and circumstances of the present case, we confine arrears of salary to 50% but he shall be entitled to full pension in accordance with the rules immediately from the date of notional retirement of service of the rank which he was holding.”

3. In compliance of this Tribunal's order dated 11.01.2018, IHQ of MoD (Army) vide letter dated 11.09.2018 (Annexure CA-5) accorded Govt sanction to implement the aforesaid order as under:-

“The applicant shall be notionally re-instated in service with effect from 20 April 2004 (the date of discharge) and shall be notionally discharged on 30 November 2008 (Afternoon) on completion of 20 years of service in the rank of Signalmán. Thereafter, the applicant shall be entitled to arrears of salary with effect from 20 April 2004 to 30 November 2008, however, the arrears of salary shall be confined to 50%, but he shall be entitled to full pension in accordance with rules”.

4. Accordingly, the applicant was paid 50% arrears of salary amounting to Rs 2,58,457/- for the period from 20.04.2004 (date of notional re-instatement) to 30.11.2008 (date of notional discharge) and 10% interest on arrears of pay and allowances amounting to Rs 27,282/-. The said amounts were paid to the applicant through SBI demand draft Nos 000503231423 and 000503231425 dated 07.08.2019 and both the demand drafts were forwarded to the applicant vide letter dated 16.08.2019 by registered post. His pension was sanctioned vide PPO

No. 157201902275-0100 dated 06.05.2019. Applicant preferred two representations dated 01.10.2019 and 14.07.2020 to Records, Jabalpur to re-instate him into service and grant further promotion upto the rank of Subedar Major with his batchmates but the representations were given no heed and reply forwarded vide letter dated 10.08.2020 which is under challenge through this O.A.

5. Submission of learned counsel for the applicant is that after T.A. No 635 of 2010 being allowed the respondents ought to have reinstated the applicant into service and granted further regular promotion up to the rank of Sub Maj along with his batch mates as the order dated 11.01.2018 mentions all consequential benefits. His further submission is that his colleagues have been promoted to the rank of Sub and Sub Maj but due to the illegal punishment by Summary Court Martial, which was set aside vide order dated 11.01.2018, the applicant was deprived of his entitled service and consequential benefits at par with his colleagues. He pleaded for his reinstatement into service and grant promotion to the rank of Sub and Sub Maj.

6. Per contra, learned counsel for the respondents submitted that in compliance of this Tribunal's order dated 11.01.2018 the applicant was notionally reinstated into service w.e.f. 20.04.2004 and notionally discharged from service w.e.f. 30.11.2008 on completion of 20 years of service. His further submission is that as per court order, 50% arrears of salary for the aforesaid period along with 10% interest thereon was paid to the applicant through SBI demand draft Nos 000503231423 and 000503231425 dated 07.08.2019 and he is in receipt of service pension vide PPO No. 157201902275-0100 dated 06.05.2019. He pleaded for

dismissal of O.A. on the ground that since the applicant was notionally reinstated into service and notionally discharged from service, his request for further promotion is not tenable in the eyes of law as he was not physically reinstated into service.

7. Heard Shri KKS Bisht, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents and perused the material placed on record.

8. Undisputedly the applicant was notionally reinstated into service w.e.f. 20.04.2004 vide order dated 11.01.2018 and he was notionally discharged from service w.e.f. 30.11.2008. After notional discharge he was paid all his dues and he is in receipt of his pension vide PPO No 157201902275-0100 dated 06.05.2019.

9. We have gone through the order dated 11.01.2018 and we find that T.A. No 635 of 2010 was allowed solely on the ground of non compliance of Army Rule 180 i.e. on technical grounds. We have also gone through the order dated 11.01.2018, relevant extract of which reads as under:-

xxxxxxx Petitioner shall be deemed notionally in service on the rank which he was holding at the time of dismissal and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages. However, keeping in view the facts and circumstances of the present case, we confine arrears of salary to 50% but he shall be entitled to full pension in accordance with the rules immediately from the date of notional retirement of service of the rank which he was holding."

10. The aforesaid order does not imply that the applicant was entitled to further promotion on his notional reinstatement. Further, since the applicant was notionally reinstated into service and notionally discharged

from service in the rank of Signalman, hence there is no question of denial of promotion to the rank of Subedar. Additionally, the applicant was not physically reinstated into the service. If he would have been physically reinstated into service, he had undergone all mandatory courses/cadres required for promotion. He was notionally reinstated for monetary benefits, therefore his claim for further promotion is not tenable due to lack of physical service and not meeting qualitative requirement for promotion.

11. In view of above, the O.A. lacks merit and is hereby **dismissed**.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 18th January, 2022
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