

**Reserve****Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION NO 254 of 2017**Wednesday, this the 14<sup>th</sup> day of March 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No JC-260595-W Ex Sub Narendra Singh, son of Late Vishal Singh, resident of House No. 10-A/66, Vrindavan Yojna, Rai Bareilly Road, Lucknow, PIN - 226029

....Applicant

Ld. Counsel for the applicant: Shri Sudhir Kumar Singh.

Verses

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence (Army) DHQ Post Office, New Delhi – 110011.
3. Director General Arty, Integrated Headquarters, Ministry of Defence (Army) Sena Bhawan,. New Delhi, 110011.
4. Officer-n-Charge, Artillery Records, Topkhana Abhilekh, PIN-908802 C/O 56 APO.
5. PAO (OR), Artillery (NE), Lekha Nagar, Nasik-09

.....Respondents

Ld. Counsel for the Respondents : Shri D.K.Pandey,  
Central Govt Counsel assisted by  
Maj Salen Xaxa, OIC Legal.

**Per Hon'ble Mr. Justice SVS Rathore, Member (A)**

**ORDER**

1. The instant Original Application has been filed by the applicant with the following prayer:

*“(a) To pass an order or direction for payment of interest on the salary of applicant @ 18% per annum on the salary from -1.04.2005 to 31.07.2008 till actual realization of the aforesaid amount.*

*(b) To pass an order or direction for payment of interest on the gratuity of applicant i.e. on Rupees 3,65,877 (three Lac sixty five thousand eight hundred seventy seven) @ 18 per annum on the salary from 01.08.2008 to 16.08.2016 till actual realization of the aforesaid amount.*

*(c) To pass an order or direction for payment of interest on the pension of applicant @ 18% per annum from 01.08.2008 to 01.08.2016 till actual realization of the aforesaid amount.*

*(d) To pass an order or direction for payment of interest on the commutation of applicant i.e. on rupees six lac eleven thousand three hundred and thirty two @ 18 per annum from 01.08.2008 to 30.01.2017 till actual realization of the aforesaid amount.*

*(e) To pass an order or direction for payment difference of basic pension along with dearness allowances i.e. rupees 5721.00 from 01.08.2008 to 31.07.2016 with interest @ 18% per annum till actual realization of the aforesaid amount.*

*(f) To pass an order which this Hon'ble Tribunal deems fit and just under the facts and circumstances of the case, in favour of the applicant.*

*(g) Allow the Original application with exemplary cost.”*

2. In brief, the facts necessary for the purpose of the instant O.A. are that the applicant was enrolled in the Indian Army on 22.07.1980 and was discharged on 31.03.2005 from the post of Subedar in P-2 Category. The applicant on 25.02.2011 filed O.A. No. 100 of 2013 challenging his discharge order on the ground that the applicant was discharged without conducting Invaliding Medical Board. Said O.A. was allowed vide order dated 24.11.2015 and the following order was passed:-

*“1. We have heard Ld. Counsel for the parties and perused the record.*

*2. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved with the impugned order of discharge dated 31.03.2005 whereby applicant was discharged from service on the basis of Release Medical Board in medical category P-2 on account of disability.*

*3. Applicant had joined the Indian Army as Sepoy on 22.07.1980. Later on, he was promoted as Subedar. While working on the post of Subedar, a show cause notice was served on the applicant to show cause as to why his services may not be terminated on account of low medical category P-2. The applicant submitted reply dated 22.11.2004 to the show cause notice. Admittedly, the applicant was suffering from ‘HYPERTROPHIC CARDIOMYOPATHY POST PTSMA’ which according to Ld. counsel for the applicant was because of stress and strain of the service.*

*4. According to Ld. counsel for the applicant, the applicant could not have been discharged from service on account of medical category P-2 in view of Army Order 3/2001, copy of which has been filed as Annexure-1 to the Original Application. Para 13 of the Army Order 3/2001 provides that Army personnel who are placed in medical category P-2 shall be employed on suitable duty. Accordingly, applicant was liable to be permitted to continue on some other duty instead of being discharged from Army.*

*5. It has been held by the Delhi High Court in the case of Subedar (SKT) Puttan Lal vs. Union of India and others decided on 20.11.2008 3 OA No 100 of 2013 Narender Singh in Writ Petition No. 5946 of 2007 which has been upheld by Hon’ble the Supreme Court in the case of Union of India & ors vs. Rajpal Singh reported in (2009) 1 Supreme Court Cases 216. Hon’ble the Supreme Court in the case of Rajpal Singh (supra) has held that a person falling under medical category P-2 should not be discharged, but be given sheltered appointment. In pursuance to judgment of Hon’ble Supreme Court in the case of Rajpal Singh (supra), Circular of 2010 was issued. The applicant has suffered on account of omission and commission on the part of the respondents. In view of the policy (supra), the Original Application deserves to be allowed.*

*6. Accordingly, Original Application is allowed.*

*7. Impugned order of discharge dated 31.03.2005 is set aside with all consequential benefits. Applicant shall be deemed to be continuing in service right from the date of impugned order of discharge notionally till he completes 28 years’ of service, i.e. 31.07.2008 and shall be paid arrears of pay and pension along with other post retiral dues based on new retirement date and service expeditiously, say, within four months from the date of production of certified copy of this order. The applicant shall be paid full amount of back wages within the aforesaid period.”*

3. Since said order was not complied with, therefore, the applicant filed Execution Application No. 89 of 2016 which was disposed of on

27.07.2016 as the PPO in pursuance of the order under execution was issued, but the said PPO was incorrect as all the dues were not covered. Thereafter the applicant filed another O.A. No. 59 of 2017 challenging the demand of consent from the applicant to make deductions. Said O.A. was dismissed as pre-mature vide order dated 22.02.2017 with the following observations:-

*“The applicant had filed Execution Application No. 89 of 2016 for compliance of the order of the Tribunal dated 24.11.2015, passed in OA No. 100 of 2013. The said execution Application was disposed of vide order of this Tribunal dated 27.07.2016 with the direction that in case any amount is further found due/outstanding, it shall be open to the applicant to represent his case to the PCDA (P) Allahabad, who was directed to consider and dispose of the matter within a specified time.*

*Now, the applicant is aggrieved by the impugned order, by means of which he has been asked to deposit at first AGIF disability benefits and the interest at the rate of 10%. The OIC Records had written a letter dated 15.10.2016 to applicant Ex Sub Narender Singh for consent certificate on an affidavit indicating his consent for recovery of AGIF disability benefits. It has been indicated that no positive reply to the said letter has been submitted by the applicant till date.*

*As is evident from the impugned order dated 20.12.2016, certain information has been required to be submitted by the applicant to proceed further in the matter. No cause of action has arisen at present and the OA seems to have been preferred at premature stage.*

*Dismissed”*

4. Now the applicant has come up before us with the aforementioned prayers.

5. Learned counsel for the applicant has argued that the respondents have not paid any interest to the applicant on the amount paid in compliance to orders passed by this Tribunal and on the other hand, the pension amount which was paid to the applicant for the period during which he remained out of job, has been deducted and interest on the aforesaid amount has been illegally recovered by the respondents. Submission of learned counsel for the applicant is that this conduct of the

respondents is not in accordance with the letter and the respondents were not entitled to recover interest from the applicant on the amount of pension paid to him.

6. Learned counsel for the respondents, in reply to arguments advanced by learned counsel for the applicant has drawn our attention mainly towards para-7 of the counter affidavit, which reads as under:-

*“That, the applicant has already started drawing Service Pension and Disability pension. He has already drawn AGI Maturity and disability amount due to him on his initial discharge from service. As per policy in vogue, a Consent Letter duly signed by the applicant and countersigned by concerned Zila Sainik Board is mandatory for recovery of Army Group Insurance Fund (AGIF) disability benefits including interest @ 10% for each individual on re-instatement. The same was also communicated to the applicant by Artillery Records vide letter No. JC-260595W/T-B/NE-4(A) dated 15 Oct 2016 as well as by Integrated Headquarters of Ministry of Defence (Army), AG’s Branch (AGIF) vide their letter number A/56327/Arty/AG/Ins/Dis/Gen/Re-instate/28 dated 27 January 2017. The same has also been forwarded to the applicant. However, the applicant remained reluctant to submit the Consent Certificate as asked from him earlier. However, he had given the Consent Certificate only on 01 Mar 2017. Accordingly, the case has been undue delayed for disbursement of entitlements to the Ex Junior Commissioned Officer. Later on, the dues have been finalised by the competent authority and remitted to the applicant....”*

7. Thus, recovery of 10% interest on the amount of pension which was due to be recovered from the applicant and was actually recovered with the prior consent of the applicant. The letter of consent given by the applicant was also countersigned by the Zila Sainik Board. This certificate was sent by the applicant himself in reply to letter issued by the respondents. A copy of the consent letter/certificate sent by the applicant has been annexed along with the O.A. as Annexure-6 by the applicant himself. Submission of learned counsel for the applicant is that no such consent letter/certificate was sent by the applicant is absolutely wrong because the applicant himself has admitted that such consent was given by

him. Assertion of the applicant that he was left with no other option but to give such consent is of no consequence because if the applicant was asked to submit such a consent letter, he could have refused to send it. Now, at this stage, the applicant cannot submit, in the absence of any circumstance that the consent letter was obtained by coercion, fraud or undue pressure. We cannot hold it to be an involuntary act of the applicant under coercion or undue pressure. The applicant, after giving consent, has availed the benefits accruing therefrom. Benefit of order passed in the earlier O.A. filed by the applicant granting relief to him has already been availed by him. At this stage, his submission that the consent letter was given by him under coercion and pressure has not legs to stand.

8. In view of observations made hereinabove, the O.A. lacks merit and deserves to be dismissed; hence **dismissed**.

No order as to cost.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : March 2018  
anb