

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

EXECUTION APPLICATION NO. 19 OF 2012

Along with MA. No. 56 of 2017

In Re:

TRANSFERRED APPLICATION No. 67 of 2010

Thursday, this the 31th day of May, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Jagdish Singh Mahara (Ex Painter No. 13621198P of 3 PARA, c/o 56 APO),
resident of village Baligarh, Post Legem, Tehsil Didihat, District Pithoragarh.

..... Applicant

Ld. Counsel for the Applicant : **Shri G.D.Joshi, Advocate.**

Versus

1. The Directorate General of Infantry (Inf-9), 6, General Staff Branch Integrated Headquarters of MoD (Army), DHQ PO New Delhi-11.
2. The Officer-In-Charge, Records, The Parachute Regiment, PIN-900493, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Dr Gyan Singh,**
Addl. Central Govt. Standing Counsel

ORDER (ORAL)

1. This is an application for Execution of order dated 02.11.2010 whereby the following directions were issued:

“21. We in the circumstances allow the Transferred Application and direct the competent authorities to review the medical categorization of the Applicant in light of Ministry of Health and Family Welfare, Government of India (National AIDS Control Organization) report dated 05.02.2007 (Annexure No. 1 to the Amendment Application) within a period of -three months from date a certified of this order is served. If after re-assessment, the applicant is found to be in an acceptable

medical category and other eligibility criteria, he should be reinstated in service. If, however, the applicant cannot be reinstated because of age or other related factors, all consequential benefits, thereof should admitted in his favour.

22.The Invaliding Medical Board proceedings of dated 03.10.2000 are set aside.”

2. Admittedly, in this case a Civil Appeal has been filed before Hon'ble Apex Court, which as per record is pending.
3. Brief facts of this case are necessary to be mentioned at this stage.
4. The applicant was enrolled in the Indian Army on 29.02.1996. He was diagnosed a case of 'AIDS 042A (HIV INFECTION WITH DISSEMINATED TUBERCULOSIS LYMPH NODES + PLEURAL)' and was placed under medical category P5 and was recommended to be invalided out of service with effect from 01.11.2000. Invalidment was challenged by the applicant by preferring a Writ Petition before the Hon'ble High Court of Uttrakhand, Nainital being Writ Petition No. 96 (SS) of 2006 which was subsequently transferred to this Tribunal and renumbered as T.A. 67 of 2010. By order under execution, said T.A. was allowed and the above quoted directions were issued. On 22.02.2018 learned counsel for the respondents informed that the requisite sanction for complying the order has been issued, but on that date learned counsel for the applicant insisted for reinstatement of the applicant though there were no unconditional direction for the reinstatement of the applicant. Subsequently, PPO was issued in compliance of the order under execution. Learned counsel for the applicant prayed for time to file objection, but instead of filing objection, he has filed objection to the PPO. Submission of learned counsel for the applicant is that in case the applicant was not reinstated, even then the applicant was entitled to all subsequent benefits and accordingly direction for

reinstatement of the applicant or for payment of all consequential benefits may be issued.

5. At this stage, we would like to deal with the legal position regarding scope of the Tribunal while exercising jurisdiction in execution matters. The law on this point well settled. An Executing Court is vested with limited jurisdiction only to get the order under execution complied with. An Executing Court is not competent to pass any new direction or orders over and above the order under execution.

6. As per the PPO issued in favour of the applicant, a copy of which has been placed on record, the applicant presently has been sanctioned pension at the rate of Rs. 14,714/- and disability pension at the rate of Rs. 4511/- for life. Relevant entries of the PPO are reproduced as under:

Sl No.	SERVICE PENSION/SERVICE ELEMENT/WIP/LDP RATE (Rs.)	W.E.F	UPTO	
1	Rs.1275/- (Rs. ONE THOUSAND TWO HUNDRED and SEVENTY FIVE only) PAYABLE PER MONTH	23-10-2000	31-03-2004	
2.	Rs. 1913/- (Rs. ONE THOUSAND NINE HUNDRED and THIRTEEN only) PAYABLE PER MONTH	01-04-2004	31-12-2005	
3.	Rs. 5125/- (Rs. FIVE THOUSAND ONE HUNDRED and TWENTY FIVE only) PAYABLE PER MONTH	01-01-2006	30.-06-2014	
4.	Rs. 5725/- (Rs. FIVE THOUSAND SEVEN HUNDRED and TWENTY FIVE only) PAYABLE PER MONTH	01-07-2014	31-12-2015	
5	Rs. 14714/- (Rs. FOURTEEN THOUSAND SEVEN HUNDRED and FOURTEEN only) PAYABLE PER MONTH	01-01-2016	FOR LIFE	
Whether rounding benefit of disability given			Yes	
SL No	DISABILITY ELEMENT RATE	% of Disability	W.E.F	UPTO
1.	Rs.1550/- (Rs ONE THOUSAND FIVE HUNDRED and FIFTY only) PAYABLE PER MONTH	100	23-10-2000	31-03-2004
2.	Rs.2325/- (Rs TWO THOUSAND THREE HUNDRED and TWENTY FIVE only) PAYABLE PER MONTH	100	01-04-2004	31-12-2005
3.	Rs.3510/- (Rs THREE THOUSAND FIVE HUNDRED and TEN only) PAYABLE PER MONTH	100	01-01-2006	02-11-2010
4.	Rs.1755/- (Rs. ONE THOUSAND SEVEN HUNDRED and FIFTY FIVE only) PAYABLE PER MONTH	50	03-11-2010	31-12-2015
5.	Rs.4511/- (Rs FOUR THOUSAND FIVE HUNDRED and ELEVEN only) PAYABLE PER MONTH	50	01-01-2016	FOR LIFE

7. The applicant is getting disability pension because of his disease which was ‘AIDS 042A (HIV INFECTION WITH DISSEMINATED TUBERCULOSIS LYMPH NODES + PLEURAL)’. It is argued by learned counsel for the respondent that a person suffering from such a disease cannot be directed to be reinstated in service because the disease is contagious in nature. Therefore, by virtue of the order under execution, this Tribunal had directed that ‘if after reassessment, the applicant is found to be in an acceptable medical category and other eligible criteria, he should be reinstated in service. There was no unconditional direction for reinstatement of the applicant for which the learned counsel for the applicant is pressing. Even after reinstatement, the disability of the applicant would persist and, thus, he could not have been reinstated in service. It has also been argued by the respondents that the applicant has rendered only four years seven months and twenty one days service. Therefore, he is not entitled to regular pension for which minimum fifteen years of service is required.

8. We have examined the record. In the Civil Appeal Diary No. 16712/2013, Union of India & others vs. Jagdish Singh Mahara Hon’ble the Apex Court on 26.08.2015 has passed the following order:-

“We have heard Mr. R. Balasubramanian, learned counsel for the petitioners – U.O.I.

Before we pass any order, we call upon the Director General, Armed Forces Medical Services, to examine and submit a report as to the medical condition of the respondent as on date and whether he is in a physical shape, acceptable to the Army.

Post after six weeks. Needful be done in the meantime.”

9. The aforementioned order of Hon’ble Apex Court shows that whether the applicant is acceptable to the Army or he should be reinstated in service

after medical examination, is sub judice before Hon'ble Apex Court. It is admitted to the parties that the said appeal is pending and no order for accepting the applicant in the Army has been passed by Hon'ble Apex Court.

10. In view of the above, we do not find any substance in the submissions made by learned counsel for the applicant. The order under execution has been complied with by the respondents and nothing remains to be executed. The applicant has received all the consequential benefits to which he was entitled under law. Accordingly, the Execution Application is rendered infructuous and is dismissed as such.

11. Since Execution Application aforesaid has been dismissed, as a consequence the objection as well as M.A. No. 56 of 2017 (Application for final order) also stand dismissed.

12. Since cost of Rs. 15,000/- awarded vide order dated 09.10.2017 has been deposited by the respondents, hence the Registry is directed to ensure payment of the same to the applicant.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 31.05.2018
anb