

**RESERVED
COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 114 of 2017**

Thursday, this the 24th day of May, 2018

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

Ex Gunner (G.D.) Udai Narain Singh No. 15118859 H, S/o late Ramchandra Singh, R/o Village & Post Phuli (Zamaniya), District Ghazipur - 232329

.... **Applicant**

Counsel appeared - Shri D.N. Pandey, Advocate
for applicant

Versus.

1. The Union of India, through its Secretary, The Ministry of Home Affairs, Government of India, New Delhi.
2. The Chief of Army Staff, Army Head Quarter, South Block, Sena Bhawan, New Delhi.
3. Commanding Officer, 1988 Medium Battery, C/o 56 A.P.O.
4. Commanding Officer, Central Command, Lucknow.
5. Commanding Officer, Artillery Records C/o 56 A.P.O.

.....**Respondents**

Counsel appeared - Shri Md. Zafar Khan, Advocate,
for Respondents Assisted by Maj Rajshri Nigam,
OIC Legal Cell.

ORDER

(Per Hon'ble Air Marshal BBP Sinha, Member (A))

1. The applicant has approached this Tribunal by means of present O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) This Tribunal may graciously please to direct the respondent to pay the compound interest at the rate of prevailing market rate w.e.f. date 28.10.2010 of its accrual to the date of its actual payment on entire amount of retiral dues which have been paid to applicant in very inordinate delay by the respondents, to meet the end of justice.

(ii) The Tribunal may graciously be pleased to direct the respondent to grant the applicant all the consequential service benefits during notional service period i.e. 01.07.2000 to 28.08.2010 which have been granted to similarly situated and junior persons to the applicant and pay its arrear to him in the interest of justice.

(iii) To pass such any other orders/directions which may be deem just and proper in the facts and circumstances of the case in favour of the applicant including costs of this application in the interest of justice.

2. The brief facts of the case, as borne out from the pleadings are that the applicant was enrolled in Army on 28.08.1993. While serving with 1988 (1) Medium Battery he was tried by Summary Court Martial under Section 69 and 46(a) of Army Act, 1950 and was awarded sentence of dismissal from service w.e.f. 01.07.2000. Against his dismissal from service, applicant preferred petition to the Chief of Army Staff by pleading not guilty of the charges, which was rejected. It has also been stated by the applicant that on the same set of charges for which he was tried by Summary Court Martial proceedings, he was also tried in Case Crime No. 140 of 1998, State vs. Udai Narain Singh, under Section 354 I.P.C., P.S. Kotwali, District Pithoragarh, Uttarakhand and he was exonerated from the competent court of law on the basis of police report dated 20.07.1998 as the police did not find any evidence for making out a case of Section 354 I.P.C. against the applicant. Thereafter applicant filed a petition in Uttaranchal High Court, bearing Writ Petition No. 630 of 2005 for quashing the Summary Court Martial proceedings and

accordingly for his reinstatement in service, which was subsequently transferred to this Tribunal and numbered as T.A. No. 05 of 2010. Vide order dated 16.04.2015 of this Tribunal aforesaid petition was partly allowed holding that the charges levelled against the applicant have not been proved beyond reasonable doubt and accordingly Summary Court Martial proceedings conducted against the applicant and the punishment awarded against the applicant were quashed. While partly allowing the petition, it was also directed by the Tribunal that the applicant would be treated to be notionally in service till he attains the age to make him eligible to receive pension but without salary for the notional period of service, whereupon he was to be granted full pension of a Sepoy. By the aforesaid order of the Tribunal dated 16.04.2015 it was further made clear that the applicant shall not be paid salary for the period in which he remained notionally in service.

3. In compliance of the aforesaid judgment of the Tribunal in T.A. No. 05 of 2010 dated 16.04.2015, the applicant was notionally re-instated w.e.f. 01.07.2000 i.e. date of dismissal of the applicant and notionally discharged from service w.e.f. 27.08.2010 i.e. on completion of 17 years of service in the rank of Sepoy, vide Artillery Records Part II order No. 1/REC/PEN-1/0006/0002/2015 and 1/REC/PEN. Thereafter pension claim of the applicant was processed to PCDA (P) Allahabad vide Artillery Record's letter No.SR/15118859H/SP//Pen-1 (J) dated 03.10.2015 for issuance of Pension Payment Order. Accordingly, Pension Payment Order No. S/38852/2015 (Army) dated 13.10.2015 was notified by PCDA (P) Allahabad which was forwarded to CPPC, Allahabad Bank for registration and further submission to pension disbursing agency of applicant i.e. Allahabad Bank for making payment

of pension alongwith arrears vide Artillery Records letter dated 03.11.2015, which according to the applicant were paid to him on 26.02.2016.

4. The grievance of the applicant is that he has made several representations to the respondents for grant of consequential service benefits of notional period of service i.e. 01.07.2000 to 28.08.2010 and also for payment of interest on delayed payment of entire retiral dues of the applicant as according to the applicant there has been undue delay in the payment of the same. But in spite of his repeated requests he has not been paid the consequential service benefits and interest on the delayed payments.

5. In rebuttal to the averments of the applicant made in the O.A. the respondents have filed their counter affidavit vehemently denying the claim of the applicant. While replying the averments made by the applicant in the O.A., it has also been submitted by the respondents that the applicant had committed offence under Army Act by committing a civil offence. Consequently a summary of evidence was recorded and after finding him guilty he was awarded a sentence of dismissal from service. However, the applicant challenged the said order before the High Court of Uttaranchal through a writ petition, which was subsequently transferred to this Tribunal and numbered as T.A. No. 05 of 2010. The said T.A. was decided vide order dated 16.04.2015 and the applicant was notionally reinstated into service w.e.f. 01.07.2000 i.e. date of his dismissal and notionally discharged w.e.f. 27.08.2010 on completion of 17 years of service in the rank of Sepoy. In reply to the alleged delayed payment, it has been submitted by the respondents that

there was involvement of various agencies in it as per the existing procedures and policies. So far as service benefits of the notional period of service of the applicant is concerned, it has been submitted by the respondents that there was direction for payment of pensionary benefits only and accordingly he has been paid Death-cum-Retirement benefits of Rs.1,52,618/- and an amount of Rs.6,46,529/- towards arrears of pension and nothing else is due to him.

6. We have heard learned counsel for both the parties and perused the material available on record.

7. From the facts stated above, it emerges out that the applicant has two grievances, firstly he may be paid penal interest on alleged delayed payments and secondly he may be paid service benefits (back wages) of the notional service of the applicant.

8. With regard to alleged inordinate delay in respect of the payment of pensionary dues to the applicant, it is pertinent to mention here that the respondents have taken 10 months and 10 days in making payment of the same. The submission of the respondents is that since there is involvement of various agencies in the payment in question, therefore they have taken aforesaid time in making payment to the applicant. In this regard, it is also pertinent to mention here that this is not a case of normal retirement where necessary papers are prepared well in advance for the anticipated retirement but this is a case where the applicant was reinstated in service pursuant to the order of Tribunal dated 16.04.2015, treating him notionally in service and only after receipt of the aforesaid order, the exercise of payments to the applicant commenced. It also goes without saying when an order is passed in judicial side by any

Court or Tribunal a reasonable time is bound to be taken in ensuring the fulfilment of all necessary legal and procedural requirements. Thus, in the aforesaid facts and circumstances of the case the delay of 10 months and 10 days between the Tribunal's order dated 16.04.2015 and the date of actual payment i.e. 26.02.2016, in making payment of post retiral dues and arrears thereon to the applicant, cannot be said to be unreasonable, especially so when no time limit has been specified in the order. In the aforesaid facts and circumstances of the case, it is crystal clear that the respondents have well explained the time taken by them in making payment in question and as such the applicant is not entitled to any penal interest on the amount paid to him towards retiral benefits etc.

9. As far as the benefits relating to the period of notional service is concerned, it is clear from a perusal of the aforesaid order of the Tribunal dated 16.04.2015 that the only direction of the Tribunal vide aforesaid judgment was to give him pensionary benefits of the rank of Sepoy, after treating him notionally in service and there is a specific direction for non payment of back wages. Thus claims by the applicant for treating him at par with similarly situated persons and junior to him i.e. granting him wages or promotion is outside the scope of the order. In compliance of the order of the Tribunal dated 16.04.2015 the applicant has already been paid Death-cum-Retirement benefits of Rs.1,52,618/- and an amount of Rs.6,46,529/- towards arrears of pension. Hence, the applicant cannot be held to be entitled to any other service benefits on account of his notional service except for aforementioned benefits pursuant to the order of the Tribunal vide aforesaid order dated 16.04.2015.

10. In view of what has been discussed above, the O.A. is misconceived, which lacks merits and is liable to be dismissed.

11. Accordingly, O.A. lacks merits and is hereby **dismissed**. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: May 24, 2018
JPT/-

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

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1

O.A. No. 114 of 2017

Udai Narain Singh -Applicant
 By Legal Practitioner for the applicant
 Vs

Union of India & Ors -Respondents
 By Legal Practitioner for Respondents

	<p><u>24.05.2018</u></p> <p><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u> <u>Hon'ble Air Marshal B.B.P. Sinha, Member (A)</u></p> <p style="text-align: center;">Judgment pronounced. O.A. is dismissed.</p> <p style="text-align: center;">For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;">(Air Marshal B.B.P. Sinha) (Justice S.V.S. Rathore) Member (A) Member (J)</p> <p style="text-align: center;">JPT</p>
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