

RESERVED JUDGMENT**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION NO. 132 OF 2018****Tuesday this the 30th day of April, 2019****Hon'ble Mr. Justice V.K.Shali, Member (J)****Hon'ble Air Marshal B.B.P.Sinha, Member (A)**

No.13924289N Ex. Havildar/Hony Naib Subedar
 Diwan Singh Bora S/o Late Sri Tikam Singh,
 R/o Ward No.7, Gorakhpur, Post Bhimtal, District Nainital

..... Applicant

By Legal Practitioner: Shri C.S. Rawat, Advocate
 Learned Counsel for the Applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. Director Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, Army Medical Corps, Records, Lucknow (U.P.).
5. P.C.D.A.P (Pension), Allahabad.

..... Respondents

By Legal Practitioner: Dr Chet Narayan Singh, Learned Standing
 Counsel for the Central Government.

ORDER (Oral)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by Ex. Havildar/Hony Naib Subedar Diwan Singh Bora (herein after referred to as the 'Applicant') with the following prayers :-

“(i) Issue a direction to the respondents to release the payment of foreign allowance/outstanding dues since 14.10.1987 to 9.1.1990 with 18% interest per annum.

(ii) Issue any other or further direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iii) To ward the cost of the petition in favour of the petitioner.”

2. The facts necessary for the purposes of instant application may be summed up as under :

3. The Applicant was enrolled in the Army Medical Corps on 09.04.1971 and was discharged from Army service under the provisions of Rule 13(3) item I (i)(a) of Army Rule, 1954 and struck off from Corps strength w.e.f. 01st May 1995 after rendering 24 years and 22 days of military service. The applicant was sent to perform his duties as a part of IPKF in Sri Lanka during his tenure with the unit from 14.10.1987 to 09.01.1990, the foreign allowance has been granted, but the same was not released to the applicant, while the other Army personnel, who had been sent to Sri Lanka, have already been granted the said benefit. The applicant performed his duties at OP PAWAN and perform his duties at Sri Lanka with his best ability and knowledge and his work was assessed and found to be excellent.

4. The respondent no.4 issued Part-II order but the payment was not released in favour of the applicant. The applicant sent a representation dated 16.01.2006 to the respondent no.4 regarding denial to pay the Foreign allowance. The respondent no.4 issued a form in the shape of Part-I regarding the observation on the Account

Statement for payment of foreign allowances. The applicant again submitted representations dated 27.08.2006 and 27.08.2006 and reminder dated 31.10.2006. The respondent no.4 recommended the matter of the applicant to the respondent no.5 for release the long outstanding dues. On 08.03.2007, the applicant again requested the respondent no.4 regarding outstanding dues, but the same was returned by the respondent nos.4 and 5. The last reminder dated 16.03.2016 sent to the respondent no.4 gave no result. Aggrieved by the inaction of the respondents, the applicant has preferred the instant O.A.

5. On the other hand, learned counsel for the respondents submits the Army Medical Corps Record Office had instructed the applicant vide letter dated 06th April 1994 to submit all observation on pay and allowances, so that the same could be settled before his discharge from service, but the applicant never forwarded the same while he was in service. However, for the first time after eleven years of his discharge from service, the applicant submitted his observation on pay & allowance, though the cause of action accrued to him to get the foreign allowance immediately after retirement in the year 1995. However, the matter of the applicant has been forwarded to Pay Accounts Office (Other Ranks), Lucknow vide letter dated 05th April 2006. The final settlement of Account in respect of the applicant prior to his discharge from Army service was done by Pay Accounts Office (Other Ranks), Lucknow and his account was closed with a credit balance of Rs.15,933/-. Para 10 of the counter affidavit is relevant in this regard, which reads as under:

“10. “on record of all payments to Jawans which are maintained in this office is known as IRLA (Records of this office-Jacket). Retention period of IRLA is 10 years from the date of Final Settlement of Accounts (FSA’S). Retention period of documents which are of transitory nature and which are ancillary to the month’s salary bill & documents relating essential events in the officers official career are 5 years only from the date on which officer retires or otherwise becomes non-effective. The applicant had been SOS (non effective) from Corps wef 01.05.1995 having been attached to Adm Bn w.e.f. 05.04.1995 as per page 06 of the sheet roll provided by your office i.e. AMC Records office Lucknow Cantt. A copy/extract of annexure “C” to paragraph 61 of office Manual Part II-

Revised Edition 2014 is also enclosed. Accordingly, this office record of all payments pertaining to the applicant have already been weeded out and disposed off after completion of their preservation period as stated above. In view of the above, this office is not in a position to ascertain as to whether Ex-Patriation Allowance has been paid in the part or not.”

6. It has further been averred by the respondents that PAO have disposed off the records of all payments pertaining to the applicant after completion of its presentation period of 10 years. Old Part II orders in respect to the petitioner have also been destroyed by AMC Records on expiry of its preservation period of 25 years as per instructions contained in Para 592 to 596 of Regulations for the Army, 1987, Volume-II (Revised Education) and Army Rule 146. The allegations made by the applicant are unsustainable and cannot be justified at this belated stage.

7. From perusal of the records, it appears that the applicant has agitated his grievance before the competent authority after about eleven years of his discharge and also approached this Tribunal after a considerable delay of about 22 years. It was obligatory on the part of the applicant to approach the competent authority during his service period, but he has slept over his right for about eleven years. Since all the papers relating to the applicant have been weeded out by the AMC Records after expiry of retention period, hence no papers relating to payment could not be made available to us by the respondents.

8. In view of the discussions, made herein above, the Applicant is not entitled to any relief. Original Application deserves to be dismissed.

9. Accordingly, O.A. No.132 of 2018 is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice V.K.Shali)
Member (J)

Dated : 30th April, 2019.

PKG