

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Execution Application No. 158 of 2017 Inre T.A. No. 65 of 2016****Wednesday, this the 15th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Sanjay Singh**

.....Petitioner

Ld. Counsel for the: **Col (Retd) RC Dixit**, Advocate.
petitioner

Versus

Union of India & Ors

... Respondents

Ld. Counsel for the **Shri Amit Jaiswal**, Advocate
Respondents. Govt Standing Counsel.**ORDER**

1. An objection has been raised by applicant against compliance report/PPO dated 19.02.2021 filed by the respondents in execution of order dated 22.03.2017 passed by this Tribunal in T.A. No. 65 of 2017. As per record, applicant is stated to have been paid a sum of Rs 33,66,985/- (Rs 32,10,186/- after deduction of income tax) on account of his arrears of salary after notional re-instatement. The applicant has prayed that even so he is still entitled for the following dues which have not been paid as yet:-

(a) A total of Rs 76,09,240/- as arrears of salary, instead of Rs 33,66,985/-.

(b) Annual Increment @ 3% per annum on salary till retirement in terms of para 10 of SAI 1/S/2008.

- (c) Promotion Increment @ 3% on sum of pay in the pay band plus lower grade pay in terms of para 14 (a) of SAI 1/S/2008.
- (d) Assured Career Progression on completion of 8th, 16th and 24th years of service.
- (e) Gratuity.
- (f) Deprivation of Canteen facilities.
- (g) Deprivation of Military Hospital facilities.
- (h) Deprivation of Leave Travel Concessions.
- (j) Deprivation of House Rent Allowance.
- (k) Deprivation of Children Education Allowance.
- (l) Deprivation of Good Quality of Life.
- (m) Compensation for Mental Agony.
- (n) Composite Personal Maintenance Allowance.
- (o) Rum Allowance.
- (p) Interest on delayed payment of due amount.

2. T.A. No. 65 of 2016 was decided on 22.03.2017 and this Tribunal passed the following order:-

“22. The petition deserves to be allowed. Accordingly, the petition is allowed. The impugned order of dismissal dated 26.6.1999, contained in Annexure No 6 and order dated 23.03.2000, rejecting the statutory appeal of the petitioner, contained in Annexure No 13 are set aside with all consequential benefits, which will be payable to the petitioner in accordance with the rules. Petitioner shall be treated in service from the date of dismissal and shall be deemed to be in continuous service for all practical purposes. Let consequential benefits be paid to the petitioner expeditiously, say, within a period of four months from the date of service/communication of the order.”

3. Further, in this case two more orders were passed by this Tribunal in execution application on 25.07.2018 and 05.09.2018. First order of this

Tribunal dated 25.07.2018 was assailed by the petitioner before the Hon'ble Supreme Court by preferring Diary No. 28034 of 2018 and the Hon'ble Apex Court passed the following order on 27.08.2018:-

“It is argued by the learned counsel for the appellant that vide order dated 22.03.2017 passed in T.A. No. 65/2016, the Armed Forces Tribunal (hereinafter referred to as ‘The Tribunal’) had set aside the dismissal order dated 26.06.1999 and specifically directed that the appellant herein shall be treated in service from the date of dismissal and shall be deemed to be in continuous service for all practical purposes. He submits that the respondent did not obey the said order and forced the appellant to file execution petition. He further submits that in the execution petition the respondents have adopted an ingenuous method to defeat the aforesaid direction by taking a frivolous plea that the only direction in the order dated 22.03.2017 was that the appellant shall be treated in service and there was no direction for reinstatement.

At the same time, we also find that the Tribunal has not taken a final view on the aforesaid plea which is raised by the respondents and, therefore, it may not be appropriate to interfere with the order of the Tribunal at this stage. However, we also find that on 25.07.2018, the appellant was directed to provide all the necessary documents, so that PPO may be issued. Such a plea of the respondents cannot be countenanced to this, particularly, when it is yet to be decided as to whether the appellant should be reinstated in service or not as per the order dated 22.03.2017. Therefore, till the time the aforesaid issue is decided, the appellant would not require to submit any such documents. We also expect the Tribunal to take the final decision on the next date which is fixed on 05.09.2018.

The instant appeal is dismissed.”

4. In execution application, second order was passed by this Tribunal dated 05.09.2018, operative portion of which is as under:-

“29. In view of the discussions made above, we are of the considered view that by the order under execution, there was no direction for reinstatement of the petitioner, the petitioner cannot take the benefit of use of the words ‘notional reinstatement’ in the letter dated 07.08.2018, so the petitioner is entitled to all the financial benefits, as directed by the Tribunal in the order under execution taking the petitioner to be notionally in service.

30. Therefore, the claim of the petitioner that he is entitled for reinstatement, is hereby rejected.

31. We direct the petitioner to furnish the documents, as required by the respondents, within a period of 15 days from today and thereafter the respondents shall ensure payment of his entire dues in pursuance of the order under execution within a period of four weeks.”

5. The aforesaid order was assailed by the petitioner before the Hon'ble Supreme Court by preferring Civil Appeal No. 9850 of 2018 and the Hon'ble Apex Court passed the order dated 21.11.2019, operative portion of which is as under:-

“The appellant is directed to submit a representation to the respondents specifying the amount to which he is entitled to, alongwith the material in support of the claim, within a period of four weeks from today. The respondents shall consider the representation made by the appellant within a period of four weeks thereafter.”

6. In response to aforesaid order, the petitioner submitted representation dated 19.12.2019 and the respondents have complied with

the order and filed compliance report dated 16.07.2021 annexing therewith copy of PPO dated 19.02.2021. The applicant has been granted monthly pension of Rs 19,100/- p.m. w.e.f. 01.07.2017 and gratuity of Rs 4,76,736/-. As stated by the respondents he is required to submit certain documents for actual payment of pension. Further, we have also gone through the calculation sheet (Annexure RA-3) annexed by the applicant with rejoinder affidavit dated 23.02.2021. The arrears of salary (including basic+grade pay+MS pay+DA) for the period 26.06.199 to 30.06.2017 appear to have been adequately computed by the respondents (i.e. CDA, PAO (Ors), Fatehgarh). Countervailing calculation sheet prepared by the applicant, indicating therein a breakdown of the claimed amount of Rs 76,09,240/- has not been submitted by the applicant, as required by the Hon'ble Apex Court order dated 21.11.2019. As such we are not in a position to accept the claim of the applicant for arrears of salary of Rs 76,09,240/-

7. The petitioner has also prayed for other consequential benefits as mentioned in para 1 aforesaid, and our observations on these points are as under:-

8. **Annual Increment.** Annual increment @ 3% of basic pay is admissible and hence can be granted to those Army personnel who are in actual service. Since applicant was not in actual service, he cannot become entitled to aforesaid benefit.

9. **Promotional Increment.** Promotional increment is inapplicable to the petitioner as he was not in actual service and therefore was never promoted to higher rank being out of Army service. In this regard it is

reiterated that the petitioner was deemed to be in service only for financial benefits and he was never re-instated in service.

10. **Assured Career Progression (ACP)**. ACP was a scheme introduced by the government to grant an automatic financial upgrade to govt employees after certain years of service, even if not promoted. This scheme is also not applicable in the cases of the petitioner as it is granted only to Army personnel while in service. Since, the petitioner was not in service, therefore, ACP is not applicable to him.

11. **Gratuity**. Petitioner has been paid gratuity as applicable vide PPO dated 19.02.2021.

12. **Deprivation of Canteen and Military Hospital Facilities**. Since petitioner is an ex-serviceman and is in receipt of service pension, he is entitled to canteen and military hospital facilities as are applicable to other military retirees.

13. **Deprivation of Leave Travel Concessions (LTC), House Rent Allowance (HRA) and Children Education Allowance (CEA)**. The aforesaid concessions/facilities can be applicable only to Army personnel while in service and not otherwise. Since petitioner has not physically served in Army, therefore, he cannot be not entitled to LTC, HRA and CEA.

14. **Deprivation of Good Quality Life and Compensation of Mental Agony**. These are unquantifiable matters and financial compensation for these cannot be assessed.

15. In view of the discussions made hereinabove, we are of the view that the petitioner is entitled to only canteen and hospital facilities as are applicable to other ex-servicemen of the Indian Army and he is not

eligible/entitled to other benefits sought under the garb of consequential benefits.

16. Respondents are, therefore, directed to provide the aforesaid facilities (canteen and ECHS) to petitioner within a period of two months from today. Petitioner is directed to complete the formalities for issue of above facilities as also for commencement of pension, as required by the respondents.

17. In view of the above, execution application is finally **disposed off**.

18. No order as to costs.

19. Miscellaneous applications, pending if any, shall stand disposed off accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15th September, 2021
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