

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 282 of 2019**

Wednesday, this the 15<sup>th</sup> day of September, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-844082P (Old Navy No. 143021Z)

Nb Sub (Old Rank Ex LRO TEL) Dharmendra Kumar Upadhyay

S/o Sri Late S.L. Upadhyay

R/o 22, Maruthi Vatika, Awadhपुरi, Agra (UP) – 282010

..... Applicant

Ld. Counsel for the Applicant: **Shri Veer Raghav Chaubey &**  
**Shri Ashok Shukla, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Chief Records Officer, DSC Records, Pin – 901277, C/o 56 APO.
3. The Chief Accounts Officer, PAO (OR) DSC Mill Road, Kannur, kerala-670013.
4. Officer-in-Charge, Naval pay office, Saheed Bhagat Singh Road, Mumbai-400023.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla,**  
 Central Govt Counsel.

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(i) The Hon'ble Tribunal may kindly be pleased to direct the respondents to grant the leave encashment of 230 days to the applicant alongwith interest within stipulated time.

- (ii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case."

2. The factual matrix on record is that the applicant was initially enrolled in the Navy on 28.12.1978 and discharged from service on 31.12.1993 after rendering 15 years of qualifying service for which he was granted service pension vide PPO No. 09/097/B/S/02158/1993. Thereafter, applicant was re-enrolled in the DSC on 30.12.1998 and discharged from DSC service on 31.10.2017 (AN) on attaining the age of superannuation of 57 years under the provisions of Army Rule 13 (3) III (i) after rendering 18 years, 10 months and 02 days of service for which he is in receipt of second service pension vide PPO No. 194201700080. During DSC service, applicant has accumulated 230 days against leave encashment but he has not been paid amount of 230 days leave encashment even after retirement from DSC service. The applicant sent a representation on 29.08.2018 to respondent No. 2 and 3 alongwith an affidavit requesting to sanction amount of his 230 days leave encashment but respondents have not considered his request. Thereafter, applicant sought information under RTI Act, 2005 from opposite party no. 4 on 06.10.2017 requesting them to intimate the records of his leave encashment in Navy service but no leave encashment records was found during his entire service with Navy, however, applicant was informed vide letter dated 11.10.2017 that records have been destroyed in accordance with Regulation 124/64, Regs. Navy Part-I Regulation 0136 of Navy Act, 1957 since ex-sailor released from the service on 31.12.1993,

hence, no records is held in this office as financial documents are kept only for 10 years in accordance with Regs. Navy Part-1 Regulation 0136 and Navy Order 62/85. However, a letter dated 08.06.2019 has been sent by DSC Records to PAO (OR) DSC for consideration of payment of 230 days leave encashment amount to the applicant but so far no amount has been paid to the applicant. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was initially enrolled in the Navy on 28.12.1978 and discharged from service on 31.12.1993 after rendering 15 years of qualifying service for which he was granted service pension. Thereafter, applicant was re-enrolled in the DSC on 30.12.1998 and discharged from DSC service on 31.10.2017 (AN) on attaining the age of superannuation of 57 years under the provisions of Army Rule 13 (3) III (i) after rendering 18 years, 10 months and 02 days of service for which he is in receipt of second service pension. The applicant has accumulated 230 days leave against leave encashment but he has not been paid amount of 230 days leave encashment even after retirement from DSC service. The applicant sent a representation on 29.08.2018 to respondent No. 2 and 3 alongwith an affidavit to sanction amount of his 230 days leave encashment but respondents have not considered his request. Thereafter, applicant sought information under RTI Act, 2005 from opposite party no. 4 on 06.10.2017 requesting them to intimate the records of his leave encashment in Navy service but no leave encashment records was found during his entire service with

Navy, however, applicant was informed vide letter dated 11.10.2017 that financial records have been destroyed in accordance with Regulation 124/64, Regs. Navy Part-I Regulation 0136 of Navy Act, 1957 since ex-sailor released from the service on 31.12.1993, hence no records is held in this office as financial documents are kept only for 10 years in accordance with Navy Part-1 Regulation 0136 and Navy order 62/85. However, a letter dated 08.06.2019 has been sent by DSC Records to PAO (OR) DSC for consideration of payment of 230 days leave encashment amount to the applicant but so far no amount has been paid to the applicant. He pleaded that applicant has also given an affidavit stating that no amount has been claimed/received by him on account of leave encashment for his Navy service, hence he should be paid 230 days leave encashment amount with interest.

4. Learned counsel for the respondents submitted that applicant was re-enrolled in the DSC on 30.12.1998 and discharged from service on 31.10.2017 (AN) on attaining the age of superannuation of 57 years after rendering more than 18 years of service. During DSC service, applicant has accumulated 230 days against leave encashment but he has not been paid amount of 230 days leave encashment as no records of his leave encashment during his previous service in Navy has been received, hence, whether he has claimed/received any amount from Navy service could not be verified due to destruction of his financial records as per Navy Regulations. The applicant vide letter dated 11.10.2017 was intimated that records have been destroyed in accordance with Regulation 124/64, Regs.

Navy Part-I Regulation 0136 of Navy Act, 1957 since ex-sailor released from the service on 31.12.1993, hence, no records is held in this office as financial documents are kept only for 10 years in accordance with Regs. Navy Part-1 Regulation 0136 and Navy Order 62/85. However, a letter dated 08.06.2019 has been sent by DSC Records to PAO (OR) DSC for consideration of payment of 230 days leave encashment amount to the applicant which is under consideration with PAO (OR) DSC.

5. We have heard learned counsel for the parties and have perused the record.

6. We find that applicant has accumulated 230 days leave against leave encashment during DSC service which is confirmed by the respondents but it could not be verified from Navy service that whether applicant has claimed/received any amount on account of leave encashment from Navy service as his financial records have been destroyed in accordance with Regulation 0136 of Navy Regulations, 1964 and Navy Order 62/85 as financial documents are kept only for 10 years. Keeping in view the affidavit and declaration given by the applicant that he has not claimed any amount against leave encashment from Navy service, applicant's prayer for grant of 230 days leave encashment amount seems genuine as it has been admitted by the respondents also vide DSC Records letter dated 08.06.2019 addressed to PAO (OR) DSC for consideration of payment of 230 days leave encashment amount to the applicant which is under consideration with PAO (OR) DSC.

7. In view of above, Original Application is **allowed**. The impugned order passed by the respondents, if any, is set aside. The respondents are directed to consider the claim of the applicant for payment of amount of 230 days leave encashment and make payment as per rules. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

8. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: Sept., 2021  
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