

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

O.A. No. 122 of 2017

Monday, this the 20th day of August, 2018

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

(Army No. 13689580-K) Ex Nk Raghuraj Singh, S/o Shri Udayveer Singh R/o, Vill-Bula, Post-Barai, District-Etah, U.P.

.... Applicant

Ld. Counsel for the: Shri P.K. Shukla, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, (Army) South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MoD (Army) South Block New Delhi.
3. Addl. Dte Gen of Manpower/MP-3 Adjutant General Branch Integrated HQ of MoD (Army) DHQ PO New Delhi-110011.
4. The Officer in Charge, Record officer of Records, Brigade of the Guards, Pin-900746 C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.
6. State Bank of India, Centralized Pension processing Centre-II Floor, Chandni Chowk, Delhi-110006.
7. The ACDA I/C PAO (ORs) The Guards Kamptee.

....Respondents

Ld. Counsel for the : Dr. Shailendra Sharma Atal, Advocate.
Respondents.

ORDER

“(Per Justice SVS Rathore, Member (J))”

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has prayed for the following relief:-

“A. To issue/ pass an order or directions to set-aside/quash the Recovery of Rs. 4,22,111/- by deducting of Rs. 5000/- monthly from service pension of applicant vide letter dated 02.12.2016, Rejection of the claim for disability element of pension vide order dated 23.12.2016, and Non Grant of Pay and Allowances from 01.06.2004 to 31.12.2009 vide letter dated 03.02.2017.

B. To issue/ pass and order or directions to the respondents to Grant of Pay and allowance from 01.06.2004 to 31.12.2009 (notional re-instatement period) and other consequential benefits to the applicant.

C. To issue/pass an order or directions to respondents to constitute the Re-Survey Medical Board of the applicant for Re-assessing the Medical Condition of applicant.

D. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

F. To allow this original application with costs.”

2. In brief the facts of the case are that the applicant was enrolled in Indian Army on 27.12.1987. While holding the post of Naik, in pursuance of the opinion of Release Medical Board, the applicant was placed in Low Medical Category P2 (P) w.e.f. 12.04.2002. As a consequence thereto the applicant was discharged from Army on 01.06.2006 under Army Rule 13(3)(iii)(v) read with Army Rule 13(2A) of the Army Rules, 1954. The applicant earlier filed O.A. No. 32 of 2015 wherein he had

challenged his aforementioned discharge order passed on account of low medical category without holding Invaliding Medical Board (IMB). The said O.A. was disposed of vide order dated 21.12.2015 with the following directions :-

“8. In view of the above, the Original Application deserves to be allowed, hence allowed. Impugned order of discharge dated 02.05.2013 is set aside with all consequential benefits. The applicant shall be allowed to continue in service on the post of Naik for the remaining period of his rank. Applicant's continuance in service shall be notional. However, for the purpose of pension and other retiral benefits, the applicant shall be deemed to be in service. This order shall be complied expeditiously, say, within a period of six months from the date of presentation of a certified copy of this order.

9. Original Application stands allowed.”

3. Order passed in the earlier O.A. was complied with. The applicant was treated to be notionally in service from 01.06.2004 to 31.12.2009. Since the applicant had pensionary service to his credit, therefore, the amount which was paid to the applicant as pension w.e.f. 01.06.2004 to 31.12.2009 was directed to be recovered from the applicant for the aforesaid period but by the order under execution no back wages were paid to the applicant.

4. Learned counsel for the applicant has submitted that virtually the order passed in favour of the applicant has caused huge loss to the applicant and keeping in view the irreparable loss caused to the applicant, the applicant prayed for an interim order in favour of the applicant and this Tribunal in this O.A. at the time of admission vide order dated 20.04.2017 has suspended the

further recovery from the applicant's pensionary benefits. Learned counsel for the applicant submits that the applicant and his family would suffer irreparable loss, if the order of recovery from his pension for the period from 01.06.2004 to 31.12.2009 is permitted to continue. He has submitted that apart from it, the applicant was granted disability pension while he was initially discharged from service but after his notional reinstatement in service his disability pension has also been discontinued.

5. At this stage the learned counsel for the applicant has submitted that in the earlier O.A., the order of discharge was assailed and the same has been allowed and therefore the applicant may be permitted to file a fresh O.A., claiming disability pension as the two cause of actions are different. Learned counsel for the applicant has submitted that liberty be given to the applicant to file a separate O.A. claiming disability pension and this O.A. be disposed of finally only with regard to the recovery of pension amount paid to him during the period from 01.06.2004 to 31.12.2009.

6. By means of this O.A. the applicant has challenged the order dated 03.02.2017. Thus the admitted facts of the case are that the order of discharge of the applicant was set aside. He was treated in service notionally from 01.06.2004 to 31.12.2009. Since the applicant was paid pension during the said period and there was no order for payment of back wages, therefore, since the applicant was treated to be in service, he was not entitled to get pension during service period although notionally and therefore

the order of recovery of pension amount paid for the aforesaid period was passed.

7. Before proceeding further, we would like to deal with the legal position regarding the recovery from pension. In this regard we may take note of the judgment of the Hon'ble Supreme Court in **Ram Dayal Rai vs. Jharkhand State Electricity Board and another**, reported in (2005) 3 Supreme Court Case 501. Para- 17 of the aforementioned judgment is reproduced as under :-

“We are, therefore, of the opinion that the impugned order does call for interference by this Court and modification of the same in order to meet the ends of justice. The occupation of the quarters after 1-11-1999 is illegal. When a question was put, the learned counsel appearing for the appellant submitted that he was paying the monthly rent of Rs 25. Justice would be amply met if we direct the appellant to pay a sum of Rs 500 per month for the entire period of illegal occupation (from 1-11-1999 to 6-1-2000). The balance of convenience and the prima facie case is also in favour of the appellant. If the pensioner's benefits is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since, after retirement, the pensionary benefit is the only amount available to eke out a livelihood for the retired employees of the Government.”

8. The prayer of the applicant is innocuous that the recovery of his pension amount would adversely affect not only the applicant but also his entire family. We find substance in his prayer that the recovery of pension amount without granting any back wages for the aforesaid period would cause irreparable loss to the applicant.

9. Since the order passed in earlier O.A. has attained the finality therefore to avoid any finance related complexity, we hereby allow this O.A. partly with the following directions.

10. This O.A. is **allowed**. Amount of pension which was due to the applicant for the period from 01.06.2004 to 31.12.2009 i.e. the period of notional re-instatement shall not be recovered from the applicant and the respondents are at liberty to treat the said amount as paid towards part back wages or part salary. If any amount of pension has already been recovered, the same shall be refunded to the applicant as part back wages or part salary.

11. Applicant is also at liberty to file fresh O.A. for the payment of disability pension as the same is a separate cause of action.

12. Order to be implemented within four months of receiving signed copy, default of which shall attract 9% interest on the amount due till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: August 20, 2018

JPT

(Justice SVS Rathore)
Member (J)

