

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 327 of 2023

Thursday, this the 4th day of April, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

IC-60433F Lt Col Anurag Bahl, Sena Medal (Retd)
S/o Shri Jagdish Chandra Bahl
R/o (Presently) at Bungalow No. 8-A Carriapa Officers Enclave,
Lucknow Cantt, Lucknow (UP)-226001
Permanent R/o : Flat No O-203, Gajendra Vihar AWHO Colony Post :
Selaqui, Dist : Dehradun (Uttarakhand) – 248011.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. The Union of India, through the Secretary, Govt. of India, Ministry of Defence (Army), South Block, New Delhi – 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO New Delhi – 110011.
3. AMS (Sigs & AEC), Military Secretary's Branch (MS-13), IHQ of MoD (Army), DHQ PO, New Delhi – 110001.
4. Comdt, HQ The Infantry School, PIN – 908769, C/o 56 APO.
5. The PCDA (Officers) (Army) Golibar Maidan, Pune (Mah) – 411001.

..... Respondents

Ld. Counsel for the Respondents : **Shri J.N. Mishra,**
Central Govt. Standing 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:-

- “(A). To quash or set aside the Respondent No. 5 letter dated 01 Feb 2022 wherein Training Allowance has been denied/not paid to the applicant under the garb of establishment of The Infantry School.
- (B). To direct the respondents to grant Training Allowance to the applicant in terms of 7th CPC for the period of he was entitled in Part II Order No. 653 dated 08 Aug 2020 promulgated by The Infantry School alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal to meet end of justice.
- (C). Exemplary cost must be imposed on Respondent No. 5 their act suffer from vice of arbitrariness as applicant is not responsible for his posting to the said school.
- (D). Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The factual matrix on record is that the applicant was commissioned in the Army on 24.06.2000. The applicant was posted to Infantry School, Mhow as Instructor Class A for the period from 08.04.2017 to 15.03.2019 in the rank of Lt Col. The Infantry School, Mhow published Part II Order No. 384 dated 25.04.2017 wherein applicant was granted Instructor Allowance w.e.f. 16.04.2017 @ Rs. 2700/- per month. The applicant was posted out to HQ CIF (U) Force Station, Reasi (J&K) w.e.f. 15.03.2019. Part II Order of posting out was published vide No. 215 dated 16.03.2019 and Instructor Allowance was ceased w.e.f. 15.03.2019 on being posted out from Infantry School Mhow. As per recommendations of 7th CPC, Instructor Allowance was abolished and it was replaced with Training Allowance. Accordingly, Infantry School, Mhow published fresh Part

II Order No. 653 dated 08.08.2020 for cessation of Instructor Allowance to the applicant w.e.f. 01.07.2017 to 15.03.2019 and authorised him Training Allowance @ 12% of basic salary w.e.f. 01.07.2017 to 15.03.2019. On receipt of Part II Order, PCDA (O) Pune recovered Instructor Allowance from the applicant in the month of Apr. 2021 but no amount was paid on account of Training Allowance in terms of Part II Order No. 653 dated 08.08.2020 published by The Infantry School, Mhow. Since then so many applications have been sent by the applicant to grant Training Allowance to him but no action has been taken by the respondents to pay Training Allowance to the applicant. Being aggrieved, the applicant has filed the present Original Application for grant of Training Allowance.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the Army on 24.06.2000. The applicant was posted to Infantry School, Mhow as Instructor Class A for the period from 08.04.2017 to 15.03.2019 in the rank of Lt Col. The Infantry School, Mhow published Part II Order No. 384 dated 25.04.2017 wherein applicant was granted Instructor Allowance w.e.f. 16.04.2017 @ Rs. 2700/- per month. The applicant was posted out to HQ CIF (U) Force Station, Reasi (J&K) w.e.f. 15.03.2019 for which a Part II Order of posting out was published vide No. 215 dated 16.03.2019 and Instructor Allowance was ceased w.e.f. 15.03.2019 on being posted out from Infantry School Mhow. As per recommendations of 7th CPC, Instructor Allowance was abolished and it was replaced with Training

Allowance. Accordingly, Infantry School, Mhow published fresh Part II Order No. 653 dated 08.08.2020 for cessation of Instructor Allowance to the applicant w.e.f. 01.07.2017 to 15.03.2019 and authorised him Training Allowance @ 12% of basic salary w.e.f. 01.07.2017 to 15.03.2019. On receipt of Part II Order, PCDA (O) Pune recovered Instructor Allowance from the applicant in the month of Apr. 2021 but no amount was paid on account of Training Allowance in terms of Part II Order No. 653 dated 08.08.2020 published by The Infantry School, Mhow. Since then so many applications have been sent by the applicant to grant Training Allowance to him but no action has been taken by the respondents to pay Training Allowance to the applicant. The applicant applied for premature retirement from service and he was discharged from service w.e.f. 31.12.2022 (AN).

4. Learned counsel for the applicant further submitted that applicant was posted to Infantry School, Mhow as Instructor Class A in the rank of Lt Col by the MS Branch (MS-13) vide posting order dated 10.02.2017. IDAS, PCDA (O) Pune vide their letter dated 01.02.2022 intimated to the applicant that there being mismatch in the authorised appointment in the PE wherein officer of the rank of Major is authorised to be posted and not of a rank of Lt Col, hence, this office is unable to admit Training Allowance to the applicant without making amendment to PE by the competent authority at IHQ of MoD (Army).

5. Learned counsel for the applicant further submitted that applicant is not responsible with regard to authorisation of rank structure in an Institute and his posting was ordered by the MS Branch, IHQ of MoD (Army) to impart duty as an Instructor which he performed during his tenure from 01.07.2017 to 15.03.2019 for which he is entitled to Training Allowance. Since, amount of Instructor Allowance has been recovered by PCDA (O) Pune from the applicant, the action of respondents in non grant of Training Allowance is arbitrary, unjust and illegal, therefore, applicant should be paid Training Allowance @ 12% of his basic pay for the period from 01.07.2017 to 15.03.2019 alongwith interest.

6. Learned counsel for the respondents submitted that Training Allowance is admissible subject to the tenability of the Ranks published in the Peace Establishments (PE) of various Category 'A' & 'B' Training Institutions. In the instant case, DO Part II Order No. 653/2020 dated 08.08.2020 for grant of Training Allowance could not be accepted in audit for payment due to reason that the appointment of Instructor Class 'A' is authorised to the rank of Major in the PE of the Institution, i.e. Infantry School, Mhow whereas the applicant was holding the rank of Lt Col. The applicant was erroneously granted Instructor Allowance for the period from 01.07.2017 to 15.03.2019 vide Part II Order No. 384 dated 25.04.2017, which was not tenable as per the rank published in the PE, i.e. the appointment of Instructor Class 'B' is authorised to the rank of Major in the PE of the Institution (Infantry School, Mhow), whereas the applicant was holding the rank

of Lt Col. Accordingly, while processing the said Part II Order No. 653/2020 dated 08.08.2020, Instructor Allowance granted earlier to the applicant for the period from 01.07.2017 to 15.03.2019 was recovered in the month of April 2021.

7. Learned counsel for the respondents further submitted that Office of the Controller General of Defence Accounts, New Delhi vide letter dated 07.02.2022 communicated that, "In a meeting held on 03.02.2022 under the Chairmanship of FA (DS), New Delhi in the presence of Adjutant General, IHQ of MoD (Army), New Delhi, it was decided that Training Allowance claims of the personnel may be regulated in terms of MoD Letter dated 28.11.2019 as per PE strength of the Training Institutes". He further submitted that applicant was posted to Infantry School as Instructor Class 'A' against the vacancy of Education Officer (Instr CI B/Maj). Since, there was mismatch in rank and Instructor Class, PCDA (O) Pune had raised objection in granting Training Allowance. However, provision exists as per para 956 of Appx 'A' to GSL 2004 wherein, existing appointment was reassigned to appointment of Instr CI 'A'(Lt Col). Hence, applicant is not entitled to the reliefs prayed by him in the Original Application. He pleaded for dismissal of the Original Application.

8. We have heard learned counsel for the parties and have perused the documents/material placed on record.

9. In the instant case, applicant was posted to Infantry School, Mhow as Instructor Class A for the period from 08.04.2017 to

15.03.2019 in the rank of Lt Col by the MS Branch (MS-13), IHQ of MoD (Army), New Delhi vide posting order dated 10.02.2017. The Infantry School, Mhow published Part II Order No. 384 dated 25.04.2017 by which applicant was granted Instructor Allowance w.e.f. 16.04.2017. The applicant being posted out to HQ CIF (U) Force Station (J&K) w.e.f. 15.03.2019, Part II Order No. 215 dated 16.03.2019 was published and Instructor Allowance was ceased w.e.f. 15.03.2019. Later on, as per recommendations of 7th CPC, Instructor Allowance was abolished and it was replaced with Training Allowance @ 12% of basic salary, Infantry School, Mhow published fresh Part II Order No. 653 dated 08.08.2020 for cessation of Instructor Allowance to the applicant w.e.f. 01.07.2017 to 15.03.2019 and authorised him Training Allowance @ 12% of basic salary w.e.f. 01.07.2017 to 15.03.2019. PCDA (O) Pune recovered Instructor Allowance from the applicant but no amount was paid on account of Training Allowance in terms of Part II Order No. 653 dated 08.08.2020 published by The Infantry School, Mhow due to holding of rank of Lt Col in place of existing appointment in the rank of Major.

10. We observe that respondents in para 11 of their counter affidavit has mentioned that there is a provision wherein existing appointment was re-assigned to the appointment of Instructor Class 'A' (Lt Col) as per Para 956 of Appendix A to GSL 2004 but inspite of that applicant has been denied Training Allowance to which he was authorised @ 12% of his basic salary.

11. We find that the applicant was posted to Infantry School, Mhow as Instructor Class A in the rank of Lt Col by the order of MS Branch, IHQ of MoD (Army), New Delhi and not at his own request for which he was granted Instructor Allowance for the period from 01.07.2017 to 15.03.2019 but the same was recovered from the applicant by the PCDA (O) Pune but in lieu thereof, Training Allowance as entitled to the applicant was denied. Since, the applicant was posted to Infantry School, Mhow in the rank of Lt Col by the respondents and amount of Training Allowance was also paid by the respondents, hence, there is no question to deny the applicant his entitlement of Training Allowance for the period from 01.07.2017 to 15.03.2019 during his posting in the rank of Lt Col as an Instructor in the Infantry School, Mhow. It is the responsibility of the respondents to earmark rank structure and reassign appointment to the Training Institutions as per PE which is within the powers/authority of IHQ of MoD (Army), New Delhi, therefore, in the present case, applicant having been performed Instructor duties in the rank of Lt Col cannot be denied his entitlement of Training Allowance.

12. In view of aforesaid, we are of the view that there is no disparity in competence/performance of duties in the rank of Major or Lt Col, therefore, the applicant is held entitled to the Training Allowance in the rank of Lt Col during his posting as an Instructor in the Infantry School, Mhow for the period from 01.07.2017 to 15.03.2019 as per existing rates.

13. Resultantly, Original Application is **allowed**. The respondents are directed to grant/pay Training Allowance to the applicant for the period from 01.07.2017 to 15.03.2019 as per existing rates alongwith 6% interest thereon. The respondents are further directed to comply with the order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: April, 2024
SB

(Justice Anil Kumar)
Member (J)