

**Court No. 1**

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

**ORIGINAL APPLICATION No. 35 of 2021**

Monday, this the 20<sup>th</sup> Day of December, 2021

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

No. 6471234-M, Ex Sep Ram Pal, S/o Chedi Lal, Resident of House No SS/61, Sector G, LDA Colony, Kanpur Road, Lucknow, PIN- 226012.

..... Applicant

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

Versus

1. Union of India, through Principal Ministry of Defence, South Block, New Delhi- 110011.
2. The Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block- III, New Delhi- 110011.
3. Deputy Directorate General DSC, General Staff branch, Integrated HQ of MoD (Army), Wing No 3, 1st Floor, West Block- III, RK Puram, New Delhi, Pin- 110066.
4. Commanding Officer, Defence Security Corps Records, 933 DSC Platoon, C/o 56 APO.
5. Chief Record Officer, Raksha Suraksha Corps Abhilekh, Defence Security Corps Records, PIN- 901277, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. :**Shri Namit Sharma,**  
**Central Govt. Counsel**

## **ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

A. *To pass an order or direction for payment of the salary from the 17.10.2005 till 07.10.2014 with the interest of 12% per annum till actual realization of the aforesaid amount.*

B. *To Pass an order which this Hon’ble Tribunal deems fit and just under the facts and circumstances of the case, in favour of the applicant.*

C. *Allow the original application with exemplary costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the army on 10.11.1979 and discharged from service on 01.12.1996 after rendering 17 years and 20 days qualifying service and was granted service pension for life. The applicant again got re-enrolled in Defence Security Corps (DSC) on 06.01.1999 for initial terms of 10 years. He was implicated for murder case and was tried by General Court Martial. He was awarded punishment of dismissal from service and life imprisonment. The applicant filed petition before Hon’ble High Court of Lucknow Bench,

which was transferred to this Tribunal. Hon'ble Tribunal set aside the conviction and dismissal order accordingly, the applicant was reinstated in service on 07.10.2014. Later on applicant was discharged from service on his own request. He was not granted salary for the period he was in jail. The applicant sent representation for salary for the period from 17.10.2005 till 07.10.2014 for the period he was in jail, which was denied by the respondents. Being aggrieved, applicant has filed instant Original Application for reinstatement in service.

3. Learned counsel for the applicant submitted that Hav Satnam Singh was murdered on 16.10.2005 wherein the applicant was falsely implicated for the murder of aforesaid Hav Satnam Singh and he was arrested on 16.10.2005. The applicant was tried by a General Court Martial held at ASC Centre North Gaya from 17.05.2007 to 28.06.2007 under Army Act Section 69 read with Sec 302 of IPC and was awarded punishment of dismissal from service and imprisonment for life. The applicant aggrieved with the aforesaid punishment filed Writ Petition No 1220 (M/B) of 2009 Ram Pal Versus Union of India and Others before Hon'ble High Court of Lucknow Bench, Lucknow which was transferred to this Tribunal. The petition was allowed vide order dated 08.10.2012 of this Tribunal and

punishment of conviction and dismissal was set aside. The applicant was reinstated in service with effect from 28.06.2007. The applicant was discharged from service on 01.04.2017 on his own request. The applicant was not paid salary from 17.10.2005 to 07.10.2014 the period applicant was in jail despite the respondents have deducted the provident fund for the aforesaid period. Learned counsel for the applicant prayed that direction be issued to the respondents to pay salary to the applicant for the period from 17.10.2005 to 07.10.2014.

4. On the other hand, learned counsel for the respondents submitted that applicant while serving with 933 DSC Platoon was attached to Ordnance Factory Rajgir Nalanda (Bihar), committed a civil offence on 16.10.2005 under Section 302, by intentionally causing the death of Hav Satnam Singh of the same platoon. He was handedover to Civil Police at Rajgir on 17.10.2005 for investigation and trial. Applicant was tried by General Court Martial and was awarded the sentence of life imprisonment and dismissal from service with effect from 28.06.2007. Applicant filed petition which was allowed and applicant was acquitted and sentence of dismissal from service was set aside. Applicant released from Central Prison Varanasi on 30.11.2012. Applicant was reinstated in DSC service wef

28.06.2007 and taken on ration strength wef 08.10.2014.

Thereafter, applicant was retired from service wef 01.04.2017.

5. Learned counsel for the respondents further submitted that applicant was allowed to reinstate in service and he was physically re-instated into service with effect from 08.10.2014. No direction for back wages was given by the Hon'ble Tribunal, hence the applicant is entitled only pay and allowances with effect from 08.10.2014. Moreover, on the principle of 'No Work No Pay' as held by Hon'ble High Court of Kerala order dated 06.03.2015 passed in WP (C) No 680/2015 (H), Ex Nk Mohan Das V of DSC vs Union of India & Others, the applicant is not entitled pay and allowance for the period from 17.10.2005 to 07.10.2014 period of imprisonment in civil jail till physical re-instatement into service. Learned counsel for the respondents prayed that instant O.A. is devoid of merit and has no substance, hence the same is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the documents available on record.

7. The question before us to decide is whether the applicant is entitled for grant of pay and allowance for the period from

17.10.2005 to 07.10.2014 i.e. period of imprisonment in civil jail till physical re-instatement into service or not?

8. At this juncture, we would like to quote the Hon'ble Apex Court judgment passed in case of **Maj. (Retd.) Hari Chand Pahwa v. Union of India**, 1995(1) Services Law Reporter, 703.

The relevant part of the said judgment reads as under:-

*"The provisions of Regulation 16 (a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the appellant under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds. A show cause notice was issued to the appellant, his reply was considered and thereafter the President passed the order forfeiting the pension and death-cum-retirement gratuity."*

9. A bare reading of the above observations would make it clear that the Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds.

10. In the light of the principles of law as laid down by the Hon'ble Apex Court, we may examine the present case on the touchstone of Army Act and the Regulations framed thereunder:-

**Army Act.** For the sake of convenience, Army Instruction No. 129 of 65 which is relevant is being reproduced as under:-

*“129. Pay and allowances admissible to JCOs/other ranks/non-combatants (enrolled) for the period between dismissal/removal/discharge and subsequent reinstatement. Reference Rules 51(g) and 52(b) – Pay and Allowances Regulations(OR) 1955.*

*2. The forfeiture of pay and allowances under Rule 51 (g) Pay and Allowances Regulations(OR) 1955 of a JCO/OP/NC(E) on his dismissal/removal/discharge consequent on his conviction by a criminal court may be remitted by the authority competent to cancel his dismissal/removal/discharge when he is reinstated in service upon his acquittal on appeal or revision in the following manner :-*

*(a) If in the opinion of the authority ordering reinstatement, the person reinstated has been honourably acquitted/fully exonerated he may make a specific order for*

*(i) Remitting the forfeiture of pay and allowances in respect of the period from the date of dismissal/removal/discharge to the date of acquittal and from the date of acquittal to the date fixed for joining duty and*

*(ii) Treating the period as duty will also count for the purpose of classification, increments and GS Pay.*

*(b) In other cases*

*(i) The forfeiture of pay and allowances for the period from the date of dismissal/removal/discharge to the date of acquittal may be remitted by the authority ordering the reinstatement to an extent considered equitable but not less than 50% of pay and allowances admissible at the time of soldier's dismissal/removal/discharge. The period will not be treated as duty unless the reinstating authority directs that it shall be so treated for any specific purpose.*

*(ii) The forfeiture of pay and allowances for the period from the date of acquittal to the date fixed for*

*joining duty may be remitted in full and the period will be treated as duty.*

3. *The orders passed under (a) and (b) of para 2 above shall be subject to the following conditions :-*

*(a) In no case remission will be allowed for a period exceeding three years preceding the date fixed for joining duty.*

*(b) No payment shall be made unless the soldier furnishes a certificate that he was not engaged in any other employment, business, profession or vocation during the period between dismissal and the date fixed for joining duty. If any amount has been earned by him during such period, the pay and allowances remitted by the competent authority shall be reduced to that extent.*

*(c) If a person during the period of dismissal reaches the age of superannuation by service/age/tenure limit the remission of pay and allowances should be restricted to the date of superannuation.*

*(d) No pay and allowances should be admissible to an individual for any period of imprisonment undergone during the period between the date of discharge/removal/dismissal and reinstatement without the specific sanction of the Central Government.*

4. *All the outstanding cases will be disposed of accordingly.*

5. *Pay and Allowances Regulations (OR), 1955 will be amended in due course.*

*Case No. 6830/AG/PS3(b)/7742/D (AG-1)*

*M of F(I) u.o. No. 192/S-PD of 1965*

*S.DF Vanath,*

*Dy. Secy."*

11. After referring the aforesaid quoted provisions and taking into consideration the provisions of Rule 51 and 52, we reached to the following conclusion:-

These are the guidelines which have been provided in cases where a person is acquitted by the criminal court or by court-martial. The

detailed charter has been given under these rules giving guidance that in what manner the pay and allowances will be applicable on acquittal for a period during which the incumbent was in imprisonment. These guidelines shall have the bearing on the subject.

12. Coming to the facts of the present case, it is no longer in dispute that the applicant was discharged from DSC service being involved in criminal case under Section 302 IPC. He was tried by General Court Martial (GCM) and awarded punishment of dismissal from service and life imprisonment. He filed petition against punishment awarded by GCM and his petition was allowed and conviction and sentence of the applicant including sentence of dismissal from service was set aside. The applicant was acquitted. By way of clarification, it may be added that in the order dated 08.10.2012 passed by this Tribunal, no order for grant of back wages was passed. The respondents in their reply have clear cut stated that applicant is not entitled salary for the period he was in jail. The stand of the applicant that he is entitled salary for the period he was in jail is not legally tenable and wrong and is liable to be rejected. We do not find any lacuna in the procedure adopted by the respondents in not granting the salary to the applicant for the period, applicant was in jail.

13. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.
14. No order as to costs.
15. Pending applications, if any, stand disposed off.

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

Dated: 20 December, 2021  
ukt/-