

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No 707 of 2021

Wednesday, this the 1st June, 2022

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

No. 4066318W Time Scale Naik Mangal Singh
S/o Budhi Singh
R/o Village – Ubot, PO – Siriyakhal,
Tehsil – Lansdowne,
District – Pauri Garhwal, Uttarakhand – 246179

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence, through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad (UP).
3. Chief of Army Staff, IHQ of MoD (Army), New Delhi-110011.
4. Senior Record Officer, Records The Garhwal Rifles, Lansdowne.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,
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 A direction to respondent no. 3 to pay service pension to the applicant to the rank of Naik Time Scale on the last rank held w.e.f. his date of discharge i.e. 01.11.2002.

ii. To summon the entire records of the applicant pertaining to computation of service pension to the rank of Naik Time Scale.

iii. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Briefly stated facts are that applicant was enrolled in Indian Army on 10.11.1983 and was discharged from service on 31.10.2002 (AN) in the rank of Time Scale Naik after rendering more than 19 years of service. The applicant has been granted service pension of Sepoy w.e.f. 01.11.2002 vide PPO dated 29.10.2002 whereas applicant is entitled for the pension of Naik (TS) irrespective of length of service in the last rank according to Govt. of India, Ministry of Defence letter dated 07.06.1999 and 09.02.2001 on the subject. The applicant submitted a legal notice cum representation dated 07.10.2021 for grant of service pension of the rank of Naik (TS) which is under consideration with the respondents. Being aggrieved the applicant has filed the present Original Application.

3. It is submitted by learned counsel for the applicant that applicant was discharged from service on 31.10.2002 (AN) in the rank of Time Scale Naik after rendering more than 19 years of service. The applicant has been granted service pension of Sepoy w.e.f. 01.11.2002 vide PPO dated 29.10.2002 whereas applicant is entitled

for the pension of Naik (TS) irrespective of length of service in the last rank according to Govt. of India, Ministry of Defence letter dated 07.06.1999 and 09.02.2001. He placed reliance on the judgment of this Tribunal in OA No. 162 of 2021, **Naik (TS) Birendra Kumar Lakhera vs. Union of India and Ors**, decided on 03.08.2021 and pleaded that applicant's case is squarely covered with the judgment being similar in nature and therefore, he is entitled to service pension in the rank of Time Scale Naik from the next date of discharge from service, ie. w.e.f. 01.11.2002.

4. Per contra, learned counsel for the respondents submitted that applicant was promoted to the rank of Naik on 20.01.1999. However, the applicant was tried by a Summary Court Martial on 23.04.2002 and reduced to the rank of Sepoy. Thereafter, applicant was discharged from service on 31.10.2002 in the rank of Naik (Time Scale). The applicant submitted a legal notice cum representation dated 07.10.2021 for grant of service pension of the rank of Naik (TS). The case of the applicant was scrutinized by the Records, Garhwal Rifles and was submitted to PAO (OR), Garhwal Rifles for necessary verification/audit vide Records, Garhwal Rifles letter dated 26.10.2021. The letter dated 26.10.2021 reads as under :-

"1. It is intimated that No. 4066318W Nk (TS) Mangal Singh was enrolled in the Army (GARH RIF) on 10 Nov 1983 and was promoted as PA Nk on 20 Jan 1999. During his service the indl was tried by SCM under AA Sec 49(b) and reduced to the rank from PA Nk to Sep on 23 Apr 2002. Thereafter, the indl was promoted as Nk (TS) on 21 Jul 2002 vide RO II No. D/0532/0003/2002. However, pension docu of the indl was recd and processed in the rk of Rfn on

13 Jul 2002 as endorsement of entry of promotion to the rank of Nk (TS) has not done at the time of procession of claim.

2. On reduction of the rank as Sep (Nk TS) the indl was disch from service on 31 Oct 2002 under Army Rule 13 (3) III (i) on completion of his terms of engagement in Sep rank.

3. Keeping in view of the above, the indl is entitled for pensionary benefits in the rank of Nk (TS), but the indl is getting pension in the rank of Sep vide PPO NO. S/038662/2002 (Army).

4. LPC-Cum-Data Sheet for grant of service pension in the rank of Nk (TS) is fwd herewith. You are requested to verify/audit the same and early return to this office for further submission to PCDA (P) Allahabad.

5. An early action is requested.”

5. Learned counsel for the respondents has also agreed to that applicant is entitled to service pension in the rank of Naik (Time Scale) from the date of discharge from service as given in para 7 of the counter affidavit filed by the respondents.

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

7. Having heard the submissions of learned counsel of both sides and having gone through records, we observe that applicant is held entitled to service pension in the rank of Naik (Time Scale) from the date of discharge from service i.e. 01.11.2002, as agreed to by the respondents in para 7 of their counter affidavit as well as Records, The Garhwal Rifles vide their letter dated 26.10.2021, addressed to Pay Accounts Office, Garhwal Rifles.

8. Accordingly, Original Application deserves to be allowed and is **allowed**. The applicant is entitled to service pension in the rank of Naik (Time Scale) from the next date of discharge from service, i.e.

01.11.2002. The respondents are directed to grant service pension to the applicant in the rank of Naik (Time Scale) from the next date of discharge from service by issuing a fresh PPO in the rank of Naik (Time Scale) granting arrears accordingly. 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. Delay shall carry interest @ 8% per annum from date of order till actual payment.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: June, 2022

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