

Reserved
Court No.3
(Sl. No.10)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 455 of 2022

Wednesday, this the 05th day of Jul, 2023

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

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

Ram Krishna Panday (JC 758217F), Son of Late Prabhu Dayal Panday,
R/O Gomti Nagar, LRP Road Behind Mahalaxmi Rice Mill, Lakhimpur
Kheri (U.P.).

.....Applicant

Ld. Counsel for : **Shri Manoj Kumar Srivastava**, Advocate
Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Defence,
South Block New Delhi.
2. The Chief of the Army Staff, Indian Army, South block, New Delhi.
3. The CPIO Office of the controller of Defence Accounts No. 1 Staff
Road, Secundeabad-500015.
4. The PAO (ORs) EM Secunderabad-21, Telangana.

...Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**, Advocate
Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has sought the following reliefs:-

(a) The Hon'ble Tribunal may kindly be pleased to pass the order and direct the opp parties to provide the payment of interest of sudden recovery to the Applicant from such date with interest.

(b) The Hon'ble Tribunal may kindly be pleased to pass any other order or direction which it deems, just and proper in the circumstances of the matter along with the cost of Application.

2. Brief facts of the case are that the applicant was enrolled in the Army on 12.09.1986. During the course of his service he was promoted to the rank of Naib Subedar on 01.09.2003, Subedar on 01.10.2008 and Subedar Major on 01.03.2016. Thereafter, being on active service he was conferred Honorary rank of Lieutenant on 26.01.2019 and Captain on 15.08.2019. Earlier, in the year 2008, his promotion order for the rank of Subedar was received to be promoted w.e.f. 30.10.2008. Accordingly, he was promoted to the next rank and Part-II Order No. 1/1247/011/2018 dated 18.12.2008 to this effect was notified and amount was adjusted in quarterly statement of account (QSA) for quarter ending 08/2009. However, since the applicant was on Part of Annual Leave (PAL) for the period 20.10.2008 to 05.12.2008 and casualty in regard to this was already published vide Part-II Order No. 0/0002/009/2009 and amount was adjusted in QSA for quarter ending 02/2009, Part-II Order related to his promotion (1/1247/011/2018) was invalidated due to applicant being on leave. Accordingly, an amount of Rs 1,21,444/- was recovered from

his IRLA in the month of August, 2012 and after protracted correspondence on the subject it was refunded to him in the month of November, 2016. This O.A. has been filed for grant of interest on Rs 1,21,444/- which was withheld by the respondents for four years.

3. Learned counsel for the applicant submitted that the recovery of Rs 1,21,444/- was made in the year 2012 due to wrong publication of Part-II Order related to his promotion to the rank of Subedar. It was further submitted that since this amount was refunded by the respondents in the year 2016 i.e. after four years of long exercise, he is entitled to interest on delayed payment of the aforesaid amount.

4. On the other hand, learned counsel for the respondents submitted that the applicant was promoted to the rank of Subedar w.e.f. 30.10.2008 vide EME Records Part-II Order No. 1/1247/011/2018 dated 18.12.2008 and the same was adjusted in QSA for quarter ending 02/2009, however, since the applicant was on PAL w.e.f. 20.10.2008 to 05.12.2008 as per Part-II Oder No. 0/0002/009/2009 which was adjusted in quarterly statement of account for quarter ending 08/2009, therefore during review by the system the promotion Part-II Order was invalidated as the applicant was on leave on the date of promotion to the rank of Subedar. Accordingly, pay and allowances related to promotion for the rank of Subedar were recovered in monthly pay slip of 08/2012. However, on adjustment of the rejoining annual leave Part-II Order w.e.f. 30.10.2008, the promotion of the applicant to the rank of Subedar w.e.f. 30.10.2008 was re-validated and an amount of Rs 1,93,094/- (recovered amount plus other adjustments) was credited in monthly pay slip for 11/2016.

5. Learned counsel for the respondents further submitted that there is no provision to pay interest on arrears of pay and allowances. It was further submitted that the recovery was affected on invalidating of promotion Part-II Order as he was on PAL at the time of promotion. It was further submitted that on receipt of fresh Part-II Order with regard to validating of promotion, the recovered amount was credited to his account in the month of November, 2016 and action of the respondents is well within the rules, hence, the question of payment of interest does not arise in the instant case. He pleaded for dismissal of O.A.

6. Heard Shri Manoj Kumar Srivastava, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

7. JC-758217F Ex Subedar Major (Honorary Lieutenant) Ram Krishna Pandey was enrolled in the Corps of EME of the Indian Army on 12.09.1986 and he was discharged from service on 31.10.2019 on completion of his term of engagement. During the course of his service he was promoted to the rank of Naib Subedar on 01.09.2003. While he was on leave for the period 20.10.2008 to 05.12.2008 his promotion order for the rank of Subedar was received and Part-II Order to this effect was published which was invalidated due to applicant being on PAL which resulted in recovery of Rs 1,21,444/- from his monthly pay slip of August, 2012. Thereafter, on publication of rejoined annual leave Part-II Order w.e.f. 30.10.2008, his promotion to the rank of Subedar w.e.f. 30.10.2008 was re-validated and amount, recovered earlier on account of cancellation of Part-II Order, was refunded in pay slip for the month of November,

2016. Thus, the amount which was recovered in the year 2012 was refunded late in the year 2016 due to wrong publication of Part-II Order at unit level.

8. In this regard he submitted RTI dated 09.10.2012 and in response to his RTI, suitable reply was furnished to applicant vide letter dated 10.10.2012, relevant extract of which for convenience sake is reproduced as under:-

“3. It is also stated that the JCO is on PAL from 20.10.08 to 05.12.08 vide 57L111 Part-II Order No o/0002/009 dated 05.02.2009 and promoted to Sub w.e.f. 30.10.2008 vide EME Records DO II No 1/1247/2010. During the review while validating the SCCIA Part-II Order bearing No 0033/001/2011 in the system, since the JCO is on leave on the date of promotion of Subedar, the promotion DO II has been validated and pay & allowances adjusted relating to Sub Pay has been recovered in 03/12.”

9. We find that the amount was recovered from the applicant on account of wrong publication of Part-II Order by the unit authorities and subsequently when correct Part-II Order was published the amount was refunded. In the circumstances, we feel that the PAO (OR) has not erred in recovering and refunding the amount to the applicant.

10. The respondents while filing counter affidavit in Para 7 submitted that there is no provision to pay interest on arrears of pay and allowances. For convenience sake para 7 of the counter affidavit is reproduced as under:-

“7. That however, it is pertinent to submit here that the applicant was promoted to the rank of Subedar w.e.f. 30 Oct 2008 vide EME Records Part-II Order No 1/1247/011/2018 dt 18 Dec 2008 and the same was adjusted in QSA 02/2009. However, the applicant was on Part of Annual Leave w.e.f. 20 Oct 2008 to 05 Dec 2008 as per DO Part-II No 0/0002/009/2009 which was adjusted in QSA 08/2009. Therefore, during review by the system, the promotion Part-II Order was invalidated as the applicant was on leave on the date of promotion of Subedar. Accordingly, pay and allowances were recovered related to Subedar promotion in MPS 08/2012. However, on adjustment of the REJAL DO II

Order w.e.f. 30 Oct 2008, the promotion of applicant to the rank of Subedar w.e.f. 30 Oct 2008 was re-validated and amount of Rs 1,93,094/- has been credited in SPS 11/2016. However, there is no provision to pay interest on arrears of pay and allowances. The promotion was invalidated and pay and allowances were recovered due to publication of Part of Annual Leave as the applicant was on leave on the date of promotion. Hence, the action of the respondents is well within the rules, hence, the question of payment of interest does not arise.”

11. We have given our anxious consideration to submissions of both the parties and we find that since PAO (OR) has recovered and credited the amount based on publication of Part-II Order, respondents have done no wrong. In the circumstances we are of the view that interest part as claimed by the applicant is not payable.

12. In view of the above, O.A. is liable to be dismissed. It is accordingly, **dismissed.**

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 05.07.2023

rathore

(Justice Anil Kumar)
Member (J)