

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No 708 of 2020**

Thursday, this the 24<sup>th</sup> day of March, 2022

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

**No. 14255557M Ex Hav (EFS) Upendra Singh Chauhan of 1 CASSU (1 Corps Air Support Signal Unit), C/o 56 APO, son of Late, RPS Chauhan, Village- Sona Ka Bas, Post Office- Sona Ka Bas, Tehsil- Itmadpur, District- Agra (U.P.), Pincode- 283126.**

..... Applicant

Ld. Counsel for the Applicant: **Shri KK Singh Bisht,  
Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence,  
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Additional Directorate General Discipline and Vigilance (DV-5B), Adjutant general's Branch, Integrated HQ of MoD (Army), New Delhi – 110011.
4. Directorate General of Signals (Sigs 4) (b) General Staff Branch, Integrated HQ of MoD (Army) DHQ PO, New Delhi – 110011.
5. Officer In Charge Records, Signal Records, PIN-908770, C/o 56 APO.

..... Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava,  
Respondents Central Govt Counsel.**

**ORDER**

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

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to set aside order passed by OIC Records, Respondent No 5 dated 03.12.2019 rejecting consequential benefits in terms of service, pay and allowances, seniority, promotion and revised service pension.
2. Rejoinder affidavit filed by the applicant is taken on record.
3. Submission of learned counsel for the applicant is that applicant feeling aggrieved against discharge from service in consequence of Summary Court Martial (SCM) preferred Civil Misc Writ Petition No 34508 of 2004 before Hon’ble Allahabad High Court which was transferred to this Tribunal and re-numbered as T.A. No 633 of 2010. The petition was allowed vide order dated 11.01.2018 of this Tribunal. In compliance of order applicant was notionally reinstated in service wef 13.07.2002 (date of dismissal) and was notionally discharged on 31.03.2008 on completion of 24 years of service in the rank of Havildar. Since the order dated 11.01.2018 was not

complied with in its letter and spirit the applicant filed representation praying to grant him promotion to the rank of Subedar Major which was rejected. Learned counsel for the applicant prayed that directions be issued to respondents to promote the applicant to the rank of Subedar Major and grant all consequential benefits.

4. Per contra, learned counsel for the respondents submitted that instant application being based on imaginary and hypothetical calculation is not maintainable and is liable to be dismissed. Her further submission is that T.A. was allowed vide order dated 11.01.2018 of this Tribunal. The operative part of judgment was ***“O.A. is allowed. The impugned Summary Court Martial proceedings commenced on 17.06.2002 and thereafter from time to time, show cause notice dated 06.01.2004 and order dated 14.05.2004 and order dated 14.05.2004 passed by the Chief of Army Staff rejecting the statutory petition of the petitioner are set aside with all consequential benefits. Petitioner shall be deemed notionally in service on the rank which he was holding at the time of dismissal and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages. However, keeping in view the facts*”**

***and circumstances of the present case, we confine arrears of salary to 50% but he shall be entitled to full pension in accordance with the rules immediately from the date of notional retirement of service of the rank which he was holding***". Learned counsel for the respondents submitted that as per order of this Tribunal applicant was notionally reinstated into service from 13.07.2002 (Date of dismissal) and notionally discharged from service from 31.03.2008 on completion of 24 years of service in the rank of Havildar for which he was paid all the terminal pensionary benefits applicable to Havildar. The applicant was not physically reinstated into service, if he would have been physically reinstated into service, he would have undergone all mandatory courses/cadres required for promotion. Since he was notionally reinstated for monetary benefits, therefore his eligibility for further promotion was ruled out due to lack of physical service and not meeting qualitative requirement for promotion. Her further submission is that respondents in compliance of the order of this Tribunal granted Rs. 3,30,935/- on account of 50% arrears of salary for the period from 13.07.2002 to 31.03.2008. The order of the Tribunal has been implemented in toto and nothing remains to be implemented in the order. Learned counsel for the respondents further submits that instant O.A. being based on

imagination is not acceptable rather is liable to be out rightly rejected.

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

6. On reading of order dated 11.01.2018 referred to above, we notice that O.A. was filed for issuing directions to respondents to promote applicant to the post of Sub Maj and to grant seniority and revised service pension. We notice that in pursuance to order of this Tribunal, applicant was notionally reinstated in service and notionally discharged on completion of 24 years of service as applicable to Havildar. As per order of this Tribunal Applicant was also granted 50% arrears of salary. Since he was notionally reinstated in service, therefore his eligibility for further promotion was ruled out due to lack of physical service and not meeting qualitative requirement for promotion. If applicant would have been physically reinstated into service, he had undergone all mandatory courses/Cadres required for promotion. Apart from this applicant cannot compare him with his junior, who got promotion not merely on seniority but got promotion on merit. Promotion automatically cannot be a consequential benefit as applicant's case is not of reinstatement.

7. Upon hearing the submissions of learned counsels of both sides and having gone through order dated 11.01.2018 passed by this Tribunal in T.A. No 633 of 2010, we find that order of this Tribunal has been fully complied with. Since the order has been complied with, the instant O.A. is liable to be dismissed.

8. In view of the above, the O.A. is **dismissed**.

9. No order as to costs.

10. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)

(Justice Umesh Chandra Srivastava)

**Member (A)**

**Member (J)**

Dated: 24 March, 2022

Ukt/-