

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 222 of 2014**Tuesday, this the 13<sup>th</sup> day of October 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex-Naik Ravindra Singh Kushwah (Army No. 14587260-X), son of late. Balwan Singh Presently residing at C/o Basant Kumar Soni Govardhan Market, Sarrafa Bazar, Dabra District-Gwalior (Madhya Pradesh)-475110.

.....Applicant

Ld. Counsel for : **Shri P.N. Chaturvedi,**  
the Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of The Ministry of Defence (Army), South Block New Delhi-110011.
3. Officer-in-Charge Records, Electrical Mechanical Engineers, Secunderabad (Andhra Pradesh)-500015.

.....Respondent

Ld. Counsel for the : **Lt Col Subodh Verma,**  
Respondents **OIC Legal Cell**

**ORDER (ORAL)**

1. Heard Ld. Counsel for the parties and perused the record.
2. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred with the grievance that the applicant may be promoted to the next higher post of Hav keeping in view the fact that the order of dismissal dated 15.07.1998 was set aside by the Tribunal in T.A. No. 146 of 2010 vide order dated 18.04.2011. Submission is that once order of dismissal has been set aside, the applicant is entitled for promotional avenue along with batch mates. Applicant's batch mates have already been promoted.
3. It is admitted fact that the applicant was dismissed from service on 15.07.1998 which was subject matter of T.A. No. 146 of 2010. T.A. was allowed vide order dated 18.04.2011. Operative portion of the judgment and order dated 18.04.2011 is reproduced as under:

*“31. For the reasons given above, the Transferred Application is allowed. We set aside the conviction and sentence awarded to the applicant by the Summary Court Martial. The question is what other relief should be granted.*

*32. It is stated by learned counsel for the applicant at the Bar that the applicant was enrolled in the year 1985 and his term of engagement of 24 years has come to an end in 2009. In the circumstances, the actual reinstatement of the applicant cannot be granted. However, we find that on account of the conviction and*

*sentence in this unfair trial, the applicant's career has been damaged and the applicant has also suffered an unwarranted imprisonment. In the circumstances, the applicant will be entitle to his salary from the date of dismissal, i.e. 15.7.1998 till the date his engagement come to an end together with interest @ of 8% per annum. In addition, the applicant shall be paid a sum of rupees two lacs as compensation. Compliance of this order will be done within three months from the date of production of a certified copy of this order before the Officer Incharge Records."*

4. Perusal of the order passed by the Tribunal shows that while allowing the T.A. and setting aside the order of dismissal, the Tribunal has granted salary to the applicant from the date of dismissal, i.e. 15.07.1998 till the date his engagement come to an end together with interest @ of 8% per annum. The Tribunal has further directed to pay a sum of rupees two lacs as compensation.

5. Admittedly, the order has been complied with and arrears of salary has been paid along with interest @ 8% with exemplary cost of rupees two lacs. Perusal of the order of the Tribunal shows that the Tribunal has expressed opinion that actual reinstatement to the applicant cannot be granted keeping in view the fact that 24 years of service of the applicant had come to an end in 2009.

6. By judicial pronouncement the Tribunal has granted certain relief by setting aside the order of dismissal. The Tribunal has granted relief only to the extent of payment of

salary for the period of 24 years keeping in view the fact that the applicant was not deemed to be in service in 2009. The Judgment of the Tribunal has attained finality and it is now not open for judicial review by another O.A. In case there was any flaw in the order of the Tribunal, or the applicant wanted to claim any other relief in consequence to the order of dismissal, then it was open for the applicant to challenge the order of the Tribunal by approaching Hon'ble Supreme Court. It is not open for this Tribunal to review the earlier decision and further extend the relief granted by it.

7. Argument advanced by Ld. Counsel for the applicant seems to be misconceived. The Tribunal has noticed in the order that the applicant attained age of superannuation in 2009, hence it shall not be possible to restore him in service and the consequential benefits have been confined only to the extent of back wages. It is not open for this bench to further extend the consequential benefits more than what has been awarded by the aforesaid order of the Tribunal.

8. Apart from it, it was for the applicant while preferring the earlier T.A. to claim promotional avenue. In the absence of any relief claimed by the applicant, the second O.A. for consequential relief is barred by Order 2 Rule 2 C.P.C. It was for the applicant to have claimed specific relief for promotional avenue while preferring the earlier T.A. In absence of any such relief claimed by the applicant in the earlier T.A. no indulgence at this stage can be granted to the applicant in view of the

provisions of Order II Rule 2 C.P.C. Order II Rule 2 C.P.C. is reproduced as under:

***“Suit to include the whole claim –(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.”***

9. In the present case, the entire jurisdiction was vested in the High Court, and later on to the Tribunal, hence it was for the applicant to claim whole relief by separate O.A. with regard to controversy in question. Further in the present case, the Tribunal has confined the consequential relief to the extent as mentioned above.

10. The present O.A. is not maintainable. Otherwise also, since the applicant would have retired in the year 2009, no relief can be granted.

11. The O.A. lacks merit and is dismissed accordingly.

12. No order as to costs.

**(Air Marshal Anil Chopra)  
Member (A)**

**(Justice D.P.Singh)  
Member (J)**

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