

**RESERVED**  
**Court No.1**

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

**Original Application No.502 of 2017**

**Friday this the 30<sup>th</sup> day of November, 2018**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Harishanker Dwivedi, Hav. 5 Mtn, Div Sig. Regt.  
C/o 99 APO, No.142176 Y  
S/o Late Sri Jai Narayan Dwivedi,  
C/o Mohan Singh Bhadauria  
H.No. 79, Karamganj, Near Bus Stand Tiraha Kalpi,  
Circular Road, Etawah – 206001  
Permanent Address : Village & Post : Senganpur,  
Tehsil : Ajeetmal,  
P.S.: Ajana, District : Auraiya (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri S.K. Singh**, Advocate

Versus

1. Union of India, through Army Chief Sena Bhawan, New Delhi.
2. Director General of Artillery (Arty-10)  
General Staff Branch, IHQ of MOD (Army)  
DHQ New Delhi – 110011.
3. Commanding Officer, Signal Records, Jabalpur.
4. C.D.A. Pension, Office of the Chief C.D.A. Pension  
P.C.D.A. (Draupadi Ghat), Allahabad.
5. Senior Record Officer, Signal Abhilekh Karyalaya,  
Signal Records, Post Bag No. – 6, Jabalpur.

..... Respondents

Ld. Counsel for the Respondents : **Dr. S.N. Pandey**,  
Central Govt Counsel.  
Assisted By : **Maj Atul Gupta**,  
Departmental Representative

**ORDER**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- “(i) *Issue an order of direction nature of appropriate direction for release retiral dues and pension for the period of more than 24 years in Army service which has been served by the applicant on the basis of records.*
- (ii) *Issue an order or direction to the opposite parties to grant of all consequential monetary benefit as salary arising from this illegal SCM proceeding conducted by opp. Party and to release all the service benefits which are applicable in favour of the applicant for the service of above 24 years in Army.*

*Further Hon’ble Court may pleased to direct Opp. Party to provide details for the records of the proceeding which has been initiated against the applicant as well as till yet by the sanction of extension of terms of more than 03 years as Havaldar by the authorities concern has not been decided till yet and also to quash SCM proceeding sentence of dated 29.04.1999 passed by authorities concerned and to reinstate in service.*

*Any such other order or direction which this Hon’ble Court may deem fit just proper may also be passed in favour of the applicant on the basis of circumstances of the case.*

- (iii) *Award the cost of the petition. “*

*(reproduced from O.A.)*

2. The facts, as pleaded by the applicant in the O.A., may be summarised as under:

The applicant was enrolled in the Army on 04.02.1972 as Sipahi in Army Corps of Signal and after completion of training, he was posted at Leh Laddakh till October 1976. During his service period, he remained posted at several stations. During his posting in NEFA, he had gone to his native place on leave. After competition of the leave period, while the applicant was returning back to his unit by train, the applicant was kidnapped by unknown persons, which he came to know subsequently that they were dacoits of Chambal. From 10<sup>th</sup> August 1995 till 04<sup>th</sup> November 1998. The applicant

remained in their forced custody. Several demand letters for ransom were also sent by the said dacoits to the house of the applicant. After his release from the custody of the dacoits, the applicant approached his unit, where he was taken on strength and in custody as a deserter. Before that, he was already declared a field deserter through C of I w.e.f. 13<sup>th</sup> August 1995. Summary Court Martial (in short 'SCM') was held on 29.04.1999 and the applicant was punished with sentence to be reduced to the rank and 89 days RI of military custody and the SCM also directed to stop the pay and allowance until he pays the sum of Rs.1,047.59 in respect of clothing and equipment of government lost by him. Vide letter no.002/1/Sigs/HSD/PC/173 dated 30.08.1999, the order of punishment given by the C.O. to the applicant was promulgated by the C.O.C. M.T.D. and O.

On 31.08.1999 show cause notice was given to the applicant by his Commanding Officer informing the applicant that punishment awarded to him by the court has been mitigated vide minute of the C.O.C. Headquarter NQB and O area dated 23.08.1999 and the same has been re-promulgated by the Depot Regiment Corps of Signals on 30.08.1999. It was further informed that since he was kidnapped by the dacoits on 10.08.1995 and was released after spending more than three years in the custody of dacoits, the applicant may not prove to be a good soldier, therefore, he was to show cause as to why he should not be discharged from service as an undesirable soldier. Additionally on 01.07.1999 the authorities concerned had issued a letter to the applicant informing about his discharge and the applicant was required to report to the Regiment Core of Signal on 17.10.1999, so as to be finally discharged. Copies of show cause notice dated 31.08.1999 and discharge letter dated 01.07.1999 are annexed as Annexure 4 to the O.A.

On 20.09.1999, discharge order No.2887/CA-3/T4/09-99 has been issued and direction has been given to the applicant to proceed for pension under Army Rule 13(3) Item-III (I) on completion of terms and conditions of service w.e.f. 01.10.1999. However despite past service in Army for about 24 years and a very good service record, the applicant has not been

considered for payment of retiral dues including pension. On 19.12.2000 Senior Record Officer for I.O.C. Records, Jabalpur gave a letter for final settlement of accounts of the applicant, but inspite of that, the payment has not been paid to the applicant. Copy of the said letter has been annexed in the O.A. as Annexure A-2. On 01.10.1999 concerning authorities gave clearance certificate to the applicant and according to the said certificate, nothing remains due against the applicant. A copy of such clearance certificate has also been annexed as Annexure No.-3.

3. In the counter affidavit, virtually nothing has been pleaded on behalf of the respondents. Regarding most of the paragraphs, it has been mentioned that these averments need no reply. It is pleaded that the applicant was declared deserter and was struck of strength on 13.08.1995. Thus, it is an admitted fact that the applicant was absent from duty from 10.08.1995 till 04<sup>th</sup> November 1998. Thereafter, he was taken on the strength. But during the period of absence, he was declared a field deserter. Admittedly, the applicant was not dismissed from service after expiry of period of three years. On the contrary he was taken on the strength and his SCM was conducted. The SCM has punished the applicant with the sentence of to be reduced to the ranks and 89 days RI of military custody and recovery of pay and allowance until he pays the sum of Rs.1,047.59 in respect of clothing and equipment of government lost by him. As per the pleadings of the applicant, the said order of punishment was mitigated.

4. It has been submitted on behalf of the applicant that the applicant has deposited the said amount of loss of Government property, as communicated in the aforesaid order well in time. It transpires from the show cause notice issued on 31<sup>st</sup> August 1999 that the punishment awarded by the SCM was mitigated and in the opinion of the competent authority, since the applicant had remained in the company of the dacoits for a long period of about three years, therefore, he may not have proved to be a good soldier. Accordingly by the said notice, he was asked to explain as to why he should not be discharged from service and subsequently he was discharged from service vide order dated 20.09.1999.

5. During the course of arguments, learned counsel for the respondents and Major Atul Gupta, Departmental Representative have conceded that in the entire service period, the military character of the applicant was very good and he had never become Absent Without Leave or a deserter earlier.

6. Alongwith this O.A., the proceedings of SCM have been filed. A perusal of the same shows that the applicant had pleaded guilty and on his plead of guilty, the punishment order was passed. However, during the SCM proceedings, the applicant has explained the reasons of his absence stating that *“I was kidnapped when rejoining for duty after leave and I was completely helpless. I had sold my land and property to get released from the dacoits. I have completed my pensionable service which is my only source of income. I may be considered sympathetically for pension.”*

7. It transpires from perusal of the records that the applicant had 23 years and 363 days of service to his credit and he was serving as a Havildar on the date of discharge and his general character is mentioned as “Very Good”.

8. In view of the admitted facts and situation, it is clear that after declaration of deserter, the applicant was taken on the strength. The SCM awarded certain punishments but the same were mitigated and ultimately the applicant was discharged from service. Admittedly, the applicant has never been dismissed from service. We simply fail to understand that a person who has completed almost 24 years of service, why his pension has been withheld, when there is no order of dismissal. A person discharged from service, is entitled for pension. Learned counsel for the applicant has vehemently argued that the applicant has not received a single penny till date.

9. Learned counsel for the respondents could not bring to our notice any ground or order, rule or regulation, on the basis of which the pension of the applicant has been withheld.

10. In view of the admitted facts and situation, this O.A. deserves to be allowed and is hereby **partly allowed.**

11. The applicant is hereby held entitled for his pension for the rank last held by him i.e. Havildar. The respondents are directed to ensure payment of pension and all other consequential benefits to the applicant for the rank last held by him within a period of four months from the date a copy of this order is produced before them, failing which the applicant shall be entitled to fetch interest @ 9% per annum on the total amount accrued from due date till the date of actual payment.

12. Since the applicant was never dismissed and was discharged from service, therefore, non release of pension and other post retiral benefits after completion of more than 24 years of service, is a serious lapse of on part of the respondents. As per the O.A., the applicant has moved several representations for redressal of his grievance, but the pension and other post retiral benefits have not been released. However, the only copy of representation filed by the applicant on 20.07.2007 is on record

13. Since in this O.A., copy of the first representation of the applicant regarding payment of pension is dated 20.07.2007, therefore, in the peculiar circumstances of the case, we hereby direct the respondents to pay the arrears of the pension from the date of first representation i.e. 20.07.2007, which is on record. No interest shall be paid on this amount. The entire amount shall be paid within a period of four months from the date a certified copy of this order is produced before the respondents, failing which the applicant shall be entitled to fetch interest @ 9% per annum on the total amount accrued from due date till the date of actual payment

14. In the circumstances of the case, no order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated : November, 2018  
PKG

**(Justice S.V.S. Rathore)**  
**Member (J)**