

**{See rule 11(1)}  
ORDER SHEET**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
Court No.1**

**O.A. No. 888 of 2022**

**Ex Sep Raji Hasan**  
By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>01.11.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>1. Heard Shri Bachchan Singh, learned counsel for the applicant and Shri Ram Sharan Awasthi, learned counsel for the respondents and perused the record.</p> <p>2. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has sought following reliefs:-</p> <p>(i) This Hon'ble Tribunal may graciously be pleased to allow this O.A. and order and direct the respondents to award the benefit of consequential relief by furtherance to the Hon'ble Tribunal's order which was made in T.A. No 838 of 2010 on 17 Sep, 2015 quashing the findings and sentence by the GCM dated 27.07.2005 (Annexure No A-1).</p> <p>(ii) An order and direction may kindly be passed to the respondents to make payment of monthly salary and arrears of pay from the date when the pay of the applicant was withheld till the date of discharge from service, on 31.07.2015 with the benefit of ACP-I and ACP-2 alongwith interest @ 9% p.a. as his net qualifying service was 21 years, 08 months and 24 days.</p> <p>(iii) The respondents may graciously be ordered to pay the cost of the O.A. and his counsel's fees.</p> <p>(iv) Any other relief which this Hon'ble Tribunal may deem fit, just and proper may also be pleased to grant to the applicant and against the respondents.</p> <p>3. Brief facts of the case are that the applicant was enrolled in 114 Infantry Battalion (Territorial Army) on 14.03.1990 and he was discharged from service on 15.03.1997 at his own request. During the period of his service his embodied service was 03 years, 06 months and 07 days. After discharge from Territorial Army, he was re-enrolled in Defence Security Corps (DSC) on 15.05.1997. While posted with 293 DSC Platoon at Central Ordnance Depot (COD), Kanpur, he was tried by GCM on 27.07.2005 for an alleged involvement in espionage activities and awarded 07 years Rigorous Imprisonment (R.I.) and dismissal from service. Against imprisonment and dismissal he preferred representation to Chief of the Army Staff on 31.05.2007 which was rejected vide order dated 25.03.2008. After rejection of representation by Chief of</p>

the Army Staff he filed petition in this Tribunal which was decided vide order dated 17.09.2015 with the following remarks:-

*“22. Accordingly, the petition is partly allowed. The findings and sentence by the GCM, passed on 27.07.2005 are hereby quashed. Consequently, the rejection order of the COAS, vide order dated 25.03.2008, is also quashed. The punishment of R.I. suffered by the petitioner cannot be undone at this stage. No order as to costs”*

4. In execution application No. 113 of 2016, filed by the applicant, the following order was passed on 08.07.2016:-

*“This execution application has been filed with respect to the grievance of the applicant that the judgment and order dated 17.09.2015 passed in T.A. No. 838 of 2010 has not been complied with.*

*Learned counsel for the applicant has failed to show that the aforesaid judgment and order of this Court has not been complied with. We do not find any reason to entertain this application, which is misconceived and is hereby dismissed.”*

5. Thereafter, applicant filed modification application Diary No. 2069 of 2016 with respect to order dated 17.09.2015 which too was rejected vide order dated 16.12.2016 in view of decision of the Hon'ble Apex Court order dated 20.01.2005 passed in W.P. No 490 of 2003, **Brahm Dutt vs Union of India**.

6. On careful perusal of the record we find that subsequent to order dated 17.09.2015 the applicant was provided service pension w.e.f. 01.08.2015 vide PPO No. S000342018 (Army) dated 09.05.2018 which he is in receipt of and it was confirmed by DSC Records in response to his petition dated 07.06.2018. For convenience sake, extract of letter dated 09.07.2018 is reproduced as under:-

*“1. x x x x*

*2. It is intimated that, you have been granted service pension with effect from 01 Aug 2015 vide PCDA (P) Allahabad PPO No S000342018 (Army) dated 09 May 2018. The same has already been forwarded to your CPPC/PDA vide this office letter No Pen/Sp-2/10405380Y dated 23 May 2018 for making payment of pensionary benefits (copy enclosed). However, a copy of said PPO is again forwarded for approaching to your CPC/PDA for releasing your pensionary benefits.”*

7. The aforesaid letter clearly indicates that the applicant was granted service pension after order being passed by this Tribunal and petition dated 16.02.2017 preferred by the applicant.

8. We have perused relief clause of T.A. No. 838 of 2010 by which the petitioner had prayed for the following reliefs:-

(i) Issue a writ, order or direction to the respondent No 1 to treat the petitioner as having continued in service till the date the petitioner would have completed minimum pensionable service.

(ii) Issue a writ of certiorari summoning and quashing the impugned verdict of GCM including the records of manipulated Inquiry/Investigation, as well cryptic rejection order of the Army Chief dated 25 Mar 2008, with all the consequential benefits to the petitioner.

(iii) Issue any other writ order or direction considered expedient, and in the

interest of justice, and equity including refund of contributory dues of the petitioner with penal rate of interests and release on bail/parole or by suspending sentence.

(iv) The arrest of the applicant was illegal and his detention in custody beyond stipulated period of time was also illegal entitling him adequate compensation from respondents.

(v) Declaring and adjudicating the GCM proceedings without jurisdiction.

(vi) Award cost to the petitioner.

9. Thus, from the aforesaid, we find that the petitioner had pleaded for multiple reliefs but the GCM proceedings were quashed on the ground that extra-judicial confession was obtained when the petitioner was in military custody. For convenience sake, relevant part of the order is reproduced as under:-

*“21. x x x . The extra-judicial confession is not admissible in a court of law on two counts that it was not voluntary and it was obtained when the petitioner was in military custody and this extra-judicial confession was the evidence on which the entire conviction was based.”*

10. The petitioner has filed this O.A. for the reliefs which were prayed in T.A. No. 838 of 2010 but while deciding the T.A. only partial relief was granted. In regard to this Order II, Rule 2(3) of CPC is relevant, which for convenience sake is reproduced as under:-

*“Omission to sue for one of several reliefs-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”*

11. In view of Order II, Rule 2 (3) of CPC, this O.A. being not maintainable for being filed in respect of the same reliefs prayed in earlier T.A. No. 838 of 2010 but not granted, is **dismissed**.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

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