

**Court No.1**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 109 of 2016**

**Thursday this the 11<sup>th</sup> day of October, 2018**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

**Hon'ble Air Marshal BBP Sinha, Member (A)**

Amar Nath Singh Kharwar, Ser No. 14497819-H  
Rank (Ex) Havildar, Trade – Clerk (GD)  
40 Medicum Regiment (SP) Army Artillery C/o 56 APO  
R/o Vill & Post – Pakari, Via – Ravtipur  
Tehsil – Jamaniya, Dist – Gazipur (UP)

..... **Applicant**

Versus

1. Union of India, Ministry of Defence, through Defence Secretary, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Indian Army, Room No B-30 ADG PI South Block Integrated Headquarters of MoD (Army), New Delhi – 110011.
3. Director General of Artillery (Arty-10) through its Director, IHQ of Ministry of Defence (Army), DHQ, New Delhi – 110011.
4. Topkhana Abhilekh, Artillery Records, Nasik Road Camp through its Record Officer, C/o 56 APO PIN – 908802.
5. Battery Commander, H Q Battery, 40 Medium Regiment (SP) C/O 56 APO, PIN 925740.
6. Punjab National Bank through its Branch Manager, Branch, Nehru Nagar, Bisheshwar Ganj, Gazipur.
7. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad U.P. - 211014

..... **Respondents**

Ld. Counsel appeared for the Applicant	-	Shri Diwakar Singh Advocate
Ld. Counsel appeared for the Respondents	-	Shri Yogesh Kesarwani Central Government Counsel

**ORDER**

**Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J).**

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayer :-

*“(I) To issue an order or direction directing the opposite parties to quash the impugned order contained as Annexure No. 1 to this petition.*

*(II) To issue an order or direction directing the opposite parties to release the petitioner's salary for the period w.e.f. 31.07.2003 to 31.08.2008 while the petitioner was notionally reinstated into service & notionally discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.*

*(III) To issue an order or direction directing the opposite parties to release the petitioner's allowances such as LRA, CILQ, NRA, TPTL, CEA and STRINC etc for the period w.e.f. 31.07.2003 to 31.08.2008 & all other pending arrears while the petitioner was notionally reinstated into service & notionally discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.*

*(IV) To issue an order or direction directing the opposite parties to grant new scale of pension w.e.f. 01.9.2008 to till date after the petitioner was notionally discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.*

*(V) To issue an order or direction directing the respondents to pay an interest @18% on the entire amount of the petitioner's salary, allowances, retiral dues of the period from 31.7.2003 to 31.8.2008 due w.e.f. 31.5.2013 plus and on entire amount of pension of the period from 01.09.2008 to till date as the payment of which have been arbitrarily delayed and continuing till date.*

*(VI) This Hon'ble Tribunal may graciously be pleased to issue any other orders or directions as this Hon'ble Court may deem fit, just and proper in the circumstances of the case, in favour of petitioner and also award the cost of the petition to the petitioner against the opposite parties.”*

2. The brief facts are that the applicant was enrolled on 27.08.20184 in the Army (Artillery) as a Soldier Clerk. He was promoted to the rank of Havildar during the tenure of his service and was entitled to serve in the Army for 24 years. The applicant was placed in Low Medical Category S1H1A1P2E1 (Permanent) (BEE Permanent) for **Chronic Obstructive Lung Disease by Release Medical Board (RMB)**. As per RMB, the disability had occurred due to stress and strain of military duties and disability is attributable and aggravated to military service. The applicant was detained in service for one year three months even he was in low medical category in terms of Army Order 46 of 1980. He was issued with Show Cause Notice on 26.05.2003 calling upon to show cause as to why the applicant should not be discharged from service as he could not be provided sheltered appointment within the Regiment. In reply of the aforesaid Show Cause Notice dated 31.05.2003, the applicant prayed for retention in service and to consider him for sheltered appointment. Thereafter, the respondent No.2 had issued the impugned order under Army Rule 13 (3) III(v) read in conjunction with Army Rule 12 (2A), according to which the applicant was to be discharged from service with effect from 01.08.2003 (till then total service was 18 years 11 months and five days).

3. Feeling aggrieved by the said order, the applicant had earlier filed Writ Petition before the Hon'ble High Court of Judicature at Allahabad, which was transferred to this Tribunal and was registered as T.A. No. 638 of 2009 and was decided on 31<sup>st</sup> May 2013, whereby the following directions were given to the respondents :

*“Thus, in the result, the T.A. succeeds and is partly allowed. The impugned order dated 01.08.2003 passed by the respondents to discharge the applicant is set aside. Respondents are directed to pay all the consequential benefits including salary and allowances from the date of discharge to the date of completion of service upto the rank of Havildar in the Army, in accordance with the Regulations for the Army 1987. As regards relief prayed in Para 3(b) and (c) by the applicant is rejected. We also direct respondents to ensure compliance of the order within a period of three months from the date of service of a certified copy of this order.”*

4. Thereafter the applicant filed Ex. Application bearing No. 12 of 2014 for execution of the order so passed in the aforementioned T.A. The said Ex. Application was disposed of vide order of the Tribunal dated 21.12.2015 and the following order was passed :

*“Learned counsel for the respondents submits that judgment and order dated 31.05.2013 of this Tribunal has been fully complied with. Arrears of salary commencing from Aug 2003 to Sep 2008 have been paid. Nothing remains due for payment to the petitioner.*

*Since the order of this Tribunal has been fully complied with, Execution Application No. 12 of 2014 loses its efficacy.*

*It is accordingly rejected.”*

5. Thereafter, this O.A. has been filed by the applicant with the aforementioned reliefs.

6. The submission of the learned counsel for the applicant is that in pursuance of the order under execution, the respondents have not paid the back wages, to which he was entitled under the order passed in the aforementioned T.A.

7. Virtually the applicant was supposed to file a fresh Ex. Application stating that the order has not been fully complied with, but instead he has filed fresh O.A. Since the matter is very old and it would further delay the matter, therefore, we consider it appropriate to dispose of this matter finally. After considering all the circumstances, we consider it just to proceed to dispose it off and to issue necessary directions to the respondents.

8. It transpires from the order sheet of this O.A. that on 11.07.2018, the respondents submitted that the PPO has been issued and the arrears of the back wages have also been paid to the applicant. Such submission was really very strange because the PPO vide its very nomenclature means Pension Payment Order. It is not the order to pay the back wages. The said order reads as under :

*“During the course of hearing learned counsel for the applicant submitted that while pension of the applicant for the notional re-instatement period (01.08.2003 - 31.08.2008) has been recovered, he has not been paid his salary & allowances as per the order under execution. He also stated that his basic pension after re-instatement is same as earlier indicating that he has not benefitted from salary &*

*allowances and deemed increments of his five year addition in service through notional re-instatement. Since pension comes out of salary, he feels that the issue of fixing his salary & allowances is unsettled as yet.*

*At this point, learned counsel for the respondents said that his salary, allowances & arrears have been adjusted through his PPO and after recovering the pension the balance amount of arrears of salary & allowances has been given to him.*

*Learned counsel for the applicant vehemently refuted this and said that it is not correct. He alleged that the respondents were corresponding with State Bank of India whereas his pension account is in Punjab National Bank.*

*After hearing both the parties, we find it hard to believe that salary & allowances have been paid through PPO. The word PPO stands for pension payment order and normally relates to pension, gratuity and commutation amounts only.*

*We fail to understand that on what basis the respondents have committed to the Tribunal earlier that the order under execution has been complied with.*

*There appears to be a disconnect in the stand of respondents. In view of this situation, Officer Incharge, Artillery Records, Nasik Road Camp, is directed to be present in the Court on the date fixed and file a diary of action on steps taken by him to comply with the order in sequence & date wise. He is also required to file a separate affidavit in terms of explaining how the salary & allowances of applicant have been paid and what is the last salary of the applicant on 31.08.2018 and what pension he is getting thereafter.*

*List this case on 24.08.2018 for hearing.*

*On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.”*

9. It is also clear from the order passed in the Ex. Application moved on behalf of the applicant that even at that time, the Tribunal was informed that the order has been fully complied with. It is very sorry state of affairs on behalf of the respondents represented by learned Advocates assisted by Departmental Representative that wrong facts were placed before the Tribunal, which led to the dismissal of the Ex. Application and during hearing of this O.A., a false stand was taken that in the PPO, the arrears have also been included. Today during the course of arguments, learned counsel for the respondents raised another objection and submitted that there was no order for payment of back wages in the order

passed in the aforementioned T.A., but the aforequoted order passed by the Tribunal clearly shows that there was a specific direction to make payment of the back wages. At the cost of repetition, we would like to reproduce the relevant part of operative portion:

*“Respondents are directed to pay all the consequential benefits including salary and allowances from the date of discharge to the date of completion of service upto the rank of Havildar in the Army, in accordance with the Regulations for the Army 1987. “*

10. Thus, there was a specific direction to pay the back wages also. So we fail to understand as to why in this case, such type of contradictory and wrong stands are being taken and the back wages of the applicant, as directed by the Tribunal, have not yet been paid even after lapse of three years.

11. In view of this, we are of the considered view that this O.A. deserves to be allowed and is hereby **allowed**. The respondents are directed to pay all the consequential benefits including salary and allowances from the date of discharge to the date of completion of service upto the rank of Havildar in the Army, in accordance with the Regulations for the Army 1987. We also direct respondents to pay an interest of 7% on the arrears of pay and allowances accrued since three months after receipt of certified copy of judgment dated 31.05.2013 i.e. w.e.f. 01.11.2015. Compliance of the order to be ensured by the respondents within a period of three months from the date of service of a certified copy of this order.

12. Since the applicant had to approach this Tribunal more than once because the specific order passed by the Tribunal had not yet been complied with and the respondents despite filing of Ex. Application, had tried to justify the same on wrong facts, therefore, we hereby impose a cost of Rs.50,000/- on the respondents as compensation towards

additional cost of litigation thrust on the applicant. The respondents shall be at liberty to realise this amount of cost from the officer/officers, who, after holding an enquiry, is/are found to be responsible for causing such a huge delay and non compliance of the order.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

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

Dated: October , 2018.  
PKG