

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

ORIGINAL APPLICATION No. 03 of 2020

Wednesday, this the 27th day of October, 2021

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

No. 15679281K, Havildar Virender Yadav S/o Late Balijeet Yadav posted with QM Branch, 6 Mountain Division Signal Regiment, PIN-917806, C/O 56 APO.

..... Applicant

Ld. Counsel for the : **Shri Pankaj Kumar Shukla**, Advocate.
Applicant

Versus

1. Union of India, through, Secretary, Ministry of Defence, (Army) DHQ, PO-New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge, Records, The Signals Regiment, Jabalpur, M.P.
4. Commanding Officer, 6 Mountain Division Signal Regiment, C/O 56 APO.
5. The Commanding Officer, Ops and Maintenance Team Klingarh Cantt, Udaipur, Rajasthan.
6. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the : **Ashish Kumar Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER (ORAL)

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

(i) Issue/pass an order or direction to the opposite parties to release the arrears of payment and allowances such as Quarter Allowance, Ration allowances, Travelling Allowances, and Children Allowances.

(ii) Issue/pass an order or direction to opposite parties to release 30 days leave encashment.

(iii) To issue/pass an order or direction of appropriate nature awarding compensation of Rs 5 Lakh or, which this Hon'ble Tribunal may think fit in the facts and circumstances of the case, in lieu of sufferings suffered by the applicant due to the act or omission or inaction on the part of respondents.

(iv) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(v) Allow this application with costs.

2. Brief facts of the case are that applicant was enrolled in the Army on 04.01.2003 and was discharged from service w.e.f. 30.04.2020 under Rule 13 (3) (a) III (iv) of Army Rules, 1954 at his own request before fulfilling the conditions of terms of engagement. He has rendered 17 years and 118 days of service and is in receipt of service pension vide PPO No. 157202002954 dated 22.04.2020. While posted at Udaipur (Rajasthan) he proceeded on 08 days part of annual leave for the period 21.04.2015 to 28.04.2015. During the period of leave, he was involved in a criminal case under Sections 323, 504, 506, 452, 308 and 304 of IPC. After completion of leave i.e. 29.04.2015 he surrendered before Assistant Sessions

Judge, Azamgarh and was lodged in civil prison. After his enlargement on bail he tried to report to unit but was denied entry in unit. Being aggrieved with denial of joining the unit, he filed O.A. No. 65 of 2016 before the Hon'ble AFT, Jaipur and vide its order dated 11.08.2017 he joined the unit on 03.09.2017 and taken on strength of Army/unit. Earlier, on account of failing to report to unit after expiry of leave, he was declared a deserter w.e.f. 29.04.2015 in terms of Para 2 of Section 106 of Army Act, 1950 and Para 6 of Special Army Order 9/S/89. Thereafter, proceedings against applicant were cancelled on his rejoining the unit. Applicant took premature discharge from service w.e.f. 30.04.2020 and has filed this O.A. for grant of Compensation in Lieu of Quarters (CILQ), Children Education Allowance (CEA), Transport Allowance (TPTL) and amount of 30 days leave encashment.

3. Submission of learned counsel for the applicant is that after rejoining the unit, respondents should have made payments related to allowances as admissible in addition to his pay and perks, which were not made despite serving a legal notice dated 01.04.2019 to respondents in this regard. He pleaded for grant of CILQ, CEA, TPTL and 30 days leave encashment amount.

4. On the other hand, submission of learned counsel for the respondents is that while serving in the unit applicant had failed

to submit the requisite documents for publication of CEA and CILQ. His further submission is that in absence of required documents, the casualties to this effect were not notified. Learned counsel for the respondents further submitted that applicant is not entitled to TPTL and Ration money for the period 29.04.2015 to 03.09.2017 during which he did not serve physically in the unit. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both the sides and gave our anxious consideration to the pleadings on record.

6. It is undisputed fact of the parties that applicant was lodged in jail for the period 29.04.2015 to 16.11.2015 in a criminal case crime No. 36/2016. After release on bail, he tried to join the unit but was not allowed. Thereafter, he was allowed to rejoin the unit by order dated 11.08.2017 passed by the Hon'ble AFT, Jaipur. Applicant rejoined the unit on 03.09.2017 (AN) and served till 30.04.2020 and he was discharged from service at his own request w.e.f. 30.04.2020.

7. While filing counter affidavit respondents' version in para 7 reads as under:-

"Since the petitioner was in jail with effect from 29 April 2015 to 16 November 2015 in a criminal case crime No. 36/16, under Section 323, 504, 506, 452, 308 and 304 and as per the court order dated 11 August 2017, the petitioner physically reported to unit with effect from 03 September 2017 (afternoon). On reporting to unit, the petitioner had failed to submit the requisite documents for

publication of Children Education Allowance (CEA) and Compensation in lieu of Quarter (CILQ) in the unit. Due to non submission of requisite documents, the unit could not publish the occurrence regarding CEA and CILQ. Subsequently, these occurrence became time barred. Since, the petitioner had not physically served in the unit for the period from 29 April 2015 to 03 September 2017, hence, Transportation Allowances (TPTL) and Ration Allowances (NRA) are not applicable to him. However, Leave Encashment of the petitioner for the year 2014, 2015, 2016, 2017, 2018 & 2019 have been published and adjusted in the month of April 2020 during the final settlement of account (Annexure R-VII)."

8. The aforesaid submission of the respondents has not been controverted by applicant while filing rejoinder affidavit. From the aforesaid, it is clear that since applicant did not submit necessary documents required for publication of CEA and CILQ, these occurrences could not be published while he was in service. In these circumstances respondents do not seem to be blameworthy as applicant had himself not submitted the required papers for publication of his casualties and the same became time barred after passage of time. In this regard, respondent No. 3 vide letter dated 10.12.2020 had intimated to concerned publication agency. Thus, there is nothing on record to show that applicant had submitted the relevant papers to respondents for notification of occurrences and he was ever denied.

9. A perusal of para 10 of counter affidavit clarifies that applicant was granted his due entitlement towards encashment

of leave for the years 2014 to 2019 and amount in question has already been paid to him while making his final statement of account in the month of April, 2020 (Annexure R-VII). It is made clear that applicant is not entitled to Tptl and NRA for the period he served in jail.

10. In view of the above, O.A. is disposed off with directions to applicant to submit related papers to respondents for publication of his due entitlements within a period of three months from today.

11. No order as to costs.

12. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 27.10.2021
rathore