

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 377 of 2018****Tuesday, this the 5th day of October, 2021****“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

IC-406009-A Col (Retd) Mahananda Rath, Son of Shri Prahlad Mahananda, Resident of A-407, Sterling Apartment, Allahabad – 211001.

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh, Advocate**
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, (Army) DHQ PO- New Delhi- 110011.
2. The Chief of Army Staff, Integrated Headquarters of Min of Def (Army) Sena Bhawan, New Delhi 110011.
3. The Director General of NCC, Min of Defence, MS (DV)/ MS Dte, West Block No 4, RK Puram, New Delhi – 66.
4. ADG, NCC, NCC Directorate, North Eastern Region, Shillong- 793001.
5. GOC -in -C, Eastern Command.
6. Commanding Officer, 5 Assam Battalion NCC Tezpur, Assam.

.....RespondentsLd. Counsel for the : **Shri Yogesh Kesarwani,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- (a). *Issue/pass an order or direction of appropriate nature to the respondents to grant the balance of Interest for delayed payment of Leave Encashment Money to Applicant by 20 months due since 01.10.2014.*
- (b). *Issue/ pass an order of direction of appropriate nature to the respondents to make the payment of loss of salary applicant could have serve for 4 more years after retirement rehabilitation on superannuation which he would have bonafiedly earned as arrears along with interest.*
- (c). *Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d). *Allow this application with costs of 25 lacks (twenty five lakhs) as applicant suffered humiliation, mental torture not only in department but also in society and family. Applicant was at crucial stage of life where he was to settle children (son for education, daughter for higher education and*

marriage which still not settled) which all was disturbed because of malafied wrongful acts of respondents.

2. Facts giving rise to Original Application in brief are that applicant was commissioned in the Indian Army on 12.06.1982. After successful completion of training, applicant was posted to various units. On 05.10.2012, applicant was posted as Officer Commanding 5 Assam Bn, NCC, Tezpur Assam. An special order to audit all kinds of account of NCC Group HQ and units under its command was ordered by NCC Directorate, North Eastern Region (NER) Shillong. Applicant was removed from the appointment of Officiating Group Commander. On the basis of special audit of accounts two court of inquiries were ordered which were finalised in about 2 and half years. The applicant preferred statutory complaint dated 29.06.2015 which was not disposed of till the filing of O.A. Applicant retired from service on 01.10.2014 but he was not relieved till the finalization of court of inquiry. Due to pendency of decision of Court of Inquiry, applicant was denied post retiral resettlement training, his application for re-employment was not processed, applicant was not issued retired officers identity card and his

leave encashment was withheld. Being aggrieved, applicant has filed instant Original Application.

3. Learned counsel for the applicant submitted that on 05.10.2012 while posted as Officer Commanding 5 Assam Bn, NCC, Tezpur applicant was falsely implicated in a court of inquiry. An special order to audit all kinds of account of NCC Group HQ and units under its command was ordered by NCC Directorate, North Eastern Region (NER) Shillong. During the course of audit, it was alleged that applicant had conducted Basic Leadership Camp for only 10 days and demanded money for 12 days. Consequent to allegation, applicant was removed from the appointment of Officiating Group Commander. On the basis of special audit of accounts two court of inquiries were ordered. First court of inquiry was held to pin point responsibility for loss if any, bring out any financial irregularity in handing of public funds and role of Officer Commanding Unit in non monitoring of management of public funds. Nothing was found against the applicant. ADG, NCC Directorate, ordered second court of inquiry against the applicant amending the previous convening order dated 19.10.2016. In second court of inquiry also nothing was found against the applicant. During the court

of inquiry applicant was attached to 73 Assam Girls NCC, Tezpur till finalization of Court of inquiry.

4. Learned counsel for the applicant submitted that as per Integrated Headquarters Discipline and Vigilance policy letter No 46440/AG/DG-1(D) dated 29.08.2013, the maximum limit for completion and communication of decision of the Court of Inquiry for an alleged offence is 135 days. However in the instant case, it has taken about 2 years and 7 months. The decision of both the inquiry was not communicated to the applicant. The applicant preferred statutory complaint dated 29.06.2015 which was not disposed of till the filing of O.A. Applicant was retired from service on 01.10.2014 but he was not relieved till the finalization of court of inquiry. Due to pendency of decision, applicant was denied post retiral resettlement training, his application for re-employment was not processed, applicant was not issued retired officers identity card and his leave encashment was withheld. Learned counsel for the applicant prayed that respondent be directed to pay interest on the delayed payment of leave encashment by 20 months and to make the payment of loss of salary which applicant would have earned in 4 years on his re-employment after retirement.

5. Per contra, learned counsel for the respondents submitted that legitimate entitlement and financial dues of the applicant were held up by PCDA (O) since a Court of Inquiry was in progress against the applicant. As per Additional Directorate General, Discipline and Vigilance, IHQ of MoD letter dated 08 Mar 2016 on completion of the Court of Inquiry, suitable directions were passed to PCDA (O) Pune to release all pensionary benefits. Further second Court of Inquiry was ordered against the applicant, based on the findings of a Special Audit Board. The applicant was not considered for re-employment as per existing policy since the applicant was involved in a disciplinary case. The applicant was alleged of the charge of wrongfully demanding the money for 12 days instead of 10 days, by the specific board of officers convened to carry out the audit. Opinion of both the court of inquiries clearly bring out that procedural lapses and financial impropriety in handling of Public Funds have occurred and that suitable action be initiated against erring individuals. Learned counsel for the respondents submitted that first court of inquiry was ordered based on the findings of the Special Audit Board and second court of inquiry was ordered by ADG, Maj Gen US Dadu as per directions of Dte Gen NCC vide letter dated 13.06.2014.

Information sought by the officer was exempted from disclosure under the provision of Section 8 (h) of RTI Act 2005. The same was intimated to the officer in reply to his RTI application. Officer was denied opportunity for resettlement training course being involved in disciplinary case. Disbursement was promptly released vide letter dated 08.03.2016 on finalisation of the case. Learned counsel for the respondents submitted that there was no infirmity of law in the action of respondents. The applicant is not entitled for any relief. The O.A. lacks merit, hence is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the documents available on record.

7. The question before us for consideration is simple and straight whether applicant is authorised to interest on delayed payment of amount of leave encashment and compensation for loss of salary for 4 years which applicant would have earned on re-employment?

8. We have gone through the order of NCC Directorate letter dated 12 Aug 2013 under which special audit of accounts was ordered, we have also gone through the Basic Leadership

Camp course letter, convening order dated 19 Oct 2013, amendment convening order dated 01 Mar 2014 and all the letters pertaining to court of inquiry.

9. Admittedly, the applicant has got all his retiral dues after finalisation of Court of Inquiry. On careful analysis of the whole situation, it emerges that prime reason for stopping of retiral dues was Court of Inquiry against the applicant. As per rules, if Court of Inquiry is pending against anybody, then neither he can proceed of pension nor he can be granted retiral dues. Accordingly, delay in grant of retiral dues and processing the application for resettlement course was not forwarded in time due to pending Court of Inquiry. As far as grant of compensation for four years for the delay in processing the application of re-employment is concerned, applicant has no claim.

10. As far as prayer of the applicant for grant of interest on delayed payment of leave encashment is concerned, we are clear that respondents can't wash off their hands by saying that we have paid the amount after finalisation of Court of Inquiry and we have no liability. The Court of Inquiry took a long time of more than two and half years and applicant was not found

guilty. Hence it will be in the interest of justice to grant interest on the delay payment of amount of leave encashment to the applicant as per RBI guidelines on the subject.

11. In view of the above, the O.A. is partly **allowed**. Respondents are directed to pay interest on delayed payment of amount of leave encashment from due date i.e. 01.10.2014 till it was actually paid i.e. 08.03.2016 as per RBI guidelines @ 9% per annum. This order is to be implemented within a period of four months from the date of receiving a certified copy of this order. Default will result an interest @ 8% per annum from due date till actual date of payment.

12. No order as to costs.

13. Pending applications, if any, stand disposed off.

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

Dated : 04 October, 2021

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