

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No 1 (E court)****M.A. No 1928 of 2018 Inre O.A. (Nil) of 2018**Monday, this the 12th day of October, 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Jagat Pal Singh Rathore (JC-141068L Ex Sub Maj (AEC),
Son of Late Gaya Singh, R/O Lines, Baragadia Ghat Road,
Fatehgarh, District – Farrukhabad.**

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Incharge- Record Officer, Records, AEC Pachmarhi
(M.P).
3. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (U.P.) -211014.

..... Respondents

Ld. Counsel for the :
Respondents**Ms. Appoli Srivastava,**
Central Govt Counsel.

ORDER

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

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to grant the rank of Hony Lt/Capt to the applicant treating him into service upto year 1998 and consequently paying all service benefits to him of the said post in accordance with service rules.

2. Submission of learned counsel for the applicant is that applicant had filed O.A. No 237 of 2014 against the respondents which was allowed vide order dated 05.01.2016 of this Tribunal and all decisions taken by the respondents with regard to rejection of the applicant’s promotional avenues to the rank of Subedar Major (Sub Maj) were set aside and respondents were directed to reconsider the applicant’s case for promotion to the post of Sub Maj keeping his status in 1993 and take a fresh decision within four months by a speaking and reasoned order. Further submission of learned counsel for the applicant is that respondents in compliance of the aforesaid order considered the applicant’s case and promoted him to the post of Sub Maj. Further submission of learned counsel for the applicant is that after respondents having accepted the applicant’s claim for promotion to the post of Sub Maj, applicant

became entitled to remain into service upto 54 years of his age and for promotion also to the post of Hony Lt/Capt and to get salary of the said post.

3. Per contra, Ms. Appoli Srivastava, learned counsel for the respondents submits that instant application being based on imaginary and hypothetical calculation is not maintainable and is liable to be dismissed as such. Her further submission is that applicant had taken a specific case in O.A. No 237 of 2014 that he being entitled to promotion to the post of Sub Maj and receiving salary of this post, a direction in this regard be issued to respondents. Her further submission is that O.A. was decided on 05.01.2016 by this Tribunal and respondents were directed to reconsider the applicant's case and take a fresh decision in the matter of his promotion to the post of Sub Maj keeping his status in 1993. Her further submission is that, the Tribunal while allowing the O.A. has clearly stated in para 18 of the judgment that applicant's promotion to the rank of Sub Maj shall be notional for the purpose of pensionary benefits, status, rank and perks etc with effect from the date of discharge from the army. Her further submission is that respondents in compliance of the order of this Tribunal reconsidered the applicant's case and notionally promoted him to the post of Sub Maj for the purpose of fixation of pension and other benefits as directed in the order. Her further submission is that it is no where provided in the

order of the Tribunal that in case applicant being notionally promoted to the post of Sub Maj, he will be allowed to continue into service for further 4 years and will be entitled to promotion to the post of Hony Lt/Capt and to get salary and other perks of the said post. Her submission is that applicant's promotion to the post of Sub Maj being notional for the purpose of fixation of pension only from the date of discharge, applicant cannot claim his entitlement to continue into service for further 4 years claiming promotion to the post of Hony Lt/ Capt. Learned counsel for the respondents further submits that instant O.A. being based on imagination is not acceptable rather is liable to be out rightly rejected.

4. Her further submission is that all reliefs flowing from a cause of action can be claimed together in one O.A. and no separate O.A. could be filed in respect of relief from the same cause of action.

5. Upon hearing the submissions of learned counsels of both sides and having gone through order dated 05.01.2016 passed by this Tribunal in O.A. No 237 of 2014, we find that instant O.A. being barred under law is not maintainable and is liable to be dismissed as such.

6. On reading of order dated 05.01.2016 referred to above, we notice that O.A. was filed for issuing directions to respondents to promote applicant to the post of Sub Maj. We

also notice that while allowing this application this Tribunal directed respondents to re-consider the case of the applicant for promotion to the post of Sub Maj keeping his status in 1993. We also notice that in pursuance to order of this Tribunal, respondents reconsidered the applicant's case and notionally promoted him to the post of Sub Maj for the purpose of pensionary benefits only as directed in the order. It is nowhere provided in the order that in the event of applicant being notionally promoted to the post of Sub Maj, he would be entitled to continue into service for further 4 years and to get promotion to the post of Hony Lt/ Capt. It has been specifically mentioned in the order that applicant's promotion to the post of Sub Maj shall be notional for purpose of pensionary benefits, status and perks etc only with effect from the date of discharge. Taking a note of the order passed by this Tribunal, we find that applicant's promotion to the post of Sub Maj is purely a notional promotion for the pensionary benefits only, it does not give any right to him to remain into service for further four years and to claim promotion to the post of Hony Lt/Capt and to get salary and other perks of this post. Applicant's claim being based on imagination is not maintainable and is liable to be dismissed as such.

7. We further note that all reliefs flowing from a cause of action can be claimed in one O.A., no separate O.A. could be filed for relief(s) flowing from the same cause of action.

8. In view of the above, we **dismiss** the O.A. being not maintainable.

(Vice Admiral Abhay Raghunath Karve)

(Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: October, 2020
Ukt/-