

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No. 68 of 2017

Tuesday, this the 3rd day of July, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Sep (Clerk) Bhim Singh (NO. 4178809 N), son of late Shri Mohan Singh Rawat, resident of Sainik Colony, Masi Bazar, PO MASI, Tehsil: Ganai Choukhutiya, District Almora (Uttarakhand). Pin 263 658

..... Applicant

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

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi 110011.
2. P.C.D.A (P) Allahabad, Uttar Pradesh.
3. Appellate Committee on First Appeals Dir PS-4, AG’s Branch, Army HQs DHQ PO, New Delhi- 110011
4. EME Records, Sikandrabad, Hyderabad.

.....Respondents

Ld. Counsel for the Respondent: **Shri R.C.Shukla,**
Addl. Central Govt. Standing Counsel

ORDER

“Per Justice S.V.S. Rathore, Member (J)”

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

“(i) The Hon’ble Tribunal may be pleased to direct the respondents to pay the salary and other allowances to the applicant for the period from 01.03.2000 to 29.02.2004 which has been illegally denied to him.

“(ii) The Hon’ble Tribunal may be further pleased to direct the respondents to grant the pension of ACP Havildar to the applicant with effect from 01.03.2004 for 20 years of colour service as

against 15 years and 15 days of service of a Sepoy which has been wrongly done by the respondents; and

(iii) to grant any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. This OA has a peculiar history. The applicant was enrolled in the Kumaon Regiment (Infantry) as a Sepoy in the trade of 'Clerk'. His initial term of engagement as per Regulation 134 of the Defence Regulations (Regulations for the Army), 1987 (RA) was minimum of 20 years in 'colours' and 3 years in 'reserve'. During the tenure of his service, the applicant was punished on eight occasions from 15.02.1987 to 04.11.1996 for different offences i.e. for disobeying lawful command of senior officer, ill treating his subordinate, intoxication, absence without leave, overstaying of leave and lastly deserting the service, for which he was tried by Summary Court Martial (SCM) and awarded punishment of dismissal from service with effect from 04.11.1996. The applicant challenged his dismissal by preferring a writ petition (C) bearing No. 7930 of 2004 before Hon'ble Delhi High Court, which was subsequently transferred to the Principal Bench of Armed Forces Tribunal, New Delhi and registered as TA No. 350 of 2010. The said TA was decided on 15.09.2010, wherein the following order was passed:

"11. We therefore direct that the impugned Summary Court Martial be set aside. The appellant will be deemed to be in service till he attains minimum pensionable service, after which he will be entitled to pension and other benefits in accordance with Rules. No order on back wages. Petition is disposed of accordingly."

3. In compliance of the aforesaid order of the Tribunal, requisite PPO was issued in favour of the applicant. According to the applicant,

said PPO is not in accordance with the order passed by the Tribunal in the aforementioned TA and this has given rise to a fresh cause of action, hence this OA.

4. Submission of learned counsel for the applicant is that as per Regulation 134 of the Regulations for the Army, Volume I, Revised Edition, 1987, the minimum period of service of Group II, to which category the applicant belongs, is 20 years with the colours and 3 years in the reserve or till the attainment of 46 years of age. It has been argued that the terms of service cannot be changed during continuance of service and, therefore, the applicant ought to have been treated to be in service for 20 years with the colours and 3 years in the reserve. On this strength, it is submitted that the order passed in earlier T.A was not duly complied as only pensionable service of 15 years was deemed in favour of the applicant.

5. On the point of back wages, learned counsel for the applicant has argued that the order of the Tribunal that “no order on back wages” would only mean that it has been left to the discretion of the competent authority to take a decision on payment of back wages. It has further been submitted that from the year 2003, the scheme of MACP has been introduced; since the length of service of the applicant as per order of the Tribunal ought to have been considered 20 years as initial term of engagement, therefore, he was entitled to the benefit of MACP as per the aforesaid scheme introduced by the respondents. Since in the PPO issued in compliance of the Tribunal’s order, the said benefit has not been granted to the applicant, therefore, it has given a fresh cause of action to the applicant, for which he has approached this Tribunal.

6. Learned counsel for the respondents has rebutted the aforesaid arguments advanced on behalf of the applicant. According to him, by means of the instant OA, the applicant is agitating the same cause of action for which he had earlier approached the Hon'ble Delhi High Court by preferring a writ petition, which on transfer to Armed Forces Tribunal, Principal Bench, New Delhi was, as observed above, registered as TA No. 350 of 2010 and decided vide order dated 15.09.2010, hence this OA is barred by the principles of *res judicata*. It has also been argued that the prayer of the applicant virtually amounts to review of the order passed by the Principal Bench of the Armed Forces Tribunal while admittedly the applicant has not preferred any review application or any application for clarification of the said order before the Principal Bench, and now by way of filing this OA, he wants to get the same interpreted as per his own interpretation, which is not permissible under law. He has argued that the order passed by the Principal Bench of Armed Forces Tribunal is very clear wherein no direction for payment of back wages has been given; accordingly, the Tribunal has clearly denied the payment of back wages to the applicant. The applicant was directed to be treated notionally in service only for the pension till he attains the minimum pensionable service and accordingly he was rightly deemed to be in service only for a period of 15 years, which is the minimum qualifying service for getting the benefit of pension. The respondents have issued the requisite PPO correctly as per this order of the Tribunal, hence the aforesaid submissions of learned counsel for the applicant have no force.

7. We have heard learned counsels for the parties and perused the record.

8. In the instant case, the first point to be considered is with regard to payment of back wages. The Principal Bench of Armed Forces Tribunal has mentioned in the order passed in the aforesaid TA that “No order on back wages”. Learned counsel for the applicant has interpreted this order that the decision on payment of back wages has been left to the discretion of the competent authority and according to him, this discretion should be exercised judiciously in the light of relevant rules.

9. We are not impressed by the aforesaid submission of learned counsel for the applicant. The law is settled on this point that the payment of back wages cannot be claimed as a matter of right until and unless there is a specific direction in the order of the Court/Tribunal for payment of the same. Payment of back wages is not automatic. In case there is no specific order for payment of back wages, then it would only mean that the Court/Tribunal has directed otherwise i.e. no payment of back wages. Interpretation of the order “No order on back wages” that it was left open to the discretion of competent authority is absolutely incorrect interpretation. The Tribunal’s direction “No order on back wages” only means that the Tribunal has not granted the benefit of payment of back wages to the applicant. On this point, we would like to refer the case of **‘Rajasthan State Road Transport Corpn and Others versus Shyam Bihari Lal Gupta’**, reported in *AIR 2005 SC 3476*, wherein the Hon’ble Apex Court has observed as under:

“3. According to learned counsel for the appellant-Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for

monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was *illegal non est*, as a natural corollary, the plaintiff was entitled to the back wages.

4. In an almost identical case, this Court in *Rajasthan State Road Transport Corporation and Anr. v. Ladulal Mali*, [1996] 8 SCC 37 held that the decree does not contain payment of back wages. Only declaratory relief of the nature granted in the present case was granted. Further, in *A.P.S.R.T.C. and Anr v. S. Narsaguod*, [2002] 2 SCC 212, in paragraph-9, this Court held as follows :

"9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earning during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

Of course, the above noted case related to the question of granting increments notionally. But the principles laid down relating to specific non-mention about any monetary benefit is relevant. As was noted in the *Rajasthan State Road Transport Corporation's case (supra)* there was no decree for grant of any monetary benefits."

10. In yet another case, '**A.P. State Road Transport Corporation and others versus Abdul Kareem**', reported in (2005) 5 SLR 368, the Hon'ble Supreme Court has emphasized the above proposition and observed as under:

"10. The principle of law on point are no more *res integra*. This Court in *S. Narsagoud (supra)* succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:

"We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

11. *Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."*

11. The Hon'ble Supreme Court in the case of '**U.P.State Brassware Corporation Ltd and another versus Uday Narain Pandey**', reported in *AIR 2006 SC 586*, has held that the payment of back wages is not automatic.

12. The only relief granted in the earlier TA was that the applicant shall be deemed to be in service till he attains minimum pensionable service, after which he will be entitled to pension and other benefits in accordance with Rules. The phrase "*entitled to pension and other benefits*" means the retiral benefits only. There was absolutely no order for reinstatement of the applicant with all consequential benefits. The TA was decided after about 14 years of the applicant's dismissal. The

Tribunal had only directed that the applicant shall be deemed to be in service till he attains minimum pensionable service. Since there was a specific direction of the Tribunal that the applicant shall be deemed to be in service till he attains the pensionable service, it cannot be interpreted to mean that he shall be in service continuously for complete term of initial engagement i.e. 20 years in 'colours' and 3 years in 'reserve'. The order of the Principal Bench of the Tribunal has, by lapse of time, attained finality. The words of the operative portion are so clear and unambiguous that they cannot be interpreted otherwise. If the applicant was aggrieved by the said order, then he ought to have moved for clarification or review of the order. Admittedly, no such step has been taken by the respondents. The PPO has been issued in accordance with the said order of the Tribunal. Therefore, the grievance of the applicant has absolutely no substance. Virtually this OA has been moved on hyper technical grounds, which are absolutely without any substance.

13. Accordingly, this OA being devoid of merit is hereby **dismissed**.
No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: July 3rd, 2018
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