

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 246 of 2021

Monday, this the 31st day of January, 2022

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

Uma Shankar Pandey (Hav 1387684 F)
S/o Late Roop Narain Pandey
R/o Village – Kulmani Nachkol Kapurr, Post – Pumdi Karchhana,
District – Allahabad (Now Prayagraj)

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Manish Misra &**
Shri Gaurav Upadhyay, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commanding Officer, 504, ASC Battalion, Allahabad.
3. GOC 4 Infantry Division, C/o 56 APO.
4. GOC-in-C, Central Command, Lucknow.

.. **Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt Counsel

ORDER

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

- “a. Issue/pass an order or directions to the respondents to fix the correct pension of applicant to the rank of Havildar w.e.f. 30.04.2000 i.e. date of discharge.

- b. Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the present case.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 25.09.1979. The applicant was due for promotion to the rank of Havildar on 31.03.1998. The applicant passed promotion cadre for Havildar on 28.02.1998 which was technically rejected. The applicant again passed promotion cadre on 31.03.1998. However, due to award of punishment of 'Severe Reprimand' on 17.10.1998, his promotion was deferred for one year. Accordingly, applicant was promoted to the rank of Havildar on 17.10.1999. The applicant was tried for an offence under Army Act Section 40 (c) and awarded punishment of reduced to the rank of Naik on 29.04.2000. The applicant had submitted an application for premature retirement while he was serving with HQ Western Command. Accordingly, his discharge order was issued by ASC Records and applicant was discharged from service in the rank of Naik on 30.04.2000 from 504 ASC Bn. Thereafter, applicant filed a Civil Writ Petition No. 19778 of 2000 before the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal and registered as TA No. 83 of 2013. During the hearing of the case, the petitioner has restricted his prayer for grant of difference of pay and allowances between Naik and Havildar from 31.03.1998 to 16.10.1999. The petition was allowed and respondents were directed to grant difference of pay and allowances between Naik and Havildar to the petitioner for the period from 31.03.1998 to 16.10.1999. Accordingly, respondents have paid

difference of pay and allowances for the period from 31.03.1998 to 16.10.1999 to the applicant. The applicant is being paid service pension for the post of Naik. Now, the applicant has filed the present Original Application to grant pension in the rank of Havildar from the date of discharge from service.

3. Learned counsel for the applicant submitted that applicant has passed promotion cadre for promotion to the rank of Havildar on 31.03.1998 but he was not considered for promotion alongwith his batch mates on 31.03.1998 due to non publication of Part II Order regarding passing of his promotion cadre. Thereafter, applicant was awarded punishment of 'Severe Reprimand' on 17.10.1998 and thus, applicant became ineligible for promotion to the rank of Havildar for a period of one year i.e. upto 16.10.1999 as per rules. The applicant was promoted to the rank of Havildar on 17.10.1999. He further submitted that applicant was promoted to the rank of Havildar on 17.10.1999 and served in the said post till the date of discharge from service, i.e. 29.04.2000 but due to punishment of 'Severe Reprimand' his rank was reduced to Naik. The applicant was promoted to the substantive rank of Havildar and therefore, he is entitled to get pension in the rank of Havildar. It is well settled principle enunciated in various pronouncements of the Hon'ble Supreme Court that pension is a right which is akin to fundamental right and right to property.

4. Learned counsel for the applicant further submitted that earlier applicant has approached to the Hon'ble High Court of Allahabad by

filing CMWP No. 19778 of 2000 which was transferred to this Tribunal and registered as TA No. 83 of 2013 and this Tribunal vide its order dated 13.09.2017 has allowed the T.A. directing the respondents to pay the difference of pay and allowances between Naik and Havildar for the period from 31.03.1998 to 16.10.1999. The applicant requested for premature retirement from service on extreme compassionate grounds in the year 1999. The request of the applicant was accepted but applicant was reduced to the rank of Naik on 29.04.2000 under Section 40(c) of Army Act, 1950 and therefore, applicant was discharged from service on 30.04.2000 as Naik. On 29.04.2000, one day before his retirement, an arbitrary and illegal order of reduction in rank has been passed but no such order was communicated to applicant till the date of filling Original Application. The action of respondents is against the Rule 22, 23, 24 and 180 of Army Rules, 1950 and Article 14 and 21 of the Constitution of India.

5. Learned counsel for the applicant also submitted that if the applicant had been given post of Havildar on his due date, then applicant would have retired in the year 2005 and punishment of Severe Reprimand on 17.10.1998 would have not affected his promotion and would have got retirement benefits, pension and arrear of salary to the post of Havildar. He pleaded that since the Tribunal has treated applicant as Havildar w.e.f. 31.03.1998 and granted the benefit of payment of difference for the post of Havildar, applicant is entitled for the pensionary benefits to the post of Havildar.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 25.09.1979. The applicant was due for promotion to the rank of Havildar on 31.03.1998. The applicant passed promotion cadre for Havildar on 28.02.1998 and Map Reading Std-II also on the same date i.e. 28.02.1998 which was technically rejected. The applicant again passed promotion cadre on 31.03.1998. However, due to award of punishment of 'Severe Reprimand' on 17.10.1998, his promotion was deferred for one year. Accordingly, the applicant was promoted to the rank of Havildar on 17.10.1999. While serving with 504 ASC Bn, the applicant was tried for an offence under Army Act Section 40 (c) and awarded punishment of reduced to the rank of Naik on 29.04.2000. The applicant had submitted an application for premature retirement while he was serving with HQ Western Command. Accordingly, his discharge order was issued by ASC Records and applicant was discharged from service in the rank of Naik on 30.04.2000 from 504 ASC Bn.

7. Learned counsel for the respondents further submitted that earlier applicant filed a Civil Writ Petition No. 19778 of 2000 before the Hon'ble High Court of Judicature at Allahabad which after constitution of the Armed Forces Tribunal has been transferred to this Tribunal and registered as T.A. No. 83 of 2013. During the hearing of the case, the petitioner has restricted his prayer for grant of difference of pay and allowances between Naik and Havildar from 31.03.1998 to 16.10.1999 which was denied to him by the respondents. The petition

was allowed and respondents were directed to grant difference of pay and allowances between Naik and Havildar to the petitioner for the period from 31.03.1998 to 16.10.1999. Accordingly, respondents have paid difference of pay and allowances for the period from 31.03.1998 to 16.10.1999 to the applicant. Now, the applicant has filed this O.A. for grant of pension in the rank of Havildar. Since, the applicant was discharged from service in the rank of Naik, he is entitled for pension of the last rank held at the time of discharge from service, i.e. Naik and therefore, applicant is not entitled pension of the post of Havildar. He pleaded for dismissal of O.A.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. It is pertinent to mention here that petitioner has not challenged the order of reduction of rank from Havildar to Naik in the petition. The petitioner made four prayers in the T.A. but while arguing the case, he restricted his prayer only for grant of difference in pay and allowances between Naik and Havildar from 31.03.1998 to 16.10.1999 which were paid to the applicant. Since, the applicant has been discharged from service as Naik and order for reduction in rank from Havildar to Naik has not been challenged in the O.A.; can the prayer to grant pension in the rank of Havildar be considered being different cause of action? If so, applicant should have filed 2nd case earlier which he did not file.

10. We find that applicant was promoted to the rank of Havildar on 17.10.1999 with ante date seniority w.e.f. 31.03.1998 in accordance with promotion order dated 30.12.1998 and thereafter, as per this Tribunal's order dated 13.09.2017, passed in T.A. No. 83 of 2013, applicant was granted pay and allowances of Havildar rank for the period from 31.03.1998 to 16.10.1999. The applicant was awarded punishment for an offence committed by him under Army Act Section 40(c) and was reduced to the rank of Naik on 29.04.2000. The applicant has already applied for premature retirement from service on extreme compassionate grounds which was sanctioned by the authority concerned and accordingly, applicant was discharged from service on 30.04.2000 in the rank of Naik. Since, the applicant was holding post of Naik on the date of discharge from service and has been discharged from service on 30.04.2000 in the rank of Naik as per Army Rules, 1954, therefore, he is entitled service pension for the last rank (Naik) which he held at the time of discharge from service under the provisions of Regulations 48 & 57 of Pension Regulations for the Army, 2008 (Part-1) and not for the post of Havildar which he held upto 29.04.2000.

11. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service in the rank of Naik nor in granting pension for the last rank of Naik which he held at the time of discharge from service. There is no violation of Rules 22, 23, 24 and 180 of the Army Rules, 1950 and Article 14 and 21 of the

Constitution of India as alleged by the applicant. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: January, 2022
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