

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 277 of 2019****Thursday this the 25<sup>th</sup> day of November, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 1283381-H, Ex Gnr Shiv Shankar, Son of Late Jagannath, Resident of Vill- Mohan Singh Ka Purwa, P.O.- Lodhipur, Tehsil- Dalmau, District- Raibareli, U.P.)

**.....Applicant**

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

**Versus**

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi.
3. Officer in Charge, Chief Record Officer, Artillery Records, Nasik Road Camp (MH)- 422102.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

**..... Respondents**

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

**ORDER**

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

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

*(A) To issue/pass an order or directions to the respondents to set aside the order dated 25.10.2018 passed by respondents.*

*(B) To issue pass an order or directions to the respondents to grant pensionary benefits in the rank of Naik from 02.04.1981 (date of relinquishment from rank of Naik) alongwith 12% interest on arrear.*

*(C) To issue/ pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

*(D) To allow this original application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 10.12.1965 and discharged from service on 01.01.1983 on completion of terms of engagement after rendering 17 years and 22 days of service. During service, he was promoted to the rank of paid acting Naik. His rank of Naik was relinquished as he absented himself from leave. Applicant was placed in low medical category CEE (Permanent). On retirement, applicant was granted pension of Sepoy. He submitted representation for

grant of pension of Naik which was rejected. Being aggrieved, applicant has filed instant Original Applicant for grant of pension of Naik.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army on 10.12.1965 and discharged from service on 01.01.1983. The applicant is getting service pension of Sepoy vide PPO dated 04.02.1983. Applicant was promoted to the rank of Naik on 01.08.1980. He was detailed for temporary duty to 606 Army Base Workshop Coy EME at Jabalpur for overhauling of 130 MM Guns. On returning from temporary duty his rank of Naik was relinquished without assigning any reason. Neither the applicant was absent without leave nor he was granted any punishment. The applicant send representation for granting him pension of Naik but his representation was not decided by the respondents. Being aggrieved, applicant filed M.A. No 1331 of 2018 Inre O.A. Nil of 2018 in this Tribunal with the prayer to decide his representation. Tribunal vide its order dated 19.07.2018 directed the respondents to decide the representation of the applicant but his representation was not decided. Applicant again filed Ex Application No 16 of 2019 inre M.A. No 1331 of 2018 Inre O.A. Nil of 2018. Then his

representation was rejected by the respondents vide order dated 25.10.2018. Learned counsel for the applicant submitted that applicant was on temporary duty from 02.04.1981 to 18.04.1981 and he was not absent from duty. He alongwith three other personnel was detailed for temporary duty to Jabalpur for repair of Gun and he was issued Railway Warrant dated 17.01.1981. He was wrongly declared absent without leave and demoted from the rank of Naik to Sepoy without assigning any sufficient reason. Learned counsel for the applicant pleaded that respondents be directed to grant pension of the rank of Naik to the applicant.

4. Per contra, learned counsel for the respondents submitted that applicant was discharged from service on 01.01.1983 on completion of terms of engagement and granted service pension vide PPO dated 04.02.1983. While in service applicant was promoted to the rank of paid acting Naik on 01.08.1980. Applicant was detailed for temporary duty to 606 Army Base Workshop Coy EME at Jabalpur for overhauling of 130 MM Guns. During the course of temporary duty, applicant absented himself without leave from 02.04.1981 to 18.04.1981 for 17 days. The matter was reported to unit and Part II Order for absent without leave was

published by the unit. As per paragraph 2 of Army Instruction 84/1968, whenever a person becomes absent without leave or without sufficient cause overstay leave granted to him, acting rank is automatically relinquished from the date of absent without leave/ Over staying of leave. Consequently, paid acting rank of Naik of the applicant was automatically relinquished from 02.04.1981.

5. Learned counsel for the respondents further submitted that applicant was placed in low medical category "CEE (Permanent)" hence become ineligible for further promotion as he was not meeting the medical criteria for further promotion and on completion of terms of engagement, he was discharged from service in the rank of Sepoy and was granted service pension. Learned counsel for the respondents submitted that applicant is not entitled for any relief as claimed in O.A. and therefore the O.A. 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 to decide is where the applicant is entitled pension of Naik or not?

8. In the instant case, applicant was detailed for temporary duty to Jabalpur for repair of Gun. While on temporary duty, he absented without leave from 02.04.1981 to 18.04.1981 for 17 days. Accordingly, his paid acting rank of Naik was relinquished and Part II Order to this effect was published and casualty was entered in service documents of the applicant and matter was informed to Record Office. We are not agree with the contention of the applicant that he was not informed about relinquishment of rank of Naik. He was placed in low medical category "CEE" (Permanent) for the disability '**LOW BACK ACHCE**', hence become ineligible for further promotion. On completion of terms of engagement, he was discharged from service and granted pension of a Sepoy. As per paragraph 133 of Pension Regulations for the Army 1961 (Part-I) service pension is assessed on the basis of the rank actually held by the individual during last ten months of his qualifying service for pension regardless of whether it is held in a substantive or paid acting capacity.

9. In view of the above discussions, we do not find any lacuna in the procedure adopted by the respondents in rejecting representation of the applicant and granting him pension of Sepoy.

10. We, therefore, we do not find any merit in the application to interfere with the impugned order dated 25.10.2018 passed by the respondent authority rejecting the claim of the applicant for grant of pension of Naik. Consequently, the application being devoid of merit is liable to be dismissed.

11. Accordingly, Original Application is **dismissed**.

12. No order as to cost.

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

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

Dated: 25 November, 2021

Ukt/-