

**RESERVED****COURT NO: 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 863 of 2021**Tuesday, this the 14<sup>th</sup> day of March, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

JC - 803573-W Sub Narendra Pal Singh (Retd), S/o Shri (Late) Brij Pal Singh, R/o : Shanti Vihar, Sithora Road, Near Satyodaya Higher Secondary School, Post: Madhinath, District: Bareilly (UP) - 243001

**..... Applicant**

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

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence (Army), South Block, New Delhi - 110 011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post - DHQ, New Delhi - 110 011.
3. OIC Records, AEC Records, PIN: 908777, C/o 56 APO.
4. SAO, O/o the CDA, Ridge Road, Jabalpur (MP) - 482001
5. SAO, PAO (ORs) AEC, Pachmarhi (MP) - 461881
6. SAO, O/o PCDA (P), Draupadhi Ghat, Allahabad (UP) – 211014.

**.....Respondents**

Ld. Counsel for the  
Respondents.

**:Shri Amit Jaiswal,**  
**Central Govt. Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *To quash and set aside CDA Jabalpur letter dated 09 May 2018 (Annexure A-1 & Impugned Order) being arbitrary in nature.*
  - (B) *To direct respondents to release pay and allowances of the applicant for the period from 07 Mar 2014 to 30 Apr 2015 along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
  - (C) *To direct the respondents to issue Corr PPO maintaining his net qualifying service as 30 years 04 days instead of 28 years 10 months and 10 days and pay the service pension accordingly along with consequential benefits wef 01 May 2015 along with suitable rate of interest on the arrears accrued thereof till date of payment.*
  - (D) *An exemplary cost, as deemed fit and proper by this Hon’ble Tribunal, be imposed on CDA Jabalpur / PAO (OR) AEC since applicant has been forced in present*

*Litigation despite being acquitted by Hon'ble Court Order dated 16 May 2016 and more than 5 years have passed but applicant has not been given his dues till filing of instant Original application.*

*(E) Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.04.1985. He was granted 23 days Balance of Annual Leave for the year 2014 wef 24 Feb 2014 to 18 Mar 2014 with prefix on 23 Feb 2014. On 07 Mar 2014, applicant was arrested by Civil Police Bareilly for an offence under Section 302, 34 of IPC 1860, Section 27, and Section 30 of Arms Act 1959. Applicant was due for retirement on 30 Apr 2015 and accordingly he was locally discharged from service on 30 Apr 2015 (A/N) under Rule 13 (3) (I) (i) (a) of Army Rules 1954 after having been service for 30 years and 04 days of service. He was granted pay and allowances upto 06 Mar 2014 and a provisional pension of Rs. 3500/- per month vide PPO dated 17.04.2015. He was acquitted by Additional Session Judge Bareilly vide order dated 16.05.2016 in Session Trial No 563 of 2014. He took up matter with AEC Records for release of pay and allowances for the period from 07 Mar 2014

to 30 Apr 2015 which was denied. Being aggrieved, applicant has filed instant O.A. for grant of pay and allowances for the period from 07.03.2014 to 30.04.2015.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 27.04.1985 and discharged from service on 30.04.2015 after completion of 30 years and 04 days of service. While on leave he was arrested by Civil Police Bareilly on 07.03.2014 for offence under Section 302, 34 of IPC, Section 27 and 30 of Arms Act 1959. He was acquitted by Additional Session Judge Bareilly vide order dated 16.05.2016 in Session Trial No 563 of 2014. On discharge from service the applicant was granted all his dues upto 06.03.2014 and a provisional pension of Rs. 3500/- per month vide PPO dated 17.04.2015. Applicant represented his case for grant of pay and allowances for the period from 07.03.2014 to 30.04.2015 stating that he has been acquitted by Additional Session Judge. He was issued Corr PPO dated 10.07.2016 wherein his net qualifying service was reduced from 30 years and 4 days to 28 years, 10 months and 10 days. A part II order dated 29.08.2018 was published to regularise the period from 07.03.2014 to 30.04.2015 in terms of Rule 52 (B) of Pay and Allowances of Army. The applicant was asked to submit declaration certificate in terms of CDA Jabalpur letter dated 09.05.2018. PAO

(OR) Jabalpur rejected the claim of the applicant vide letter dated 09.05.2018. Learned counsel for the applicant prayed that since the applicant was acquitted by Additional Session Judge Bareilly, respondents be directed to release pay and allowances of the applicant for the period from 07.03.2014 to 30.04.2015 along with interest.

4. On the other hand, learned counsel for the respondents submitted that JCO was granted balance of Annual Leave from 24.02.2014 to 18.03.2014. He was arrested by Civil Police on 07.03.2014 during leave for an offence under IPC Section 302/304, Section 27 and Section 30 of Arms Act, based on FIR No 133/2014 dated 07.03.2014 lodged at Police Station, Subash Nagar, Bareilly. After arrest, he was lodged in Bareilly Jail, however he was discharged from service on 30.04.2015 on completion of terms of service and age limit while in jail. The applicant was acquitted by the District Court Bareilly on 16.05.2016. After acquittal, JCO was granted service pension, gratuity and communication vide PPO dated 18.07.2016. The JCO approached AEC Records for released of pay and allowances for the period he was in custody under the provisions of Army Act Section 93, read in conjunction with para 51 (f) and 53 of Pay and Allowances Regulation (ORs) 1979. Applicant was not granted pay and allowances for the period

from 07.03.2014 to 30.04.2015, since he has not physically served for this period, he is not entitled for pay and allowances as per Rule 51(g) of Pay and Allowances Regulations for Junior Commissioned Officers, Other Ranks and non-combatants (enrolled), revised edition 1979. His case was returned by the respondents stating that period under imprisonment and acquittal after retirement does not cover under the Pay and Allowances Regulations. Then Part II Order for acquittal was published and forwarded to concerned authority along with other necessary documents. There were some observations and applicant was asked to rectify them, but no reply was received from the applicant. Learned counsel for the respondents submitted that applicant is not entitled for any relief and as such O.A. is liable to be dismissed.

5. We have heard learned counsel of both the parties and perused the documents available on record.

6. The question before us to decide is “whether the applicant after acquittal is entitled for pay and allowances and pension for the period from 07.03.2014 to 30.04.2015 while he was in jail”.

7. There are cases where the principle of “No work no pay” has been applied for grant of the pay for the period the person has not served. The judgments would show that grant of back wages will

depend upon the facts and circumstances of each case. When the administration has wrongly denied the dues to such a person he should be given the full benefits subject to being there any change in law and other factors.

8. In a judgment passed by Principal Bench of Armed Forces Tribunal, New Delhi in TA No. 233 of 2010 – ***Ranjit Singh Vs Union of India and Ors.*** decided on 25.3.2010, the Tribunal has considered the Army Instructions, Regulations and the provisions of Army Act. Reference Rules 51(g) and 52(b) – Pay and Allowances Regulations (OR) 1955. The forfeiture of pay and allowances under Rule 51 (g) on his dismissal/removal/discharge consequent on his conviction by a criminal court may be remitted by the authority competent to cancel his dismissal/ removal/ discharge upon his acquittal on appeal or revision in the following manner :-

**(a) If in the opinion of the authority ordering reinstatement, the person reinstated has been honourably acquitted/fully exonerated he may make a specific order for:-**

**(i) Remitting the forfeiture of pay and allowances in respect of the period from the date of dismissal/removal/discharge to the date of acquittal and from the date of acquittal to the date fixed for joining duty and**

**(ii) Treating the period as duty will also count for the purpose of classification, increments and GS Pay.**

**(b)** In other cases

(i) The forfeiture of pay and allowances for the period from the date of dismissal/ removal/ discharge to the date of acquittal may be remitted by the authority ordering the reinstatement to an extent considered equitable but not less than 50% of pay and allowances admissible at the time of soldier's dismissal/ removal/ discharge. The period will not be treated as duty unless the reinstating authority directs that it shall be so treated for any specific purpose.

(ii) The forfeiture of pay and allowances for the period from the date of acquittal to the date fixed for joining duty may be remitted in full and the period will be treated as duty.

9. The orders passed under (a) and (b) of para 2 above shall be subject to the following conditions :-

*(a) In no case remission will be allowed for a period exceeding three years preceding the date fixed for joining duty.*

*(b) No payment shall be made unless the soldier furnishes a certificate that he was not engaged in any other employment, business, profession or vocation during the period between dismissal and the date fixed for joining duty. If any amount has been earned by him during such period, the pay and allowances remitted by the competent*



*authority shall be reduced to that extent.*

***(c) If a person during the period of dismissal reaches the age of superannuation by service/age/tenure limit the remission of pay and allowances should be restricted to the date of superannuation.***

*(d) No pay and allowances should be admissible to an individual for any period of imprisonment undergone during the period between the date of imprisonment and date of discharge/dismissal without the specific sanction of the Central Government.*

2. *All the outstanding cases will be disposed of accordingly.*

3. *Pay and Allowances Regulations (OR), 1955 will be amended in due course.*

Case No. 6830/AG/PS3(b)/7742/D (AG-1)M  
of F(I) u.o. No. 192/S-PD of 1965  
S. DF Vanath, Dy. Secy.”

10. After referring the aforesaid quoted provisions and taking into consideration the provisions of Rule 51 and 52, the Principal Bench reached to the following conclusion:-

“These are the guidelines which have been provided in cases where a person is acquitted by the criminal court or by court-martial. The detailed charter has been given under these rules giving guidance that in what manner the pay and allowances will be applicable on acquittal for a period during which the incumbent was in imprisonment. These guidelines shall have the bearing on the subject.”

11. The Principal Bench in another case i.e. O.A. No. 317 of 2011- Ex. Rfn. ***Mohinder Singh Vs Union of India & Ors.*** decided on 12.9.2012 has held that if in the opinion of the authority reinstating, person reinstated has been honourably acquitted/fully exonerated he may make a specific order of remitting the forfeiture of pay and allowances in respect of the period from the date of dismissal, discharge, removal to the date of acquittal and treating the period as duty. Then, under Clause(B) in other cases, the pay and allowances for the period from the date of dismissal, removal, discharge, to the date of acquittal may be remitted by the authority ordering reinstatement, to an extent considered equitable, but not less than 50% of the pay and allowances admissible at the time of individual's dismissal, removal or discharge.

12. Coming to the facts of the present case, it is no longer in dispute that without holding any departmental enquiry etc., the applicant was discharged from the army being involved in criminal case. He was acquitted by Additional Session Judge Bareilly. Copy of the judgment of the Additional Session Judge Bareilly dated 16.05.2016 is on the record. Its perusal would show that Additional Session Judge Bareilly found that there is no material to constitute offence against the applicant. In this factual background, in view of

the principles of law laid down by the Hon'ble Apex Court referred to herein above and rule position, the applicant is not entitled pay and allowances for the period he was in jail but he is entitled for the pension for the period he was in jail.

13. The attention of the authorities was brought to the rules and regulations bearing on the subject, at the time when order dated 09.05.2018 was passed. It may be added that the order dated 09.05.2018 is not clear with regard to payment of salary etc. The respondents in their reply took a clear cut stand that since the applicant did not perform duty, therefore, he is not entitled for the pay and allowances and pension for the period he was in jail. This stand of the respondents, is not legally tenable and wrong and is liable to be rejected.

14. In the case of **Sardara Singh Vs. State of Punjab and others** reported in 2013(1) RSJ 539, decided on 23.08.2012 Punjab and Haryana High Court has relied upon the judgment of Hon'ble the Supreme Court in **Union of India and others Vs. Jaipal Singh**, 2004(1) SCT 108 = 2003 Supp (5) SCR 115 wherein it was held by Hon'ble Apex Court that in case a person is discharged on account of criminal proceedings and conviction, he cannot claim back wages for the period he was not in service. The State cannot be made liable for the period for which it could not avail the services of the

respondents and, therefore, the order passed by the High Court directing to pay back wages was held liable to be set aside. It is, therefore, clear from the above discussion that the Hon'ble Supreme Court has laid down the principle that in case there is no work, no pay shall be paid as back wages for the period the petitioner was out of service. Accordingly, applying the said principle of 'no work, no pay' it is clear that the order passed by the authorities holding that the applicant was not entitled to the pay and allowances and pension for the period he was in jail is sustainable.

15. The stand of the respondents for not granting pensionary benefits for the period of imprisonment, as discussed hereinabove is not legally tenable and wrong and is liable to be rejected. In nutshell, it is held that the applicant is entitled to the pensionary benefits after acquittal as the order dated 09.05.2018 seems to have not been challenged in the Hon'ble Apex Court.

16. In the result, the O.A. succeeds and is partly allowed and the order dated 09.05.2018 is quashed. The applicant is not entitled to pay and allowed for the period he was in jail on the principal of 'No Work, No Pay'. The applicant shall be granted service pension maintaining his net qualifying service as 30 years instead of 28 years and 10 months as per rule. The respondents are directed to release pensionary benefits to applicant within a period of four months from

today. Default will invite interest @ 8% per annum.

17. No order as to costs.

18. Pending miscellaneous applications, if any, are disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 14 March, 2023

Ukt/-