

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 319 of 2020**Tuesday, this the 26th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-841795-P Ex Nb Sub Gajendra Singh, S/o (Late)
Surender Singh, R/O : House No. B/24, Ragav Vihar, Post :
Prem Nagar Dist: Dehradun – 248007 (Uttarkhand)

..... Applicant

Ld. Counsel for the : **Shri Arvind Kumar Pandey**, Advocate.
Applicant **Shri Virat Anand Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of the Army Staff, New Delhi-110101.
3. Dy Dte Gen DSC IHQ of MOD (Army), PIN -900108 C/o 56 APO.
4. OIC, DSC Records PIN -901277 C/O 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.**Shri Arvind Kumar Pandey**,
Central Govt. Standing Counsel

ORDER

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 or set aside the Respondents letter 11.07.2017 **(Annexure A-1 of OA)**.

(b) To issue order or directions to the respondents to grant compensation (Back wages with all consequential benefits) for the period from 01.04.2009 to 26.12.2011 as applicant was wrongly denied for further extension of service due to lacking ACR criteria.

(c) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

(d) Allow this OA with heavy cost.

2. Brief facts of the case are that applicant having retired from Army as JCO was re-enrolled as Havildar in Defence Security Corps (DSC) on 27.03.1999 for initial terms of engagement of 05 years and opted not to count his former service towards DSC service. On completion of his initial terms of engagement, he was granted extension of service from 27.03.2004 to 26.03.2009. Thereafter, having been found ineligible for further extension of service beyond 26.03.2009 due to lacking ACR criteria, he was discharged from service on 31.03.2009 under the provisions of Rule 13 (3) I (i) (a) of Army Rules, 1954. This O.A. has been filed by applicant for grant of

compensation which was denied by the respondents vide order dated 11.07.2017.

3. Submission of learned counsel for the applicant is that though Writ Petition No. 5396 of 2008 was allowed in favour of applicant vide order dated 26.03.2009, yet the respondents have denied extension of service which is illegal and highly violative of Article 14 and 21 of the Constitution of India. His further submission is that applicant is entitled for compensation as per order of the Hon'ble High Court of Guwahati. Relying upon the Hon'ble Apex Court judgment in the case of **Associated Cement Companies Ltd vs PN Sharma**, AIR 1965 SC 1595, learned counsel for the applicant submitted that applicant be granted compensation in view of the judgment of the Hon'ble High Court of Guwahati delivered on 26.03.2009.

4. On the other hand, learned counsel for the respondents submitted that applicant, who is in receipt of service pension as well as disability pension, was denied extension of service beyond 26.03.2009 keeping in view of his lacking ACR criteria as stipulated in policy letter dated 23.03.1956, amended vide policy letter dated 05.12.1981 and Record Office Instructions No. 04/2008. His further submission is that extension of service is not a matter of right as held in **Ex Sep RP Manivannan vs Union of India & Ors**, O.A. No. 123 of 2016 decided by Hon'ble AFT, Kochi Bench on 02.03.2017 and in **Sep**

Arjun Singh Parihar vs Union of India & Ors, O.A. No. 116 of 2014 decided by Hon'ble AFT, Jabalpur on 25.04.2016. He pleaded for dismissal of O.A.

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

6. We have observed that after denial of extension of tenure, applicant had filed Writ Petition No. 5396 of 2008 in the Hon'ble High Court at Guwahati which was allowed in his favour vide order dated 26.03.2009. For convenience sake, operative portion of the aforesaid judgment is reproduced as under:-

"12. I find no material to substantiate that the impugned order was passed in accordance with law and in the interest of justice. Therefore, inevitable conclusion is that the impugned order is not sustainable in law and is liable to be set aside and quashed. The impugned order dated 25.06.2008 is accordingly set aside and quashed but only so far the writ petitioner is concerned."

7. Against aforesaid order, respondents had filed an appeal in the Hon'ble High Court of Guwahati which was disposed off vide order dated 07.06.2012. Operative portion of aforesaid order is as under:-

"12. I find no material to substantiate that the impugned order was passed in accordance with law and in the interest of justice. Therefore, inevitable conclusion is that the impugned order is not sustainable in law and is liable to be set aside and quashed. The impugned order dated 25.06.2008 is accordingly set aside and quashed but only so far the writ petitioner is concerned."

We have heard learned counsel for the parties.

Learned counsel for the appellants submits that even though the view taken by learned single Judge was erroneous, in view of lapse of time, even if the respondent is to be granted extension, the same could be only upto 23.12.2011 and at this stage the matter has become infructuous.

Learned counsel for the respondent-writ petitioner submits that since the petitioner has been wrongly denied extension he was entitled to compensation. Since the matter has become infructuous, we do not consider it necessary to go into the rival contentions. It is, however, made clear that the writ petitioner will not be debarred from putting forward his claim at any appropriate forum in accordance with law."

8. In view of the aforesaid observations, an inference may be drawn that applicant should have approached authority concerned for claiming compensation. However, applicant had filed O.A. No. 292 of 2015 before this Tribunal with a prayer to grant extension of service w.e.f. 17.03.2009 to 26.03.2011 and provide benefits including pay and allowances. The aforesaid O.A. was disposed off vide order dated 04.07.2016 directing applicant to approach competent authority for claiming compensation. Operative portion of order dated 04.07.2016 is reproduced as under:-

"In view of the observations made by the Hon'ble High Court, the prayer made by the applicant before this Tribunal, cannot be granted.

The applicant may approach the authority concerned as directed by the Hon'ble High Court by putting forward his claim."

9. Thus, keeping in view that vide order dated 07.06.2012 and 04.07.2016 applicant was directed to approach appropriate

authority for claiming compensation, we direct applicant to approach Army authorities to claim compensation, which on denial may be challenged before the appropriate forum.

10. The O.A. is disposed off accordingly.

11. No order as to costs.

12. Pending miscellaneous, if any, shall stand disposed off.

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

Dated: 26.10.2021
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