

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**RA 29 of 2022 with MA 4172 of 2022
in
OA 1944 of 2019**

Nb Sub Manoj Kumar Applicant
Versus	
Union of India and Ors. Respondents

For Applicant	:	Mr. Manoj Kumar Gupta, Advocate
For Respondents	:	Mr. K.K. Tyagi, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**O R D E R
02.03.2023**

MA 4172/2022

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. The MA stands disposed of.

RA 29/2022 IN OA 1944/2019

3. This RA has been filed under Section 18 of the Armed Forces Tribunal (Procedures) Rules, 2008, read in conjunction with Section 14(4)(f) of the Armed Forces Tribunal Act, 2007, by the

applicant in OA 1944/2019, seeking a review of the order dated 11.07.2022 passed by this Tribunal in OA 1944/2019.

4. Originally, the applicant in OA 1944/2019, had sought the following relief-

(a) Direct the respondents to quash and set aside impugned letter and allot JC number and release promotion to next higher rank of Nb-Sub with notional benefit and ante date seniority, after having been satisfied that the applicant already holding rank of Nb-Sub since 07.05.2018.

(b) Call for the Records based on which the Respondents failed to issue JC number to the applicant between the period May 2018 to Dec 2018 when became overage ignoring next vacancy arising in this period.

(c) Issue directions to Respondent to grant 02 years extension of service to the applicant in JCO rank as per policy in vogue.

(d) Direct the Respondents to withhold discharge order dated 12.01.2019 and 03.10.2019 for discharging the applicant in present rank of Havildar Auto Elect B Veh against his present rank of Nb-Sub.

(e) To pass such further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in accordance with law.

(f) In the interim, stay discharge order dated 12.01.2019 and 03.10.2019.

5. The AFT (PB) vide its Order dated 11.07.2022 allowed the OA and directed the Respondents to:

(a) Notionally promote the applicant to the rank of Nb Sub with effect from 01.05.2018.

(b) Grant all pensionary benefits in the rank of Nb Sub on his superannuation on 29.09.2020 (AN). The applicant will however, be not entitled to any back wages for this period.

6. It is the case of the applicant here, that when retrospective promotion is given, the employee is entitled to all benefits including arrears of salary. Also that because of the notional promotion which is held for two years, the applicant is eligible to extra increments in the rank of Nb sub for these two years. That in the absence of being granted extra increments, the applicant is prejudiced as he was already granted MACP in the rank of Hav and thus does not stand to any monetary benefit from this favourable order. Thus the applicant

has sought review of the order dated 11.07.2022 on the following grounds:-

- (a) That the applicant was discharged by the order of the respondents in the rank of Havildar, whereas he was holding the rank of Nb Sub on the day of his discharge and thereby he was liable to get the extension of the service for the period of 02 years or as his course-mates or juniors who got further extension and promotions to the rank of Subedar.
- (b) That the applicant was erroneously discharged from service by the order dated 29.02.2020(AN) in the rank of Havildar, whereas he should have been Nb Sub as ordered by this Tribunal and had already protected his right while rejecting the interim prayer when the applicant approached for justice while in service.
- (c) That the respondents had infringed the rights of the applicant for promotion to the rank of Nb Sub and to Sub subsequently; denied extension which would have then given opportunity for promotion to rank of Sub Maj or Hony ranks. Thus since the respondents had erred in this

matter, the applicant became the victim of their malicious acts.

(d) That the Respondents initially sent letter dated 28.04.2018 regarding promotion of the applicant to the rank of Nb Sub, but later sent a letter of cancellation dated 01.05.2018. On the information of the cancellation of promotion, the applicant approached the Record Office, obtained letter of promotion dated 03.05.2018, handed it over to the Unit and was promoted to the rank of Nb Sub on 07.05.2018. Meanwhile, the letter for the cancellation of promotion was received on 10.05.2018, on the basis of which the applicant was discharged in the rank of Havildar.

(e) That the letter dated 01.05.2018 became infructuous by the letter dated 03.05.2018, which was issued after the order of the cancellation. Moreover, since the applicant had sought further extension, which was affirmed, the discharge was illegal.

(f) That, had the applicant not been illegally and erroneously discharged, he would have served in the service and would have obtained extension of service and the rank of Sub. Hence, the respondents are liable for the

payment of damages to the applicant in view of the
MAXIM- INJURIA SINE DAMNO.

7. Based on the above grounds, the applicant has prayed that considering the facts of the case, the RA be allowed and he be given the pay and allowances of Nb Sub from the date of his notional promotion; and /or pass any other order as deemed appropriate in the facts of the case.

8. Per contra, the Respondents have stated that the pay of the applicant had been fixed as on 01.05.2018 @ Rs. 41,100/-, which included the 3rd MACP (in the rank of Nb Sub) wef 01.01.2018. And that, subsequently, the applicant was granted two increments on 07/2018 and 07/2019 with the basic pay being Rs. 42,300/- and Rs. 43,600/- respectively, and finally discharged on 29.02.2020. As such, on his discharge on 29.02.2020, the applicant was already drawing the basic pay admissible to a Nb Sub @ Rs. 43,600/- and his pension was therefore accordingly fixed. Thus no further change was required in fixing the admissible basic pay of the applicant, pursuant to the AFT(PB) Order dated 11.07.2022.

Consideration

9. The Section 14 of the Armed Forces Tribunal Act, 2007, lays down the jurisdiction, powers and authority in service matters and

at 14(1) states "*Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters*". The Right of Review is granted by CPC as a remedy to be sought for an applied under special circumstances and conditions. The objective of this right is to correct the error or any mistake made in the decision of the court. This right is subjected to many limitations and conditions mentioned in Order 47 of the Civil Procedure Code. Similar powers for Review by AFT is enshrined in Sec 14(4)(f) which lays down "*For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely.... (f) reviewing its decisions*" Section 18 of the AFT (Procedures) Rules, 2008, further lays down the procedures pertaining to filing a Review application.

10. The applicant herein has prayed that the applicant be given seniority, re-instatement and the promotional as well as the monetary benefit at par with personnel in his rank and trade or even

personal promoted being juniors wef the date of discharge by way of an extra increment accrued to him upon notional promotion as allowed in impugned order. From the details given by the Respondents, it is seen that the applicant had already been given the MACP in the rank of Nb Sub from 01.01.2018 and therefore, the notional promotion will not entitle the applicant to an additional increment. Even if the applicant was not in receipt of the increment of the 3rd MACP, the notional promotion does not entitle him to pay and allowances for a rank and position which was never held by him and in which he had physically not worked.

11. The Hon'ble Supreme Court in the case of ***Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr.*** (1989) 2 SCC 541, considered the direction issued by the High Court and upheld that there has to be **"no pay for no work"**. A person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date **but is not entitled to the payment of arrears of the salary.** The

same ratio was reiterated in the case of ***Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha*** (1990) 3 SCC 472.

12. Similarly, a three judge bench of the Hon'ble Supreme Court considered the said issue in the case of ***A.K. Soumini Vs. State Bank of Travancore & Anr.***, (2003) 7 SCC 238. In this said case, this Court held: "8. In *State of Haryana & Others vs. O.P. Gupta & Others* [1996(7) SCC 533], this Court **had an occasion to deal with a claim for arrears**, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. **When such promotes claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotes did not work for the period in the promoted capacities.** In coming to such conclusions this Court followed the earlier decisions reported in the cases of ***Paluru Ramakrishnaiah vs. Union of India***, (1989)

2 SCC 541 and ***Virender Kumar, G.M., N. Rlys. Vs. Avinash Chandra Chadha***. [(1990) 3 SCC 472]

13. Moreover the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh vs. B.B.S Rathore*** (CA No. 3041/2010) by order dated 24.07.2014 set forth the following principles emerging from the aforesaid judgments:

(i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.

(ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.

(iii) The principle of "no work, no pay" is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is entitled to the arrears of salary.

14. Thus, it is evident from the preceding details that there is no error in the Order dated 11.07.2022. If the decision making process is found to be in accordance with the prescribed procedure, meeting the requirement of principles of natural justice, and if a prudent man approach has been adopted, interference into administrative action, in the absence of mala fides or statutory rules and regulations being violated is not called for. The Hon'ble Supreme

Court in the case of ***Pancham Lal Pandey Vs. Neeraj Kumar Mishra and Others*** (2023 SCC OnLine SC 143) held that:

"The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order / record without going into as to whether there is a possibility of another opinion different from the one expressed."

15. The Hon'ble Supreme Court in the case of ***S. Murali Sundaram Vs. Jothibai Kannan*** (2023 SCC OnLine SC 185) held that –

"From the aforesaid it appears that the High Court has considered the review application as if it was an appeal against the order passed by the High Court in Writ Petition No.8606 of 2010. As observed hereinabove the same is wholly impermissible while deciding the review application. Even if the judgment sought to be reviewed is erroneous the same cannot be a ground to review the same in exercise of powers under Order 47 Rule 1 CPC. An erroneous order may be subjected to appeal before the higher forum but cannot be a subject matter of review under Order 47 Rule 1 CPC."

16. Thus, there is no error apparent on the face of record in the Order dated 11.07.2022 and therefore this court sitting in review cannot go into the reappraisal of the merits of the case. The applicant has been granted notional promotion wef 01.05.2018. Since his notional promotion wef 01.05.2018 has been granted, he has been granted retiral benefits of a Nb Sub from his date of

discharge on 29.09.2020. And in the instant case, since the applicant is already been granted the 3rd MACP in the rank of Nb Sub, the applicant is not entitled to any other benefit. Accordingly, considering the limited scope available to this Tribunal in a proceeding for review initiated under Section 14(f) of the Armed Forces Tribunal Act, 2007 read with Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008, we see no reason to interfere with the matter.

17. Therefore, the present review petition is dismissed.

18. No order as to costs.

19. Pending miscellaneous application(s), if any, stands closed.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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