

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

MA 4247/2022  
IN  
MA 451/2022 IN OA 2308/2019

Ex Nk/DSC Nirinder Singh  
Versus  
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. US Maurya, Advocate  
For Respondents : Mr. Arvind Patel, Advocate

CORAM :  
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

MA 4247/2022 IN MA 451/2022 IN OA 2308/2019

This is an application filed by the applicant purportedly under Section 29 of the Armed Forces Tribunal Act, 2007 and the prayer made in the application reads as under:

*"In view of the foregoing, it is most humbly submitted that this Hon'ble Tribunal may be pleased to grant relief as per order dated 14.10.2020 (Annexure MA-1) and order dated 18.04.2022 (Annexure MA-2) of this Hon'ble Tribunal."*

2. Section 29 of the Armed Forces Tribunal, 2007, confers power of execution of orders passed by this Tribunal. Facts in nutshell indicate that the applicant invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, by filing

OA 2308/2019, wherein, the applicant had sought second service pension for the service rendered by him in the Defence Security Corps (DSC). The applicant having rendered 14 years, 09 months and 24 days of service in the DSC and the shortfall being less than one year sought grant of second pension for the service rendered in the DSC and taking note of the law laid down by a Full Bench of this Tribunal in the case of Smt Shama Kaur Vs. Union of India and Ors. (OA 1238/2016 decided on 01.10.2019), the OA filed by the applicant was allowed in terms of the order passed and Para 7 of which reads as under:

*"7. The instant O.A is, therefore, allowed with the following directions:*

*(i) The short fall of 02 months and 06 days of qualifying service for second service pension is condoned;*

*(ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the service rendered by him in DSC, from the date of his discharge; and*

*(iii) The arrears shall be paid within four months from the date of receipt of a copy of this order. In default, the applicant will be entitled to interest @ 6% per annum till payment."*

3. After the aforesaid order was passed, when the directions issued in the order were not being implemented, the applicant invoked the jurisdiction of this Tribunal by filing an application under Section 29 of the Armed Forces Tribunal Act, 2007, being MA 853/2021 and thereafter MA 451/2022 an application

filed under Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008. Both these applications were disposed of by a common order passed on 18.04.2022. It came to the notice of this Tribunal in the execution proceedings originally filed, namely, MA 853/2021 that after the applicant was retired, a sum of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only) was paid to him as service gratuity and retiral gratuity and it was the contention of the respondents that for settling the second pension granted to the applicant for the service rendered in the DSC by virtue of the order passed in OA 2308/2019, the applicant should deposit the amount of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only) only then the claim can be settled.

4. When such a proposition was made, this Tribunal was of the opinion that the respondents should explore the possibility of giving some benefit to the applicant in the matter of recovery of the amount of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only) and directed the respondents to indicate as to whether there is any circular, rule or regulation which permits the recovery of the amount of gratuity in installment.

5. The respondents have brought to our notice a communication received from the Accounts Officer Pension in the office of PCDA (P) dated 13.01.2022, wherein, it is indicated that in cases when an individual was paid a big amount, the manner of recovery of amount from the pension is indicated. Therefore, on 18.04.2022, a detailed order was passed by this Tribunal disposing of MA 853/2021 and MA 451/2022. The order passed by the Tribunal on 18.04.2022 in these applications reads as under:

*" Seeking execution of an order passed by this Tribunal on 14.10.2020 in O.A. No. 2308 of 2019, this application has been filed. The compliance report has been submitted by the respondents on 09.11.2021 and it is pointed out that the requisite Corrigendum PPO has been issued and an amount of Rs.9,01,192/- being the Service Gratuity and Retirement Gratuity (SGRG) paid to the applicant has to be recovered from the applicant, then only he would be entitled to pension. There is no dispute in this regard as the applicant has already received the SGRG and for receiving the pension, the applicant is required to repay the SGRG amount already received by him.*

2. *However, when the matter came up for consideration before us on the last date of hearing, we had requested the learned counsel appearing for the respondents and the OIC, Legal Cell, to seek instructions from the O/o The Pr. Controller of Defence Accounts (Pension) [PCDA (P) for short] as to whether there is any provision for recovery of this SGRG amount in instalment as it may be difficult for the applicant to deposit the amount in one go. Today, on instructions, we are informed that the Accounts Officer (P), O/o PCDA (P), vide his communication dated 13.01.2022, has given the following opinion:*

*"As the individual was paid a big amount, hence recovery with the Pension being paid is an issue and consideration. Therefore it has been decided by this office that Record office may be advised to forward the consent letter from the pensioner duly certified by him for the recovery of overpaid amount from the arrears of pension/recurring pension/gratuity/CVP to PAO to accord LPC-cum-data sheet. Further it is stated that the recovery from recurring pension, if required, would only be @ 1/3<sup>rd</sup> of the net pension the individual will get."*

3. We find the aforesaid opinion to be reasonable. Accordingly, we direct that subject to the applicant's giving No Objection/requisite certificate, as detailed in the aforesaid communication received from the Accounts Officer (P) O/o PCDA (P), 1/3<sup>rd</sup> amount of net pension can be recovered from the applicant after paying 2/3<sup>rd</sup> of the pension till the recovery of the amount is complete.

4. With the aforesaid, M.A. No. 853 of 2021 as also M.A. No. 451 of 2022 stand disposed of.

*Copy of this order be given 'Dasti'."*

6. Now, the applicant in this application has come out with a prayer that the order passed on 18.04/2022 be executed and at the same time, placing reliance on certain judgments, the learned counsel for the applicant tried to indicate that the amount of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only) cannot be recovered.

7. The question as to whether the respondents are entitled to recover the amount of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only) cannot be adjudicated in these proceedings. It is a different cause of action and the applicant has to challenge it, if permissible in law, in a different proceeding. Today, before this Tribunal, in these proceedings, the only issue is as to whether the order passed on 14.10.2020 in OA 2308/2019 has been executed or not and if not what directions have to be issued.

8. As far execution of the order passed on 14.10.2020 in OA 2308/2019 is concerned, we have already on 18.04.2022

while disposing of MA 853/2021 and MA 451/2022 in Para 3 finding the opinion of the Accounts Department to be reasonable, directed the applicant to give the No Objection Certificate/Requisite Certificate as detailed in the letter and on the same being done, the respondents were directed to effect recovery from the applicant after paying 2/3<sup>rd</sup> pension till the recovery was completed and issue the necessary PPO. It seems that the applicant is delaying the matter and is not complying with the directions issued on 18.04.2022 and somehow wants to get pension without payment of the amount of Rs.9,01,192/- (Rupees Nine Lakh One Thousand One Hundred Ninety Two Only). This is not permissible and, therefore, we see no reason to keep these proceedings pending.

9. Accordingly, we dispose of this execution application with a direction that in case the applicant complies with the directions issued on 18.04.2022 in MA 853/2021 and MA 451/2022, respondents should settle the claim of the applicant by issuing PPO as per the rules within a period of one month from the date when the applicant complies with the direction issued on 18.04.2022. In case the applicant does not comply with the order, the respondents are not required to take any action. However, the applicant is granted liberty to challenge the proposed recovery of gratuity amount from



the applicant, if permissible in accordance with law, and if such a challenge is made, the same shall be decided in accordance with law.

10. For the present, we dispose of all the proceedings in the light of the aforesaid order.

11. No order as to costs.

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

Pronounced in open Court on this 11<sup>th</sup> day of December, 2023.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C. P. MOHANTY]  
MEMBER (A)

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