

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

110.

OA 1643/2022 WITH MA 4503/2024

Col Ajay Kothiyal (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. A.K.Trivedi, Advocate
For Respondents : Mr. Rajan Khosla, Advocate for RR 1-2
Mr. Neeraj, Sr. CGSC for R-6

CORAM

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

ORDER
16.10.2024

MA 4503/2024

For the averments made in the application, the delay in filing the counter affidavit is condoned. The counter affidavit is taken on record. MA stands disposed of.

OA 1643/2022

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007 the applicant has filed this application and in para 8 the following reliefs are claimed:

- “(a) Declare the whole action of the respondents as illegal, unjust, arbitrary and discriminatory in not making payment of pay and allowances for the period in question and not fixing the pension of the applicant correctly.*
- (b) Grant pay and allowances for the period from 26.4.2018 to 29.08.2018 and also authorise and grant one annual increment due wef 01.07.2018 and thereafter calculate and refix the pension of the applicant and make payment of the arrears on account of difference of pension and other retirement benefits such as Gratuity, leave encashment, etc. along with interest @ 18% p.a. till payment.*

- (c) *Grant and make payment of difference of Gallantry Award of Rs.7500/- wef 01 Aug 2017 to 25.04.2018) along with interest @ 18% p.a.till payment.*
- (d) *Award interest @ 18% on the delayed payment of pension, gratuity leave encashment, AGIF, gallantry award and pay and allowances (Paid between 25.10.2019 to 27.07.2021)."*

3. During the course of hearing today the only issue canvassed before us was with regard to grant of pay and allowances for the period 26.4.2018 to 29.08.2018 and also to authorise grant of one increment which fell due on 01.07.2018. As far as other reliefs are concerned, it seems that during the pendency of the matter they have been granted as is evident from the PPOs and other documents filed in this regard.

4. Be that as it may, in this OA we would only consider the prayer made vide para 8(b) and leave other issues to be canvassed by the applicant afresh in accordance with law in case he has any grievance still subsisting with regard to the same.

5. Facts, in brief, indicate that the applicant was commissioned in the Indian Army on 19th December, 1992. The applicant claims to have an outstanding service career and with the passage of time promoted to the rank of Col. On 4th April 2013 the Military Secretary Branch of the Indian Army, namely, respondent No.3 issued an order dated 4th April, 2013 by which the applicant was posted/appointed on deputation as Principal, Nehru Institute of Mountaineering, Uttarkashi, hereinafter referred to as the 'NIM' and was directed to report for duty at the said institute

on 22nd April, 2013. The applicant joined the Institute on 26th April, 2013. The tenure of the applicant was extended up to 25th April, 2018 and while being so placed on 27th April, 2018 the applicant submitted an application seeking premature retirement from service from of the Indian Army. The application was submitted to the Military Secretary Branch, Integrated Headquarters of the Ministry of Defence, New Delhi, which was duly recommended by the Competent Authority and the premature retirement of the applicant was accepted by the Army Headquarters vide order dated 7th June, 2018 and the applicant was to be relieved of his duties on or before 4th September, 2018. Documents evidencing all these facts are on record and filed as Annexures A-1, A-3, A-4 and A-5 respectively.

6. Be that as it may, it is the case of the applicant that after his premature retirement vide Annexure A-5 dated 7th June, 2018, he continued to be on the rolls of the NIM and was relieved and struck off the rolls of the NIM on 29th August, 2018. A reference is made to Part II order (Annexure A-6) filed by the applicant. It is the case of the applicant that after his premature retirement, there has been delay in settlement of his post retiral claims in the matter of payment of gratuity, leave encashment, AGIF, Gallantry Award etc., and payment of pension, therefore, he claims various benefits in this regard. However, the grievance that was canvassed before us was to the effect that the salary and

allowances for the period 26th April, 2018 to 29th August, 2018, along with one increment which fell due on 1st July, 2018, have not been paid to him and, therefore, based on the documents that have come on record, the applicant claims the said benefits. Even though, in the pleadings the applicant admits that retirement gratuity amounting to Rs.18,79,000/- was paid to him on 29th June, 2020, arrears of pension amounting to Rs.24,69,103/- on 29th June, 2020, leave encashment of Rs.19,17,720/- on 27th July, 2021 and AGIF benefit amounting to Rs.9,75,132/- was paid to him on 25th October, 2019, he claims interest on the delayed payment and also submits in the petition that the Gallantry Award has not been granted to him.

7. Be that as it may, we are adverting to consider the question of grant of pay and allowances for the period 26th April, 2018 to 29th August, 2018. As far as the official respondents, namely, respondent Nos.2,3 and 4 are concerned, it is their contention that the applicant was on deputation with the NIM from 13th April, 2013 to 25th April, 2018. However, even after the period of deputation was over on 25th April, 2018, he did not join his parent department in the Indian Army upto 29th August, 2018 when he proceeded on premature retirement. It is the case of the Respondent No.6 (NIM) that they communicated with the MS Branch on various occasions for regularisation of the period from 26th April, 2018 to 29th August, 2018 vide various

communication as detailed in para 7 and 8 of the short counter affidavit but it is the case of the respondents that on account of non grant of sanction by the Competent Authority and on account of the applicant having not joined the parent department after 25th April, 2018, when he is said to have been relieved from the NIM, no salary is payable by the Indian Army authorities. It is stated that the applicant's premature retirement was processed from the NIM, he superannuated on PMR from NIM on 29th August, 2018, Part II order was published from NIM on 29th August, 2018 and the last pay certificate is also issued by the NIM. It is the case of the official respondents 1 to 4 that as the applicant did not discharge duties with them for the period in question, he is not entitled to any salary from the said authority. Initially respondent No.6, the NIM, was not impleaded as a party but while hearing the matter on 5th January, 2023, it was directed that the NIM be impleaded as a party. Accordingly, the NIM was impleaded as a party and they have filed a detailed counter affidavit. As far as respondent No.6 is concerned, it is their contention that the deputation period of the applicant with the NIM came to an end on 25th April, 2018 and with the approval of the Secretary of NIM, one Medical officer Capt. Hemendra Singh was authorised to look after the duties of the Principal, NIM vide orders passed on 25th April, 2018 and the applicant relinquished his duties from 25th April, 2018 and, therefore,

it is their contention that NIM is not legally bound to pay any salary to the applicant for the period after 25th April, 2018 upto 29th August, 2018. It is further admitted by respondent No.6, the NIM, that Part II order was issued on 29th August, 2018 wherein the applicant was shown to have relinquished the appointment of Principal, NIM on 26th April, 2018. Part II order dated 26th April, 2018 is annexed as Annexure R-1. There is serious dispute between the MS Branch/the Army Authorities and the NIM as to who is liable to pay the salary to the applicant for the period 26th April, 2018 to 29th August, 2018 and who is responsible for regularising the aforesaid period.

8. As far as respondent No.6 is concerned, even though they contend that the applicant had relinquished the appointment of Principal on NIM on 26th April, 2018, they admit the fact that the Part II order in this regard was issued on 29th August, 2018 vide Annexure R-1. Even though, the applicant and the MS Branch insisted that the NIM should release the pay and allowances of the applicant for the period 26th April, 2018 to 29th August, 2018 on the ground that the applicant was on the strength of the NIM till 29th August, 2018. The contention of respondent No.6 is that Part II order was not issued immediately after completion of the tenure, it was only issued after some time on 29th August, 2018, even though the tenure had expired on 25th April, 2018. On the contrary the MS Branch contends that the applicant over stayed

with the borrowing department on deputation without approval of the Competent Authority.

9. Be that as it may, the dispute now for resolution before this Tribunal is as to whether the applicant is entitled to salary for the period 26th April, 2018 to 29th August, 2018 and if yes, who is responsible for payment of the same. It is an admitted position that the applicant, as per the orders of deputation, was to complete his tenure in NIM on 25th April, 2018 and on 24th April, 2018 vide Annexure R-2, the Government of India, Ministry of Defence decided that one Medical officer Capt. Hemendra Singh shall look after the affairs of the NIM with effect from 26th April, 2018 till appointment of a Principal or Vice Principal. However, except for this order there is no document or material available on record to show as to when Capt. Hemendra Singh took charge in pursuance to the order dated 24th April, 2018 (Annexure R-2) and till when he discharged his duties as such and when the regular Principal was appointed. The applicant has filed a detailed affidavit and he points out that he continued to be on the strength of the NIM upto 29th August, 2018 and the Army Authorities admit the fact that the applicant did not report back to MS Branch after he is said to have relinquished the appointment of Principal, NIM on 26th April, 2018. It has come on record that the applicant was granted premature retirement with effect from 29th August, 2018.

However, from the documents and pleadings that have come on record, we find that a Part II order was issued by the NIM under the signatures of Capt. Hemendra Singh who is shown as Principal, NIM. This Part II order is Annexure R-1 filed by the respondent, issued on 29th August, 2018 by the office of NIM which pertains to the applicant who is shown to be on deputation from the MoD and serving in the NIM. The details furnished in this Part II Order indicate that the applicant was granted premature retirement on 29th August, 2018 and he was struck off the ration strength of NIM on 29th August, 2018 even though he relinquished the appointment of Principal on 26th April, 2018 and his address is shown as 192/2, Vasant Vihar, New Forest, Dehradun. From this document it is clear that the applicant was only struck off the ration strength of the NIM on 29th August, 2018. That apart, from the documents available on record it is further revealed that after the so called date of relinquishment of appointment as Principal, NIM on 26th April, 2018, the officiating Principal of NIM Capt. Hemendra Singh has issued a leave certificate indicating that the applicant has been granted 15 days leave as part of annual leave from 28th May, 2018 to 11th June, 2018. It is not known as to how leave could be granted to the applicant for this period as is indicated in Annexure RA-1 (to rejoinder), if he was relieved from the NIM on 26th April, 2018. That apart, it is further seen that DSOP

subscription and AGIF subscription have been paid for the months from May 2018 up to August, 2018. The said documents have been collectively filed by the applicant as Annexure RA-2 with his rejoinder and it is seen that NIM had deposited a sum of Rs.10,000/- on 7th May, 2018, 2nd June, 2018, 19th July, 2018 and 2nd August, 2018 with regard to payment of DSOP subscription of the applicant. All these amounts have been deposited by the officiating Principal of the NIM Capt. Hemendra Singh. That apart on 1st April, 2018, 1st May, 2018, 2 June, 2018, 14th June, 2018 a sum of Rs.5000/- every month has been deposited towards AGIF subscription of the applicant. This amount is deposited by the NIM and these four deposits have been made by Mr. G. S Bist, Registrar, NIM so also Capt Hemendra Singh, Officiating Principal and another Officiating Registrar Mr. Vishal Ranjan. A collective scrutiny and analysis of the documents, pleadings and the facts that have come on record clearly show that the applicant was on deputation with the NIM for the period from 4th April, 2013 up to 25th April, 2018. Vide orders passed on 7th June, 2018 his deputation period was extended up to 4th September, 2018. Even though it is the contention of the NIM that on 26th April, 2018 the applicant relinquished the appointment of Principal, NIM and handed over the charge to Capt Hemendra Singh but the Part II order (Annexure R-1) clearly shows that he was struck off the ration

strength of NIM only on 29th August, 2018 and it was NIM which issued the leave certificate for the period 28th May, 2018 to 11th June, 2018, deposited his DSOP amount from May to August, 2018 and also deposited his AGIF contribution from April to July 2018. Prima facie these go to conclude that the applicant continued to be on the rolls of the NIM till his premature retirement on 29th August, 2018. He never reported to Army Authorities and he was never taken on the rolls of the Army Authorities. At least there is no documentary evidence in support of the same. This is a case where the MoD, the Army authorities and NIM are disputing the liability to pay salary for the period in question on the ground that they are not responsible for the same and they are shifting the liability and responsibility on each other. However, the prima facie assessment of the documents clearly show that the deputation period of the applicant was up to 29th August, 2018 when his premature retirement was accepted on 7th July, 2018. The intimation about this acceptance was forwarded to the NIM vide Annexure A-5 by MS Branch of the Indian Army. In para 2 and 3 of this document the following assertions are made which clearly show that on 7th July, 2018 the applicant was working in the NIM:

"2. The request in respect of IC-51821 Col Ajay Kothiyal, KC, SC, VSM, Inf for premature retirement from Army service has been approved by the competent authority.

3. The officer may be informed immediately. The officer may be relieved of his duties as

early as possible but not later than 04 Sep 2018 (AN).

10. The Part II order dated 29th August, 2018 and other documents, as referred to hereinabove, clearly show that the applicant continued to be on the rolls of NIM for various period till he was granted premature retirement on 29th August, 2018. That being so, we are of the considered view that the liability to pay salary to the applicant for the period 26th April, 2018 to 29th August, 2018 would be of respondent No.6 – NIM and if the said institute feels that they are not liable and it is the parent department of the applicant, i.e., Indian Army, MS Branch who have to discharge their liability, they are free to raise the claim with the said authorities and settle it inter-se dispute between the two departments or organisations of the Government of India. Only because the two departments/organisations of the Government of India are disputing their liability, shifting the liability between themselves and are washing their hands of the liability, the applicant cannot be put to loss as there is enough material available on record to show that even after his deputation period was over, he continued to be on the rolls of the NIM, was granted leave and other benefits from the NIM and, therefore, we have no hesitation in holding that the applicant is entitled to the salary for the period 26th April, 2018 to 29th August, 2018 and at the first instance NIM is responsible for payment of the same and thereafter they may have the liberty to

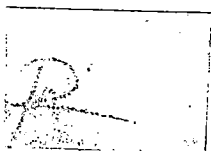
raise the claim with the MoD, Indian Army or the MS Branch, as the case may be.

11. Accordingly, we allow this OA in part and issue the following directions:

(i) Salary to the applicant for the period in question from 26th April, 2018 to 29th August, 2018 be paid by R-6 – the NIM along with interest at the rate of eight per cent from the date it fell due till payment. This should be made within three months from the date of receipt of a copy of this order.

(ii) As far as any other unclaimed or unsettled benefit of the applicant like pension, gratuity, etc. still remains outstanding and with regard to other prayer made in this OA, we are not adverting to and the applicant may take recourse to such remedy as may be available to him under law for redressal of those grievances. The inter se dispute with regard to liability to pay the amount between R-6 – NIM, the Indian Army, MS Branch and the MoD is left open to be agitated inter-departmentally between the organisations of the Government of India in accordance with the procedure prescribed and the policy laid down in the matter of resolution of inter se departmental or organisational disputes between various organs and authorities of the Union of India.

12. Any observation made by us in this order will not come in the way of any of the departments or organisations or will not adversely affect them in resolution of such a dispute or claim.



The observations made by us in this order are only to make a prima facie assessment to enable us to fix the liability in the matter of payment of salary to the applicant as claimed before us.

13. With the aforesaid OA stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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