

COURT NO. 2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 404/2016

Lt Col Beant Singh (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. T Prashad, Advocate  
For Respondents : Mr. Arvind Patel, Advocate  
Maj A.R. Subramaniam, OIC Legal Cell

CORAM

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking the reliefs as claimed in Para 8 which read as under:

- (a) *Quash the order of the Central Government dated 12 September, 2012, read with corrigendum dated 15.02.2013, insofar as it denies grant of back wages from 04.12.2001 to 04.03.2013, being arbitrary and illegal.*
- (b) *Quash the order of the Central Government dated 16.11.2015 (Annexure A-1) which rejects the Statutory Complaint dated 17.10.2014 (Annexure A-*

*2) and denies grant of back wages from 04.12.2001 to 04.03.2013, being arbitrary and illegal.*

*(c) Declare that from 04.12.2001 to 04.03.2013, the applicant was illegally kept out of Army service through an illegal and excessive punishment, though he was always ready and willing to serve and that he is entitled to back wages for the said period and direct the respondents to pay to the applicant back wages with interest for the aforesaid period of 04.12,2001 and to 04.03.2013.*

*(d) Pass and other order or direction which this Hon'ble Tribunal considers just and appropriate under the circumstances of the case.*

### **Facts of the case**

2. The facts germane to the case are that the applicant was commissioned in the Indian Army on 15.12.1984 and thereafter till 05.03.1995, he was posted to various units of the Army. On 06.03.1995 he was posted as Garrison Engineer [Project (GE (P))], Agra and while serving there a disciplinary action was initiated against him, which led to his trial by a General Court Martial (GCM) under the Army Act, 1950.

3. The GCM proceedings commenced on 28.02.2001 and concluded on 12.04.2001, wherein the GCM found the applicant guilty and sentenced him to cashiering and

Rigorous Imprisonment (RI) for one year. The proceedings were subsequently confirmed by the General Officer Commanding-in-Chief (GOC-in-C) Central Command, who remitted the unexpired portion of the RI. The punishment took effect on 04.12.2001. The applicant filed an appeal dated 31.03.2002 against the order, under Section 164 (2) of the Army Act, which was rejected by the Central Government on 08.08.2003.

4. Aggrieved by his trial, conviction and sentence by the GCM, he filed a Writ Petition (Civil) No. 772/2004 before the Hon'ble High Court of Delhi, which was admitted and later in 2009, the said W.P. (C) was transferred to the Principal Bench of this Tribunal and the same was registered as Transferred Application (TA) No. 503/2009, the records of which have been perused by us.

5. Thereafter, the said TA was heard at length and on 02.05.2011, this Tribunal partly allowed the TA on the point of sentence and remanded the matter back to the

respondents 1 and 2 (The Union of India and the Chief of the Army Staff respectively) for their reconsideration of the sentence in light of the mitigating circumstances outlined in the judgment including the sentence awarded to the GE(W) Agra. On 13.09.2012, vide order No C/06300/CC/122/AG/DV-2/494D(AG) the Central Government commuted the applicant's sentence to read as under :

***"11. AND WHEREAS, taking into account the aforesaid facts and circumstance of the case, it has been decided that the sentence awarded to the appellant shall be modified in deference to the aforesaid order of the tribunal.***

***12. NOW THEREFORE, the Central Government, under the provisions of Section 163 (2), read with Section 179 of the Army Act, 1950 hereby commutes the punishment awarded to IC-42744M ex Major Beant Singh to :-***

***(a) to take rank and precedence as if his appointment as substantive Major bore date the 25th day of December 1996.***

***(b) to be severely reprimanded.***

***13. AND PURSUANT to the commuted sentence, the grant of pension to the officer would be dealt separately by IHQ of MoD (Army) under the relevant provisions of Pension Regulations in consultation with concerned branch of Ministry of Defence. The officer shall not be entitled to back wages on principle of 'no work no pay.'***

On 15.02.2013, the Government of India modified this order and directions were given to reinstate the applicant, but

without back wages for the period elapsed between the date of notional reinstatement and the resumption of duties. This order was communicated on the same day by the AG/DV Branch of IHQ of the Ministry of Defence (Army).

6. On 04.03.2013, MS Branch IHQ of Ministry of Defence (Army) issued an immediate posting order assigning the applicant to the Chief Engineer, Jalandhar Zone. On 05.03.2013, the applicant joined the office of the Chief Engineer, Jalandhar Zone, on posting.

7. It is the case of the applicant that since this reinstatement was a continuation of his service, the respondents were required to pay him the entitled pay and allowances for the period from 04.12.2001 to 04.03.2013. However, despite his reinstatement, no pay or allowances for this period were paid to him. On 31.07.2014, the applicant submitted a statutory complaint under Section 27 of the Army Act 1950. The applicant submits that instead of processing

the complaint on its merits, the respondents returned it, citing technical reasons for not being in the correct format.

8. Learned counsel for the applicant submits that on 17.10.2014, the applicant resubmitted the complaint, after meeting the technical requirements. It was further submitted that the statutory complaint was countersigned by the Superior Authority on 29.10.2014, and an advance copy was forwarded to the Complaint and Advisory Board (CAB) at the COAS Secretariat, IHQ of the Ministry of Defence (Army). On attaining the age of 54 years, the applicant superannuated on 31.03.2015 in the rank of Lt Col. However, the statutory complaint had remained undisposed. The applicant submits that after waiting for over ten months without any update on his Statutory Complaint, on 11.09.2015 he sent a reminder requesting for early disposal of his Statutory Complaint which was filed on 17.10.2014 and in response to the said reminder, vide letter dated 14.10.2015 the respondents intimated the applicant that the Statutory Complaint was still

being processed and finally vide order dated 16.11.2015 the Central Government rejected the Statutory Complaint. Aggrieved by the rejection the applicant has instituted the instant OA.

9. It is the case of the applicant that the punishment awarded to the applicant was found to be infirm by this Tribunal as he was awarded a severe sentence as compared to another similarly situated person in the GE (W) who was also found guilty of the same charge and was given a minor punishment and no explanation was given for adopting a discriminatory treatment to the applicant.

10. It was argued on behalf of the applicant that the Respondents themselves found the sentence to be iniquitous and ordered commutation of the sentence and reinstated the applicant back into service and that the commutation of sentence was an admission of the iniquitous and excessive nature of punishment and further reinstatement of the

applicant back to service was the correction of the mistake committed by the respondents. It is further submitted on behalf of the applicant that since it was a resumption of interrupted service which was caused due to the act of the respondents themselves, the applicant is therefore entitled to the pay and allowances for the period 04.12.2001 to 04.03.2013, during which he was illegally kept out of the service.

11. It was further contended on behalf of the applicant that since, the sentence was awarded by a GCM and confirmed by the respondents any interference with such a sentence will automatically, relate back to the date of confirmation of the said award, the net effect of which would be that it would be deemed that the services of the applicant were never terminated and that the applicant had continued to remain in service without any break in his service.

12. Per contra, the respondents on the other hand assert that the subsequent to the commuted sentence, the grant of pension to the officer was dealt by the IHQ of MoD (Army) as per the provisions of the pension regulation in consultation with the concerned branch of the MoD and therefore, the applicant is not entitled to back wages as per the principle of 'no work no pay'. Reliance was further placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Union of India and others v. Vijay Pal Singh*** [(2010) 12 SCC 737; Date of decision: 18.05.2010] and ***A.K. Soumini v. State Bank of Travancore and another*** [(2003) 7 SCC 238; Date of decision: 14.08.2003].

13. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record. The only question which falls for determination is as to whether, on the facts and circumstances of this case, the petitioner is

entitled for pay and allowance for the aforesaid period, when he was out of service ?

14. It is no longer in dispute that the applicant was reinstated in service, after his sentence was commuted, and the applicant had already been given rank and appointment as substantive Major, and subsequently promoted to Lt. Col.

15. However, it is pertinent to refer to the order dated 02.05.2011 of this Tribunal in TA No. 503/2009, wherein on an examination of Para 13 & 14, we find that the appeal against the GCM was partly allowed by this Tribunal to the extent of sentencing, and not on the findings of the GCM on the conviction of the applicant, and thus, the case was remitted back to the Respondents only to the reconsideration of sentence awarded to the applicant, and nowhere, at any point of time the applicant was acquitted either by this Tribunal or by the Respondents, and that the reconsideration

was given effect to by the Respondents solely on the sentence alone.

16. Therefore, the cases relied upon the applicant as in ***Hindustan Tin Works v. Employees*** [(1979) 2SCC 80], the administrative termination was found to be illegal and in ***JN Srivastava V. UoI*** [(1989) 9 SCC 559], the condition of payment of backwages was applicable in cases of acquittal on appeal, but in the case of applicant, neither the conviction was held to be illegal, nor the applicant was acquitted on appeal. Similarly, in ***Surendra Kumar Verma v. CGIT*** [(1980) 4 SCC 883], and ***Ranchhodji Chaturji Thakore v. Superintendent Engineer Gujarat Electricity Board*** [(1996) 11 SCC 603], the administrative termination and disciplinary action were held to be illegal respectively. Thus, we find that the cases relied upon the applicant are different in factual context, and hence, do not help the case of the applicant.

17. On the point under consideration, we find it pertinent to refer to the observations of the Hon'ble Supreme Court in the case of ***Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr.*** [(1989) 2 SCC 541], wherein the Hon'ble Apex Court considered the direction issued by the High Court and held that :

*"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to re-fixation of their present salary on the basis of the notional seniority granted to them in different grade to that their present salary is not less than those who are immediately below them."*

and thus it is held that such person 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 by the Hon'ble Supreme

Court in the case of ***Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha*** [(1990) 3 SCC 472].

18. Similarly, 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].*

*So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for candidate to secure at least a minimum eligibility mark of 68% at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this*

*Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference."*

19. Moreover the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh vs. B.B.S Rathore (CA No. 3041/2010)*** vide Judgment 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.*

*(emphasis supplied)*

20. Concluding, in light of the aforesaid verdicts, we are of the considered view that the applicant is not entitled to back wages from 04.12.2001 to 04.03.2013 due to operation of principle of "no work, no pay" which is further based on the settled principle in service jurisprudence that a person must be paid ordinarily, if he has worked and should not be paid, if he has not worked, and that in the instant case the applicant was prevented from work not by the Respondents, but by charges against him, for which he was convicted and which conviction was upheld by this Tribunal vide order dated 02.05.2011 in TA 503/2009 and which has since attained finality, though only the sentence was remitted by the Respondents. Therefore, there does not exist any equity nor any right in favour of the applicant, qua the prayer made by the applicant which are thus declined.

21. Consequently, the present OA 404 of 2016 being devoid of merit is dismissed.

22. No order as to costs.

Pronounced in the open Court on 09<sup>th</sup> day of August, 2024.

[LT GEN CP MOHANTY]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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