

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

95.

OA 644/2022

Cdr Sudhir Kumar (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Prashant Vaxish, Advocate  
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER  
26.04.2024

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:-

- (a) *To pass an order directing the respondents to regularise the pay of the applicant.*
- (b) *To pass an order directing the respondents to clear the pending pay from the period of 14.12.1997 to 25.12.1998, regularise the pay in terms of pension and other post service entitlements in accordance with the regularized pay along with arrears.*
- (c) *To direct the respondents to regularise the pension of the applicant in consonance with the entire tenure including the period of 14.12.1997- 25.12.1998.*
- (d) *To pass an order to grant compensation for the damages and mental agony faced by the applicant.*

2. The applicant claims pay, allowances and other consequential benefits along with arrears from 14.12.1997

to 25.12.1998 thereafter to regularize his pay in terms of pension and other post other retiral benefits.

3. Facts in nutshell, which are relevant for deciding the issue in question, indicate that the applicant was enrolled into Indian Navy on 31.01.1983 at the post of Sub Lieutenant. Subsequently, he was promoted and posted in INS Chilka, Odisha. The applicant faced a court martial while posted in INS Chilka in the month of November and December, 1997 and based on the outcome of the court martial vide order passed on 31.12.1997 he was dismissed from the Indian Naval Service.

4. Being aggrieved by the aforesaid actions of the respondents, the applicant preferred a statutory appeal under Section 163 of the Navy Act 1957 for Judicial Review assailing the court martial order dated 13.12.1997. On 18.09.1998, the respondent No.2 set aside the court martial order, the sentence and findings recorded by the Court on 13.12.1997 and the Appellate Authority gave directions to conduct the retrial of the proceedings against the applicant.

5. Accordingly, the applicant re-joined the service on 25.12.1998. Thereafter, he underwent the retrial by a fresh court martial, on the same charges, in the month of

February and March, 2001 at Cochin, in this retrial, he was exonerated and acquitted of all the charges made against him and, therefore, vide signal No. DTG151950/Mar and letter dated 02.01.2002 the FOC-in-C reinstated the applicant on the ground that he has been acquitted of all the charges. However, for the period the applicant remained out from the service after his initial dismissal and subsequent acquittal in the retrial, i.e., from 13.12.1997 to 24.12.1998, the entire pay, allowances and other consequential benefits have been disallowed to the applicant and the said period have been treated as “No Work, No Pay”. The applicant claims pay, allowances and other consequential benefits from 13.12.1997 to 24.12.1998 and it is the contention of the applicant that he is entitled to the entire pay, allowances and other consequential benefits for the aforesaid period.

6. A detailed submission has been made and legal arguments have been raised by the applicant and the applicant relies upon the following judgments, which read as under:-

- (i) Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248 as well as Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association Vs. National Textile Corporation Ltd. & Ors. Civil Appeal No. 6260-61 of 2021.

(ii) Paul Antony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679.

(iii) Union of India & Anr. Vs. Charanjit S Gill & Ors., 2000 (5)

SCC 742 Burn & Co. Vs. Their Workmen, AIR 1959 SC 529

(iv) Union of India Vs. K.V. Jankiraman & Ors. 1991 (4) SCC

109 J.N. Srivastava Vs. Union of India, 1998 (9) SCC 559.

in support of his contention to say that once the applicant has been acquitted from all the charges then he is entitled to the entire pay, allowances and consequential benefits. The respondents have denied the same only on the ground that as the applicant was convicted in the first trial the Competent Authority is well within the jurisdiction to decide the issue of grant of pay, allowances and other consequential benefits to the applicant and having decided to treat the period as “No Work No Pay” the applicant is entitled to any further benefits.

7. Having heard learned counsel for the parties, we are of the considered view that in denying the entire pay and allowances to the applicant for the period he was out of service, in view of his involvement in the court martial and after his acquittal is not proper, the applicant is entitled to the entire pay and allowances. The applicant having been acquitted of all the charges leveled against him in the District Court Martial and the competent Authority having directed

for his reinstatement with certain benefits. The intervening period from 13.12.1997 to 24.12.1998, cannot be treated on the basis of "No work No Pay". The applicant was prevented from working for the said period only because of his trial and conviction in the Court Martial and he has been subsequently exonerated after remand for retrial by the Appellate Authority. Once the applicant is acquitted of all the charges in retrial held the entire period of service where the applicant was prevented from working has to be regularized by treating as service for all respect. The principle of "No Work No Pay" cannot be applied in the facts and circumstances of the case for the simple reason that the applicant was prevented from working on account of the action of the respondents which was ultimately found to be unsustainable and no punishment was imposed upon him after he was acquitted on retrial by the court martial authority. The same has become final after the applicant's exoneration on retrial and once the exoneration had attained finality, the applicant was entitled to all consequential benefits as if he was in service during the entire period. Accordingly, we find the action of the respondents in denying pay and allowances to the applicant for the aforesaid period to be unsustainable in law.

9. Therefore, we allow this application and direct that the entire pay and allowances and all consequential benefits accruing to the applicant for the period he remained out of service, i.e., from 13.12.1997 to 24.12.1998 to be paid him within a period of three months with interest @6% per annum from the date due till the payment. Consequently, revision of pension of payment all these benefits are also be granted to the applicant.

10. Keeping in view of the aforesaid, the OA stands disposed of.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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