

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

OA 1303/2017 with MA 973/2017

Ex Sub Maj & Hony Lt (Retd)
Om Pal Singh Chauhan **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Mr. A K Trivedi &
Mr. Yogesh Sharma, Advocates
For Respondents : Mr. R S Chhillar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 973/2017

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **Uoi & Ors** vs **Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh vs Union of India & Ors (Civil Appeal No. 30073/2017)**, the MA 973/2017 is allowed despite

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opposition on behalf of the respondents and the delay in filing the OA 1303/2017 is thus condoned. The MA is disposed of accordingly.

OA 1303/2017

2. The applicant no. JC-370913X Ex Sub Maj and Hony Lt (Retd) Om Pal Singh Chauhan vide the present OA makes the following prayers:-

“(a) Declare the whole action of the respondents from making recoveries from the pay of the applicant at the time of retirement without issuing any show cause of notice and without following a due process of law.

(b) Direct the respondents to refund an amount of Rs. 24,767/- alongwith interest @ 18%, which has been illegally recovered/deducted from the pay of the applicant.

(c) Any other order as may be deemed just and proper in the facts and circumstances of the case.

(d) Award costs”

3. The applicant was enrolled in the Army (Corps of Signals) on 24.03.1981 and was discharged from service with effect from 31.07.2014 (Afternoon) under Army rule 13(3) I. (i) (a) on completion of terms of engagement. As per the averments made in the counter affidavit of the respondents attested on 17.09.2018, the applicant had rendered 33 years and 130 days of service, for which he is in receipt of service

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pension vide PCDA(P) Allahabad PPO No- S/30430/2014 (Army) dated 23rd May 2014 as amended vide corrigendum PPO NO- S/Corr/6500/2014 dated 17.12.2014.

4. The applicant vide Signal Records Posting Order No- 0110430/PJ dated 16.10.2001 was posted as an Instructor to 2 Technical Training Regiment from 24 Infantry Division Signal Regiment with effect from 30.11.2001. The applicant physically reported to 2 Technical Training Regiment on 14.06.2002, as per Annexure R-III to the counter affidavit of the respondents.

5. The occurrences regarding Instructor Allowance were published from 14.06.2002 to July 2006 vide 2 Technical Training Regiment Part II No-3/0841/2015 dated 25.04.2015 and 03/0842/2015 dated 25.04.2015 and adjusted by the PAO (OR) Corps Of Signals. At the final settlement of Account, copy of which is annexed as Annexure R-IV to the counter affidavit of the respondents, admittedly an amount of Rs. 24,767/- (Rupees Twenty Four Thousand Seven Hundred Sixty seven Only) was deducted from the Instructor Allowance to be paid to the applicant for the period from 14.06.2002 to 30.07.2006.

6. The applicant submitted a petition No-370913/OPS/Pers dated 01.08.2014 regarding the wrong deduction of the instructor allowance for the period from 14.06.2002 to 30.07.2006 at the final settlement of account 07/2014 which was received by the Signals Record, which is not refuted by the respondents.

CONTENTIONS RAISED

7. The applicant has submitted that these deductions made from his pay and allowances without issuing any show cause notice to him and without any opportunity of any hearing is wholly illegal and unjust. It has been submitted by the applicant that in response to an RTI made by him, his claim was forwarded to the PAO(ORs) Corps of Signals Jabalpur who responded that the instructor's allowance is not admissible to those personnel who have been employed or appointed as regular faculty in various defence establishments.

8. The applicant has submitted that he was enrolled in the Indian Army as Clerk GD (Clk SD) and not as an Instructor but upon posting to the Training Establishment,

he was directed to perform the duties of an Instructor only for a fixed term. He has thus submitted that his case cannot be considered as that of Regular Faculty as 'Regular Faculty' means those who are appointed as Instructors in the Indian Army.

9. The applicant has submitted further that the factum that he had been paid Instructional allowances for the period from 14-06-2002 to 30-07-2006 fortifies that he was entitled to the payment of the instructional allowances which had been erroneously deducted from his pay and allowances at the time of his retirement.

10. The applicant has also placed on record a Part II Order No. 3/0841/2015 dated 25-04-2015 showing the payment of the Instructional Allowance to the applicant from 14-06-2002 onwards till 30-06-2003, whilst he was Posted as CLK SD Instructor in Trg Estt: 2 TTR in Category B which as scanned reads as under:-

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2 TECH. (R) REGT

Part-II Order No: 30841/2015

Dated: 25 Apr 2015

Continuations: FOUR

Dated: 17 July, 2017

Ser. No.	Army Number, Rank & Name	Description	From Date		Amount/Rate	Period		Other Allowances/Details			Reference Part-II Order Number	Remarks
			To Date			BRA	NRA	(a)	(b)	(c)		
1	2	3	4	5	6	7			8	9		

INSTRUCTIONAL ALLOWANCE

0018	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	14062002 30062002	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -
0019	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	01072002 30092002	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -
0020	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	01102002 02112002	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -
0021	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	28112002 31122002	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -
0072	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	01012003 18032003	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -
0023	JC-370913X SUB (CLKSD) OM PAL SINGH CHAUHAN	INSTAL	18032003 25032003	500						3/0074/001/2002	(a) Instr Appl: CLK SD INSTR (b) Trg Est: 2 TTR (c) Category: B (d) Remarks: -

RESTRICTED

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2 TECH. (R) REGT

Part-II Order No: 30841/2015

Dated: 25 Apr 2015

Continuations: FIVE

Sr. No.	Army Number, Rank & Name	Description	From Date		Amount/Rate	Period		Other Allowances/Details			Reference Part-II Order Number	Remarks
			To Date			BRA	NRA	(a)	(b)	(c)		
1	2	3	4	5	6	7			8	9		

Guarantees:
 1. Certified that the conditions specified in GOI, MoD letter No 1(28)9/V/D(Pay/Services) dated 28 Feb 2000 as amended vide letter No 154/2008/D(Pay/Services) dated 04 Nov 2008 have been fulfilled for the grant of instructional allowance to the PBOR for whom claim made in this Part II Order.
 2. Certified that no claim is made in respect of individuals employed as regular faculty in the training establishment.
 3. Certified that no deputation allowance is claimed in respect of individuals for which instructional allowance is claimed.
 4. Certified that Training Institute/Establishment, to which individuals are deputed, authorized establishments for payment of this allowance.

Typed By: : Hrv P B Thakur
 Entered By: : Hrv Saini KSSS
 Checked By: : Nv S B Bree Kumar J

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11. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **State of Punjab and others etc** versus **Rafiq Masih (White Washer) etc** in Civil Appeal 11527/2014 dated 18.12.2014 whereby vide para 12 thereof it has been observed to the effect:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

It was thus submitted on behalf of the applicant that the deduction made in the final settlement of the applicant of his

dues of an amount of Rs. 24,767/- was wholly unjustified and erroneous.

SUBMISSIONS OF THE RESPONDENTS

12. The respondents with their counter affidavit submitted the response dated 14.11.2015 sent to the applicant by The Record Signals to his application under the Right to Information Act 2005 which states as under:-

*"3. **Reply of Para (a).** Person who have obtained "AI" grading and "BI" grading in UPCLASS courses are eligible for instructor allowance.*

*4. **Reply of Para (b).** Instructor's are posted to training establishments depends on subject to availability of vacancy.*

*5. **Reply of Para (c) to (g).** Information sought pertains to the training establishment in which individual was posted and not to this office."*

13. *Inter alia*, the respondents placed on record a copy of the letter dated 31.08.2017 no. P/JC370913X/FSA/PDC/NER of the OIC records to state to the effect:-

"2. It is intimated that, instructional allces of above name ESM has already been adjusted upto 31 Mar 2004 vide your office letter No PDC/843/JC370913/RTI dt 17 May 2017 and arrears of Rs 1,121/- has issued to the ESM vide DD No 000461821147 dt 13 Jul 2017.

3. Now, the JCO has claimed again for instructional allces upto 30 Jul 2006 vide above OA. Pt II Order of INSTAL already published by 2 TTR upto 30 Jul 2006 vide Pt II Order No 3/0842/2015 dt 25 Apr 2015.

CTC Copy of the same is enclosed herewith for your further necessary action pl.

4. Request accord TOP PRIORITY"

14. The respondents have further submitted that despite their letter dated 31.08.2017 referred to hereinabove from the OIC records to the PAO (OR) Corps of Signals, there has been no response therefrom.

ANALYSIS

15. The respondents vide averments in para 1 of their counter affidavit, stated to the effect:-

"At the time of final settlement of account (Annexed as Annexure R-IV), PAO (OR) corps of Signals deducted a sum of Rs.24,767/- for the period from 14th June 2002 to 30th July 2006. Being PAO(OR) Corps Signals is the competent authority to comment upon the issue, a case was taken up vide Signals Records Letter No P/JC370913X/FSA/PDC/ NER dated 31st August 2017 (Annexed as Annexure R-XIV), but PAO (OR) Corps of Signals is silent and no reply has been received from them. Hence Record Signals is not in a position to further clarify the issue." ,—

Thus, vide order dated 28.08.2024, the respondents were directed to place on record the Appendix to the letter dated 29.02.2020 placed as Annexure A7 by the applicant on the record. The letter dated 29.02.2000 of the Under Secretary to the Government of India no. 1(26)/97/VI/D(Pay/Services) as

issued by the Ministry of Defence to the Chiefs of Three Armed Forces reads to the effect:-

"I am directed to state that the issue regarding certain anomalies arising from the implementation of revised pay scales and allowances consequent to the V CPC award has been considered in the light of the recommendations of a Committee specially constituted on the above subject and it has been decided that the Armed Forces personnel who are deputed on training assignments as Instructors to the training institutes and establishments listed in Appendix to this letter shall be eligible for Instructional Allowance at the following rates:

Category	Rate (Rs. Per month)
Officer	900
JCOs & Equivalent	500
NCOs & Equivalent	300

2. In the case of personnel of the Army Education Corps, the Allowance will be restricted only to those appointed as Instructors in specialised Service subjects in Category 'A' training establishments. Those employed or appointed as regular faculty in various defence training establishments will not be entitled to this allowance.

3. Personnel in receipt of the Instructional Allowance will not however be entitled to any Deputation (Duty) Allowance in addition.

4. The relevant Rules in Pay and Allowances Regulations for Army, Navy and Air Force will be suitably amended in due course.

5. This will take effect from the date of issue of this letter.

6. This issues with the concurrence of the Ministry of Defence (Finance) vide their U.O.No1/77/99-PA, dated 23-2-2000."

16. The said Appendix to the letter dated 29.02.2000 was submitted by the respondents on the record on 23.10.2024 which indicates that at serial no 34 thereof 'All Regimental Training Centres' of the Army are enlisted in the List of Training Establishments. Thus, clearly the applicant was entitled to the Instructor's allowance for the period from 14-06-2002 to 30-07-2006 which he has been paid upto 31.03.2004 by the respondents. The balance due to him is for the period 31.03.2004 to 30.07.2006.

17. This is so in as much as Annexure A1, the posting order of the applicant placed on record categorically reads to the effect:-

Ser no.	Army no, Rank, Trade and name	Unit		Date of reporting to new unit by
		From	To	
01.	JC-370913X, Nb Sub (Clk GD) Om Pal Singh Chauhan (For instr duties)	24 Inf Div Sig Regt (AREN) C/O 56 APO	2 TTR, 1 STC Jabalpur (MP)	30 Nov 2001

(emphasis supplied)

CONCLUSION

18. In view of our analysis hereinabove, the respondents are directed to make the balance payment on account of Instructor Allowance for the period 31st March 2004 to 30th July 2006 which was authorized to him vide two Part II Orders 03/0841/2015 dated 25.04.2015 and 03/0842/2015 dated 25.04.2015 and is also due to him as per rules. The payment be made within three months from the date of this order. However, the arrears of the grant of interest shall commence to run from a period of three years prior to the institution of the OA which was instituted on 20.07.2017. In the event of the payment of the amount directed hereinabove not being paid within a period of three months from the date of this order, the applicant shall be entitled to interest @ 6% p.a. till the payment is made.

Pronounced in the open Court on 10 day of January, 2025.

[RASHIKA CHAUBE]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP