

**COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 1090/2019**

**Smt. Sujata Barua Wd of TJ 6624-H Ex Nb Sub  
Ashok Kumar Barua ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents**

**For Applicant : Mr. S M Dalal, Advocate  
For Respondents: Mr. Avdhesh Kumar Singh, Advocate**

**CORAM**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

On behalf of the applicant, it is submitted by the learned counsel for the applicant whose Vakalatnama is on the record at page 39 of the OA that in prayer 8(b) which reads to the effect:

*“(b) Direct the respondents to pay the salary including all allowances to the applicant for the period 15 May 2015 to 31 Mar*

*2016 during which period the applicant was made to perform duty with the respondents."*

the period specified therein as **15 May 2015 to 31 Mar 2016** be read as **15 Dec 2015 to 16 May 2016** as indicated vide Annexure A-1 placed at page 14 vide the Impugned Order No.TJ 6624/SR/NERL-II dated 08.08.2018. The said prayer is allowed and the period stipulated in prayer 8(b) shall read as:

**15 Dec 2015 to 16 May 2016**

2. Likewise, in prayer 8(c) the date mentioned as 15 May 2015 accordingly shall read as 15 Dec. 2015.

3. The applicant-Wd of **TJ 6624-H Ex Nb SubAshok Kumar Barua** vide the present OA makes the following amended prayers:

- a) *Quash impugned order dated 08 Aug 2018 being perverse, arbitrary and illegal.*
- b) *Direct the respondents to pay the salary including all allowances to the applicant for the period 15 Dec 2015 to 16 May 2016 during which period the husband of the applicant was made to perform duty with the respondents.*

- c) *Direct the respondents to pay penal interest @ 18% p.a. over the entire amount of salary from 15 Dec 2015 till the date of actual payment.*
- d) *Award exemplary costs in favour of the applicant against the respondents for causing harassment and mental agony and financial distress to the applicant.*
- e) *Pass any other or further order(s), which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case."*

#### **FACTS ON RECORD**

4. The late husband of the applicant was enrolled in the 133 Infantry Battalion (TA) Ecological, DOGRA during the recruitment rally for ex-Servicemen held at 133 Infantry Battalion (TA) Ecological, DOGRA with effect from 28<sup>th</sup> October, 2015 to 29<sup>th</sup> October, 2015 and the 133 Infantry Battalion (TA) Ecological, DOGRA sent a call up letter to the husband of the applicant vide letter No.1416/A dated 14<sup>th</sup> December, 2015 and in pursuance thereto, the husband of the applicant reported to 133 Infantry Battalion(TA), Ecological DOGRA in the afternoon of 14<sup>th</sup> December, 2015. Thereafter, the husband of the applicant was sent to temporary duty to 150 Infantry Battalion (TA) Punjab on

17<sup>th</sup> December, 2015 (AN) for performing the duties of Band Master of TA Fusion Band stationed at Delhi vide 133 Infantry Battalion (TA), Ecological DOGRA Movement Order No.1421/A dated 17<sup>th</sup> December, 2015.

5. Further, the husband of the applicant under the provisions of Appendix VIII 'B' of Territorial Army Regulations, 1948 (Revised Edition 1976) was selected for the grant of direct JCO commission in the Territorial Army in the rank of Nb Subedar in the existing vacancy vide IHQ of MoD (Army) vide letter No.63903/DJC/GS/TA-3 dated 11<sup>th</sup> April, 2016 under which the Commanding Officer 133 Infantry Battalion (TA), Ecological DOGRA was advised to issue necessary call up notice to the husband of the applicant for training within the then current training year. The embodiment of the husband of the applicant was published by 133 Infantry Battalion (TA), Ecological DOGRA vide their Part II Order No.0/0113/2016 dated 19<sup>th</sup> April, 2016 showing the date of embodiment as 15<sup>th</sup> December, 2015.

6. Further, under the provisions of the Territorial Army Regulations, 1948 (Revised Edition 1976), the grant of direct JCO Commission to the husband of the applicant in 133 Infantry Battalion (TA), Ecological DOGRA in the rank of Naib Subedar was approved by the Additional Directorate General of Territorial Army vide IHQ of MoD (Army) Letter No. 63903/DJC/GS/TA-3 dated 31<sup>st</sup> May, 2016 and on the allotment of personal No.TJ-006624H, the date of enrolment of the husband of the applicant as 15<sup>th</sup> December, 2015 was published by 133 Infantry Battalion (TA), Ecological DOGRA vide Part II Order No.0/0170/2016 dated 22<sup>nd</sup> August, 2016 and later on the same was cancelled by 133 Infantry Battalion (TA), Ecological DOGRA vide Part II Order No.0/0179/0001/2016 dated 2<sup>nd</sup> September, 2016 and was re-published vide Part II Order No.0//0179/0002/2016 dated 2<sup>nd</sup> September, 2016 by showing the date of enrolment of the husband of the applicant as 31<sup>st</sup> May, 2016. Later on, the husband of the applicant was discharged from Territorial Army service with effect from 31<sup>st</sup> December, 2017

under Territorial Army Act Rule 16(ii) of Territorial Army Regulations, 1948 at his own request.

7. The husband of the applicant was, however, not paid the salary and allowances for the period of six months from 15.12.2015 to 16.05.2016 against which the husband of the applicant had submitted a representation dated 12.07.2018 to the Army Authorities/ADG(TA), Army Headquarters, New Delhi to which the respondents replied vide impugned letter No.TJ-6624/SR/NERL-II dated 08.08.2018 to the effect:

**"NON PAYMENT OF PAY AND PENSION**

1. *Reference your petition dated Nil received through IHQ of MoD(Army) letter No.54246/Petn/133TA/GS/TA-3 dated 12 Jul 2018.*
2. *The case has been examined in detail and it is intimated that as per your service documents maintained by this office, you were enrolled on 31 May, 2016 in 133 Infantry Battalion (TA), Ecological DOGRA and discharged from service on 31 Dec 2017 under TA Act Rule 16(ii) of TA Regulations 1948(Revised Edition 1976) at your own request. Therefore, your claim for payment of six month's pay from 15 Dec 2016 to 16 May 2016 is not valid.*
3. *This is for your information please."*

## ANALYSIS

8. Significantly, the respondents vide Para 4.2 to 4.4 of their counter affidavit dated 09.12.2019 have stated to the effect that the applicant was enrolled in 133 Infantry Battalion (TA), Ecological DOGRA during the recruitment rally for Ex-servicemen held at 133 Infantry Battalion (TA), Ecological DOGRA with effect from 28 Oct 2015 to 29 Oct 2015 and the husband of the applicant reported to 133 Infantry Battalion (TA), Ecological DOGRA on 14 Dec 2015 (AN) and thereafter the applicant was sent on temporary duty to 150 Infantry Battalion (TA) Punjab on 17 Dec 2015 (AN) for performing the duties of Band Master of TA Fusion Band stationed at Delhi vide 133 Infantry Battalion (TA), Ecological DOGRA Movement Order No.1421/A dated 17 Dec 2015 and the embodiment of the husband of the applicant was published by 133 Infantry Battalion (TA), Ecological DOGRA vide Part II Order No. 0/0113/2016 dated 19 April, 2016 showing the date of embodiment of the

husband of the applicant as 15 December, 2015. Under the provisions of the Territorial Army Regulations, 1948 (Revised Edition 1976), the husband of the applicant was granted the direct JCO Commission in 133 Infantry Battalion (TA), Ecological DOGRA in the rank of Nb Sub duly approved by the Additional Directorate General of Territorial Army vide IHQ of MoD (Army) Letter No.63903/DJC/GS/TA-3 dated 31 May, 2016 and on the allotment of personal No.TJ-006624H, the date of enrolment of the husband of the applicant as 15<sup>th</sup> December, 2015 was published by 133 Infantry Battalion(TA), Ecological DOGRA vide Part II Order No.0/0170/2016 dated 22 August, 2016 and later on the same was cancelled by 133 Infantry Battalion (TA), Ecological DOGRA vide Part II Order No.0/0179/0001/2016 dated 2<sup>nd</sup> September, 2016 and was re-published vide Part II Order No.0/0179/0002/2016 dated 2<sup>nd</sup> September, 2016 showing the date of his enrolment as 31<sup>st</sup> May, 2016.

9. Placed on record is Annexure A-4 to the OA, the Movement Order of the husband of the applicant showing his departure date

and time as 17.12.2015(AN) which as scanned and reads to the effect:

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RESTRICTED Reverted on 19-12-15 **Annexure - A-4**

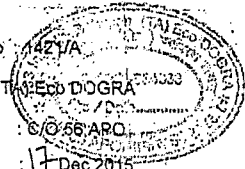
Mob Nos :-  
Adjt - 9805008062  
NSA - 9805008064

**"YATRA KE DAURAN AISI HARKET NA KAREN JISSE APNE DESH AUR UNIT KA APANA HO ARMY AUR APNI IZZAT KAYAM RAKHEN, YATRA KE DAURAN KISI ANJAN VYAKTI/JAGAH SE KHANE/PINE KA SAMAN NA LEIN, YEH JEHREELA HO SAKTA HAI"**

**MOVEMENT ORDER**

1. TJ- NYA Rank Nb Sub Name Ashok Kumar Barua of 133 Inf Bn (TA) Eco DOGRA is proceeding on TD to 150 Inf Bn (TA) Punjab
2. Departure date & time : 17 Dec 2015 (FA/AN)
3. Route via MR Destination : Known to the JCO.
4. Authority : This mov order.
5. Remarks : For official purpose.
6. On arrival at (Station) Destination the party will report to : Adjt.
7. SOS wef \_\_\_\_\_ & SORS \_\_\_\_\_ Dec 2015 and rationed up to \_\_\_\_\_ Dec 2015.
8. Military matters will not be discussed with unauthorized persons.
9. Anti-malaria precaution order the provision of AO 782/64 and 504/67 have been explained to the party and will be observed strictly.
10. In case of any difficulty enroute the indi will report to MCO/CMP or if neither is available then to the stn master, producing this move order as authority.

Case file No : 1421/A  
133 Inf Bn (TA) **Eco DOGRA**  
Station : C/O-56 ARD  
Dated : 17 Dec 2015  
Distr -



*(Signature)*  
(Jitendra Singh)  
Capt  
Adjt.  
for CO

- 1 JCO concerned
- 2 Office Copy.

150 Inf Bn (TA) PUNJAB  
150 Inf Bn (TA) PUNJAB

RESTRICTED

10. Placed on record of the OA as Annexure R-9 to the counter affidavit of the respondents, is a copy of letter No.1437/A dated 27.08.2019 of 133 Infantry Battalion(TA), Ecological DOGRA addressed to the Legal Cell, Records The Dogra Regiment vide which para 3(a) (b) (c) is to the effect:

*"3. Comments on the following docus is as under:-*

*(a) Letter No.1416/A dated 14 Dec 2015. Board proceeding after finalization of recruitment was submitted to TA Gp HQ Western Comd on 08 Dec 2015 vide 1416/A dated 08 Dec 2015. As per directions of TA Dte, this unit sent call up letter to TJ-6624H Ex Nb Sub Ashok Kumar Barua and he reported to this unit on 14 Dec 2015 and was taken on unit strength on the same day. Col Vinay Handa, then Commanding Officer letter No.112080/Est/Gen dated 05 Apr 2019 is attached as ready reference.*

*(b) Part II Order No.0/0113/2016 dated 19 Apr 2015. On joining the casualty was manually published vide DO Part II Order 0/0113/2016 dated 19 Apr 2015 and showing his date of joining as 15 Dec 2015 for allotment of TJ No. to the indl. On receipt of TJ No. DO Part II Order No.0/0170/0001/2016 dated 22 Aug 2016 was published through HRMS showing his date of joining as 15 Dec 2015 which was later cancelled vide this unit*

*DO Part II Order.No.0/0179/0002/2016 dated 02 Sep 2016 and showing his date of joining as 31 May 2016.*

*(c) Movement Order No.1421/A dated 17 Dec 2015. JCO was sent on temp duty to 150 Inf Bn (TA) PUNJAB on 17 Dec 2015(AN). The urgency was expressed by TA Dte for the requirement of the said JCO for performing the duties of Band Master of TA Fusion Band stationed at Delhi. Copy of letter No.112080/Est/Gen dated 05 Apr 2019 received from then Commanding Officer Col Vinay Handa is enclosed for your ready reference."*

11. The same is a clear indicator that the applicant's late husband's Part II Order in terms of para 3(a)(b)(c) of letter No.1437/A dated 27.08.2019 was published showing his joining date as 15.12.2015 for allotment of TJ No. to the individual which was cancelled vide DO Part II Order No.0/0179/0002.2015 dated 20.09.2016 showing his date of joining as 31 May 2016 in terms of para (3(c). **Para 3(c) of the said letter indicates that the JCO was sent on temp duty to 150 Inf Bn(TA) PUNJAB on 17.12.2015(AN) as the urgency was expressed by TA Dte for the requirement of the said JCO for performing duties of Band Master of the TA Fusion Band stationed at Delhi.**

12. The counter affidavit of the respondents does not aver to the effect that the applicant was not in service of the respondents for the period from 15.12.2015 to 16.05.2016 and rather makes it apparent that the applicant had reported to 133 Infantry Battalion(TA), Ecological DOGRA on 14.12.2015(AN) as averred in the reply vide para 4.2 to 4.4 of the counter affidavit of the respondents placed on record at Page 46 which indicates that the applicant was temporarily sent to 150 Infantry Battalion(TA) Punjab on 17.12.2025(AN) for duty duties of Band Master of TA Fusion Band stationed at Delhi vide 133 Infantry Battalion(TA), Ecological DOGRA Movement Order No.1421/A dated 17.12.2025 and that the embodiment of the applicant was published by 133 Infantry Battalion(TA), Ecological DOGRA Movement order No.1421/A dated 17 Dec.2015. and that the embodiment of the applicant was published by 133 Infantry Battalion(TA), Ecological DOGRA vide Part II Order No.0/0113/2016 dated 19.04.2016 showing his date of embodiment as 15 12.2025 but that the said Part II Order was

cancelled by 133 Infantry Battalion(TA), Ecological DOGRA vide 133 Infantry Battalion(TA), Ecological DOGRA vide Part II Order No.0/0179/0001/2016 dated 02.09.20016 and re-published vide Part II Order No.0/0179/0002/2016 dated 02.09.2016 showing his date of enrolment as 31.05.2016. The applicant was thereafter discharged from Territorial Army service on 31.12.2017 under the Territorial Army Act Rule 16(ii) of Territorial Army Regulations, 1948(Revised edition 1976) at his own request according to the respondents and as per paras 4.6 to 4.7 of the counter affidavit of the respondents in response to the OA, the applicant is stated to be not entitled for the pay and allowances for the period from 15.12.2015 to 30.05.2016..

13. Apparently, the late husband of the applicant had complied with the movement order as per Annexure according to the respondents A-4 and reported for duty as stated in the counter affidavit of the respondents and it is the respondents who had cancelled his movement order vide Annexure R-3 placed on record. The respondents, however, do not state that the applicant

was not in service of the respondents-133 Infantry Battalion(TA), Ecological DOGRA during the said period of 15.12.2015 to 16.05.2016 but have categorically stated that he was discharged from TA wef 31.12.2017 under the Territorial Army Act Rule 16(ii) of Territorial Army Regulations, 1948 at his own request.

14. The averments made in paras 4.4 & 4.5 of the OA state that on being sent on temporary duty to 150 Bn TA(Punjab) vide 133 Infantry Battalion(TA), Ecological DOGRA Movement Order dated 17.12.2015 Annexure A-4 hereinabove and on arrival in 150 Bn TA(Punjab) on 18.12.2015, the husband of the applicant was appointed as Band Master and started to perform his duties accordingly. Vide Para 4.5 of the OA, the applicant has submitted to the effect:

*"4.5 That while on the strength of 150 Bn (TA) Punjab the applicant was sent on tour/TD as Band Master of TA Fusion Band. This Band, led by the husband of the applicant had participated in the following events:*

- (i) 15 Jan 2016-performed at Army House, New Delhi*
- (ii) 26 Jan 2016-participated in Republic Day Parade/Functions*
- (iii) 29 Jan 2016-participated in Band Display on the occasions of Beating the Retreat.*

- (iv) Feb 2016-performed on the occasion of Northern Command Raising Day at Udhampur
- (v) Mar 2016- Performed at HQ 21 Corps(Bhopal)
- (vi) Apr 2016 -Performed at Chandigarh on the occasion of Western Command Raising Day. Rel. This Hon'ble Tribunal may pleased to direct the respondents to file all relevant documents for temporary duty move of the applicant alongwith other band personnel. After many such tours, the applicant was directed to return to 133 Infantry Battalion(TA), Ecological DOGRA on 15 May 2016.

15. Significantly, the respondents have not chosen to file any response to the averments made in Para 4.5 of the OA and the parawise reply given by the respondents shows that after the respondents have given the response to paras 4.2. to 4.4 of the OA vide the counter affidavit, the response given by the respondents is to Para 4.6 and 4.7 of the OA and thus the respondents do not refute the participation of the husband of the applicant in the events as stated by him vide Para 4.5 of the OA. Rule 12(2) of the Armed Forces Tribunal(Procedure) Rules, 2008 reads to the effect:

*"That in the reply filed under sub-rule(1) by the respondents in terms of Rule 12(2) of the Armed Forces Tribunal(Procedure) Rules 2008, the respondents shall specifically admit, deny or explain the facts stated by the applicant in his application and may also state that such additional facts as may be found necessary for the just decision of the case. It shall be signed and verified as a written statement by the respondents or any other person duly authorized by*

*him in writing in the same manner as provided for in Order VI, rule 15 of the Code of Civil Procedure 1908(5 of 1908).*

Thus, the absence of any denial by the respondents to refute the averments made in Para 4.5 of the OA make it apparent that the averments made in the OA and the participation of husband of the applicant as stated therein has to be deemed to be admitted.

16. The respondents during the course of the hearing of the present OA did not deny that the applicant was not in the service of the respondents for the period from 15.12.2015 to 16.05.2016 and thus apparently late husband of the applicant had to be paid the salary and allowances for the period from 15.12.2015 to 16.05.2016 which the applicant as his legal representative is entitled to.

### CONCLUSION

19. Thus, the OA 1090/2019 is allowed as under:

(a) Taking into account that the applicant's late husband had admittedly moved a representation dated 01.07.2018 to the respondents to make the payment of his salary, the respondents are directed to pay to the applicant the salary due to her late

husband from 15.12.2015 within a period of three months from the date of this order with interest @ 8% p.a. from the date 15.12.2015 onwards, and

(b) In the event of any default of compliance of the directions hereinabove, the respondents shall also be liable to make payment of interest @ 8% p.a. till the date of payment on the total unpaid amount.

(c) There is no order as to costs.

Pronounced in the open Court on this 30th day of March, 2026.

**(REAR ADMIRAL DHIREN VIG)**  
**MEMBER(A)**

**(JUSTICE ANU MALHOTRA)**  
**MEMBER(J)**

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