

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
O.A. No. 63 of 2014

THIS 13th APRIL, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

**Subedar Rajendra Kumar Singh
Village and Post office Ardewa
District Chhapra
Bihar – 841 424.**

Versus

RESPONDENT(S)

1. **Union of India,**
Through Secretary
Ministry of Defence
New Delhi – 110 011.
2. **The Chief of Army Staff,**
Through Adjutant General(ADGPS)
IHQ of MoD (Army)
New Delhi – 110 011.
3. **The Senior Records Officer**
ASC Records
Bangalore – 560 007.

For the applicant (s)
For the respondent(s)

Mr. K. Ramesh with Mr. S.K.Choudhury, Advocates.
Mr. Sauvik Nandy, Advocate

ORDER

PER HON'BLE JUSTICE N.K. AGARWAL, MEMBER (JUDICIAL)

1. This OA has been filed by the applicant under section 14 of the Armed Forces Tribunal Act, 2007, claiming notional reinstatement and consequential benefits, salaries and retiral dues. The facts, in brief, necessary to resolve the controversy in the matter are as follows :

2. The applicant was enrolled on 17.2.1981 as a Sepoy in the Army Services Corps as a clerk. In view of onset of diabetes in April 2006 he was downgraded in permanent low medical category. The applicant was discharged from military service on 31.8.2008 being a low Medical category in terms of Army HQ policy letter dated 12.4.2007 whereby an order has been passed by the Chief of Army Staff directing discharge of all the personnel in low medical category without holding the IMB. The aforesaid policy

letter was quashed and set aside by the Hon'ble Delhi High Court vide its judgment dated 20.11.2008. On the basis of the above judgment the applicant was directed to be reinstated back in military service. He deposited the entire amounts of Rs. 6 Lac received by him after he was discharged in August 2008. However, vide ASC Records (C) letter dated 11.2.2009 PCDA(P) Allahabad was informed that the applicant will be completing his normal term of engagement on 28.2.2009 and, therefore, not entitled for further service and the amount deposited by him is required to be refunded to the applicant. It appears that on the same day, i.e. 11.2.2009 one unwillingness certificate was also obtained by the respondents from the applicant. Thereafter, the applicant was not reinstated in his service and the amount of about Rs. 6 Lac deposited by the applicant was refunded by the respondents after a period of 6/7 months.

3. By pressing only the relief of notional reinstatement in service till the date of applicant's retirement i.e. 28.11.2009 and for arrears of salary along with consequential benefits, Mr. K. Ramesh, learned counsel for the applicant would submit that the applicant had already deposited the amount in terms of the Hon'ble Delhi High Court judgment, reported to the unit for his reinstatement and only about 15/16 days were left for his retirement by completing which the applicant becomes entitled for the salary of entire period commencing from 31.8.2008 upto the date of retirement. Therefore, on the face it is clear that the unwillingness certificate has been obtained by applying the pressure tactics, inasmuch as, they themselves have decided vide letter dated 11.2.2009 that the applicant is not entitled for reinstatement which on the face and in the light of the judgment of Hon'ble Delhi High Court is incorrect and it appears that just to implement the aforesaid order of ASC Records, the unwillingness certificate has been obtained from the applicant.

4. On the other hand, the learned counsel for the respondents would contend that the applicant has himself shown his unwillingness to serve further till date of retirement and in view of above he has not been reinstated and, therefore, the applicant's application falls devoid of merits.

5. We have heard the counsel for the parties and perused the records. From the perusal of records, it is clear as crystal that by serving Army for a period of 15 years 16 days the applicant would have been entitled for the entire arrears of salaries and also the benefit of consequent increase in his retiral dues and pension ever since 31.8.2008. He had also refunded the amount of dues paid by the respondents. So, it does not stand to the reason that in such circumstances he will execute any such unwillingness certificate. On the other hand, the respondents' letter dated 11.2.2009 filed by the respondents themselves discloses their mind set according to which the applicant was not entitled for further service, which admittedly is not correct. Therefore, it is difficult for us to believe that in such circumstances the applicant would execute such unwillingness certificate which is detrimental to his interest. It is also clear that he was not in need of money at that point of time, inasmuch as, he himself deposited the amount, approached the

respondents for his reinstatement and the same has been refunded by the respondents to the applicant after 6/7 months.

6. Considering the above aspect of the matter, in our considered opinion the applicant has not been reinstated by the respondents on the basis of ASC Records (C) letter dated 11.2.2009 and not on the basis of applicant's alleged unwillingness certificate and, therefore, the applicant is entitled for his notional reinstatement.

7. For the reasons mentioned above, the application is allowed in part. The respondents are directed to reinstate the applicant notionally, pay him all the arrear of salaries with 6% interest from 31.8.2008 till the date of his retirement and also the retiral dues calculating accordingly. However, the respondents are entitled to adjust the amount already paid by them while discharging the applicant. The entire exercise shall be completed within a period of three months from the date of receipt of a plain copy of this order. No order as to costs.

8. The application thus stands disposed of.

9. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to the parties after observing requisite formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE N.K. AGARWAL)
Member (Judicial)