

(2020) 01 AFT CK 0066

In the Armed Forces Tribunal

Case No : Miscellaneous Application No. 1443 Of 2017, T.A No. 484 Of 2010

Gautam Sanyal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Army Act, 1950 — Section 52(f)

Citation : (2020) 01 AFT CK 0066

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : I.S. Singh, K.S. Bhati

Final Decision : Dismissed

Judgement

1. Aggrieved by the denial of back wages by the respondents quoting the principle of No work No Pay despite this Tribunal (Principal Bench), vide its order dated 19.04.2011, having acquitted him of most charges and converted his sentence of 'cashiering and rigorous imprisonment of one year to the sentence of period of imprisonment already undergone' as of that date, the petitioner has filed this application seeking back wages as well as promotion to rank of Lt Colonel (Time Scale).

2. Heard the learned counsels on both sides and perused the pleadings on record.

3 Facts germane to the case are that the petitioner was commissioned as a Short Service Officer on 12.07.1967, and granted Permanent Commission thereafter with date of seniority 15.06.1969. The petitioner was tried by General Court Martial for alleged acts of financial irregularities while functioning as a Garrison Engineer (GE) and, on being found guilty of the charges, was sentenced to be cashiered from service and to suffer RI for

one year. He filed WP 1490/1987 in the Delhi High Court alleging irregularities in the GCM, which was disposed off on 17.07.1989 with liberty to

approach the Court in case his grievances continued after the disposal of his post confirmation petition (PCP). Upon rejection of the PCP the

petitioner filed another WP 1652/1990 against the findings and sentence of the GCM and also sought pension and retiral benefits. The said WP was

transferred to AFT (PB), New Delhi as T.A.No 484/2010. AFT (PB), New Delhi vide order dated 19.04.2011. upheld the conviction of the petitioner

on First Charge under Army Act Section 52 (f) and acquitted the petitioner of the remaining charges (charges two to six). Accordingly, this Tribunal

converted the sentence of 'cashiering and RI for one year' to the sentence of imprisonment the petitioner has already undergone. The respondents had

filed an appeal against the AFT (PB), New Delhi order which the Hon'ble Supreme Court dismissed on 01.02 2013. Consequently, the respondents

had issued the following implementation order:-

C/00982/3/AG/DV-5 dated 09 Jun 2014

ADJUTANT GENERAL'S BRANCH (ADDL DTE GEN OF DISCP AND VIG)

IMPLEMENTATION OF THE ORDERS DATED 19 APRIL 2011 PASSED BY HON'BLE ARMED FORCES TRIBUNAL (PRINCIPAL

BENCH), NEW DELHI IN TA NO 484 OF 2010 ARISING OUT OF CWP NO. 1652 OF 1990 FILED BY IC-23618L EX MAJ GAUTAM

SANYAL VS U01 AND OTHERS

1. Under the powers delegated to him vide Govt of India letter No. MOD/IC/1027/32/AS(J)/6864/2006 dated 01 September 2006, the

Adjutant General has accorded approval to implement the Honble Armed Forces Tribunal (Principal Bench), New Delhi Order dated 19

April 2011 passed in TA No 484 of 2010 arising out of CWP No 1652 of 1990 filed by IC-23618L Ex Maj Gautam Sanyal Vs. U01 and

Others in the following manner:-

(a) The sentence of ""Cashiering and Rigorous Imprisonment for one year"" be modified to the sentence of ""Imprisonment for one year

which the Petitioner had already undergone.

(b) The Petitioner will be notionally reinstated in service with effect from the date of promulgation of sentence i.e. 31 October 1988 and

would be deemed retired from service in the normal course.

(c) The Petitioner will be entitled to consequential promotions and retiral benefits, as applicable.

2. Accordingly. MS Branch and AG/PS will take necessary action for implementation of the Order of the Hon'ble Armed Forces Tribunal

(Principal Bench), New Delhi, dated 19 April 2011.

3. This implementation Order supersedes earlier Order issued vide Note No. C/06290/VVC/18/AG/DV-2 dated 02 May 2013 on the said

case.

4. It is the petitioner's case that the above implementation order has not been executed fully in letter and spirit in that the petitioner has not been paid

back wages for the period from 31.10.1988 to 31.12.1996 and he has not been granted promotion to the rank of Lt Colonel (Time Scale). Hence this

M.A.

5. Learned counsel for the petitioner has placed reliance on the order dated 28.03.2019 of this Tribunal (PB) in the matter of Ex. Gunner Manmohan

Singh Vs. Union of India and others (OA No. 137 of 2018) wherein the petitioner was paid back wages during the period from his dismissal from

service upto the date of his discharge (except for the period spent in civil jail) after his conviction by the Sessions Judge, Gurgaon was set aside by the

Punjab and Haryana High Court in appeal by acquitting the petitioner and granting him benefits of such acquittal.

6. Reliance is also placed on the judgment dated 02.07.2013 of the Hon'ble Apex Court in the matter of State of Uttar Pradesh Vs. Dayanand

Chakrawarty and Others (2013) 7SCC 595) wherein, at Para 48, the Court had observed as under:-

We have observed that the principal of 'no pay no work' is not applicable to the employees who were guided by specific rules like Leave

Rules, etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule

relating to absence from duty. If an employee is prevented by the employer from performing his duties. the employee cannot be blamed for

having not worked, and the principle of ""no pay no work"" shall not be applicable to such employee,

7. Learned counsel for the petitioner has submitted that as the petitioner had

completed more than 29 years of service, viz. over 21 years, which is the minimum service for mandatory promotion as Lt Colonel (TS), he should have been promoted to that rank in keeping with Para 1(c) of the Implementation Order.

8. Per contra, learned counsel for the respondents has contended that though the petitioner has been granted pension, however, based on the principle

of no work no pay', the petitioner was not entitled to pay and allowances for the period from 31.10.1988 (date of dismissal) to 31.12.1996 (Date of

notional retirement from service), which is the period when he was not in service. Reliance is placed on the judgment dated 25.07.2007 of the Honble

Apex Court in the matter of UT of Chandigarh Vs. Brijmohan Kaur (Civil Appeal No (S). 5898 of 2006) to contend that it is a settled law that in case

a person does not discharge any duty, the principle of no work no pay' would be applicable. Counsel has averred that the petitioner cannot take

support of the order in the ex Gnr Manmohan Singh case (supra) for seeking pay for the period when he did not serve on account of his dismissal, as

his was not a case of 'clean acquittal'. AFT (PB), New Delhi vide its order dated 19.04.2011 had upheld the conviction of the petitioner on the First

Charge under Army Act Section 52 (f) while acquitting the petitioner of the remaining five charges. Thus the Tribunal's order did not exonerate the

petitioner of wrongdoing but only ruled that the punishment awarded was disproportionate to the offence. As the petitioner did not work during the

period and he was not eligible to be paid his salary for the impugned period, he was not paid his back wages.

9. With regard to the petitioner's plea for grant of promotion to the rank of Lt Colonel (TS), the respondents have contended that all Majors with 21

years of service do not automatically get promoted as Lt Colonel (TS). The officers who meet the service criteria are put through a Selection Board to

confirm that there is nothing coming in the way of their promotion before promotion orders are issued. Accordingly, the petitioner was given due

consideration for grant of substantive rank of Lt Colonel (TS) but was not empanelled as he did not satisfy the discipline criteria as laid down in

Appendix to Army Order (AO) 12/87. Para 6 of the Appendix reads as follows:-

6. Discipline. The gravity and nature of the offence will be examined and promotions will not be recommended if the disciplinary case

involves moral turpitude, gross negligence, acts of cowardice or unofficer like behavior.

10. Hence, he was not promoted. Learned counsel has asserted that the AFT (PB), New Delhi had ordered notional reinstatement for completion of

service to enable payment of pension, which has been implemented. However, the petitioner can neither be paid back wages or granted promotion as

Lt Colonel (TS) for the aforesaid reasons.

Consideration

11. We have given careful consideration to the arguments on both sides and find that the primary issue before us is whether the petitioner, who has

been given partial relief by the Tribunal in terms of being acquitted in five charges (out of six charges for which he had been found guilty by GCM),

should be paid back wages for the period from the date from which he was cashiered from service (31.10.1988) to the date of his superannuation

after notional reinstatement in service (31.12.1996) and whether he should be granted promotion to the rank of Lt Colonel (TS) as he had served for

more than the minimum qualifying service of 21 years as per the orders of the Tribunal.

12. The petitioner has contended that the principle of 'no work no pay does not apply in his case and has referred to the Ex Gnr Manmohan Singh case

(supra) and the Dayanand Chakrawarty case (supra) in support of his prayer. On the other hand the respondents have contended that these cases are

clearly distinguishable from the circumstances of the petitioner's case as in the Ex Gnr Manmohan case, the petitioner had been fully acquitted.

whereas in the petitioner's case, he was only partially acquitted, and thus, remains convicted of one charge.

13. The petitioner has also contended that, having completed 21 years of qualifying service, and having been exonerated by this Tribunal, he should be

granted his promotion as Lt Colonel (TS) accordingly. On the other hand, the respondents have contended that the Selection Board for Lt Colonel

(TS) checks out the discipline criteria before clearing officers for promotion. The petitioner was not empanelled for promotion as he did not meet the

discipline criteria as set out in Para 6 of Appendix to AO 12/87, as he had not been granted a clean acquittal, and thus, remained convicted by GCM of

one charge.

14. In light of the arguments before us, we are in agreement with the respondents that the principle of 'no work no pay would be relevant in case of the applicant for the period from 31.10.1988 to 31.12.1996 as his is not a case of clean acquittal and thus. his plea for payment of salary etc for that period is liable to be rejected. Similarly, the respondents were correct in not granting promotion to Lt Colonel (TS) rank as he did not clear the disciplinary criteria, as set out in Para 6 of Appendix to AO 12/87 during such consideration by the Military Secretary's Branch.

15. In the result, the MA lacks merit and is disallowed. No order as to costs.

Pronounced in open court on this the 29th day of January 2020.