

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

**MA-21/2015
(In TA -06-2012)**

PRESENT

**HON'BLE MR.JUSTICE B.P.KATAKEY, MEMBER (J)
HON'BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER(A)**

NO.358635 H Rfn/Orl
Shri Amar Nath Yadav
S/O.Shri Baba Ram Yadav
Resident of Village Kalaun (Sherpur)
PO Narayanpur
PS Adalahat
Dist. Mrzapur, Uttar Pradesh.

..... Applicant.

**By legal practitioners for
Applicant.**

Mr BC Pathak
Mr. B.Pathak
Ms J.Phukan
Mr R.Thadani

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence MoD),
South Block, New Delhi – 110011.
2. The Director General of Assam Rifles
Shilling -793001, Meghalaya.

3. The Colonel Commandant
13th Assam Rifles, C/O.99 APO

..... Respondents

**By Legal Practitioner for the
Respondents**

Mr.C.Baruah, CGSC

Date of Hearing : 20.03.2017

Date of Order : **20.03.2017**

ORDER

(B.P.Katakey,J)

The applicant, who was successful in getting the order dated 5.2.2013 passed in TA-06/2012 setting aside the order of dismissal, has filed this MA contending that the order passed by this Tribunal has not been fully complied with, inasmuch as though the respondent authorities have reinstated the applicant in service pursuant to the aforesaid order dated 5.2.2013, he has not been granted the pay and allowance for the period for which he was under the order of dismissal i.e. from the date of dismissal till 19.4.2013.

[2] We have heard Mr.R.Thadani, learned counsel for the applicant and Mr. C.Baruah, learned CGSC appearing for the respondents.

[3] Referring to the order dated 5.2.2013 passed by this Tribunal in TA 06/2012 and also FR 54-A (3) of the Fundamental Rules, it has been submitted by the learned counsel for the applicant that since this Tribunal had directed forthwith reinstatement of the applicant in service and also to grant of the benefit to which he is entitled to, by setting aside the SCM proceedings held against him, whereby and whereupon he has been dismissed from service, the respondent authorities cannot refuse to pay the pay and allowances of the applicant from the date of dismissal till 5.2.2013 when the order of dismissal has been interfered with by this Tribunal. Referring to the order dated 10.5.2013, it has also been submitted that the Director General of Assam Rifles, instead of forthwith reinstatement of the applicant w.e.f. 5.2.2013 has reinstated the applicant on 19.4.2013 and refused to treat the period in which the applicant was under order of dismissal as qualifying service for all purposes.

[4] Learned counsel appearing for the respondents on the other hand placing reliance on the averments made in the affidavit filed and also Rule 25(2) of the CCS(Pension) Rules,1972, has submitted that since the applicant did not serve Assam Rifles for 6 years 1 month 6 days, the said period has not been treated as qualifying service as the applicant has been reinstated in service w.e.f. 19.4.2013 i.e. the date when he has reported to the Unit after the

Tribunal has set aside the order of dismissal vide order dated 5.2.2013. It has also been submitted that there being no order passed by the competent authority regularizing the said period of absence, the applicant is not entitled to any benefit for the aforesaid period.

[5] The applicant has challenged the order of dismissal from service by the SCM in WP(c) No. 2834/2007, which was filed before the Hon'ble Gauhati High Court and on being transferred from the Hon'ble Gauhati High Court, the said case was registered and re-numbered as TA 06/2012 before this Regional Bench. This Tribunal, upon hearing the learned counsel for the parties and upon perusal of the records, vide order 5.2.2013 has interfered with the order of dismissal from service. This Tribunal has consequently directed the respondent authorities to reinstate the applicant in service forthwith with the benefits to which he is entitled to.

[6] It appears from the records produced by Mr. C.Baruah, learned counsel appearing for the respondents that the competent has taken the decision to implement the Tribunal's directions contained in the order dated 5.2.2013. Pursuant to the notice issued by the competent authority, the applicant reported to duty on 19.4.2013. The Director General of Assam Rifles then passed an order dated 10.5.2013 taking back the applicant in service w.e.f.

19.4.2013 and directed payment of pay and allowances w.e.f. 19.4.2013 i.e. the date on which the applicant reported to the Unit, treating the period between date of dismissal till 19.4.2013 as non-qualifying service for all purposes.

[7] This Tribunal having interfered with the order of dismissal of the applicant from service vide order 5.2.2013 directing forthwith reinstatement, the Director General Assam Rifles in no case could have passed an order for reinstatement w.e.f. 19.4.2013 ,as has been done vide order dated 10.5.2013

[8] FR 54-A (3) provides that if the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as on duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal removal or compulsory retirement ,as the case may be .

[9] In the instant case, this Tribunal vide order dated 5.2.2013 did not restrict the pay and allowances of the applicant. The direction was to pay whatever the applicant is found to be entitled to having set aside the order of dismissal. The Records does not reveal passing of any order by which the respondent authority has also restricted payment of arrear to the applicant.

[10] Rule 25 (1) of the CCS (Pension) Rules 1972 provides that a Government Servant who is dismissed , removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service.

Sub Rule (2) of the said Rules, however, provides the period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement and the period of suspension, if any, shall not be counted as qualifying service unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement.

[11] While Sub Rule (1) of Rules 25 of the said Rules provides that in case of dismissal, removal or compulsory retirement , Government servant would be entitled to count his past service as qualifying service, in the event of his reinstatement, Rule 25(2) cast a duty on

the competent authority to pass order to regularize the period. In this case, it is not disputed that the provisions of Fundamental Rules as well as CCS (Pension) Rules are applicable.

[12] Having regard to the fact that this Tribunal while passing the order dated 5.2.1023 did not restrict payment of back wages and also having regard to the Rule 54-A(3) of the Fundamental Rules, we are of the considered opinion that the applicant is entitled to pay and allowances for the period between the date of dismissal and 5.2.2013, i.e. the date of the order passed by this Tribunal, the order of dismissal having been interfered with on merit by this Tribunal. The applicant shall also be entitled to pay and allowances from 5.2.2013 till 19.4.2013

[13] That being the position, we direct the respondents to treat the period from the date of dismissal to 19.4.2013 as qualifying service for the purpose of grant of pay and allowances and pension. The respondents shall accordingly grant pay and allowances to the applicant for the aforesaid period within a period of 6(six) months from the date of receipt of a copy of this order. It is, however, made clear that the entitlement, if any, for promotion of the applicant would be governed by the relevant rules, regulations, executive instructions issued from time to time

[14] OA is accordingly allowed to the extent indicated above.

[15] No costs.

MEMBER(A)

MEMBER (J)

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