

IN THE ARMED FORCES TRIBUNAL**REGIONAL BENCH, GUWAHATI****OA- 28/2016.****PRESENT****HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER(J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

Shri A.Nipuni Mao
Aged about 54 years (Ex No
G/2201434 h Hav/GD of the
22nd Assam Rifles) s/o Late Ashiko Mao
Resident of Kaibi Village BPO Kaibi
PO Tadubi District Senapati Manipur

..... **Applicant.**

**By legal practitioners for
Applicant.**

Mr.Kh Chongojn
Mr.H.Chandrakumar

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.
2. The Secretary to the Government of India
Ministry of Home Affairs, New Delhi.
3. The General Officer commanding- in-
Chief Eastern Command Fort William
Calcutta (West Bengal)
4. Director General of Assam Rifles
Shillong-793 001.
5. The Commandant/Commanding Officer
22nd Assam Rifles, Headquarters Tripura
Range (Assam Rifles) C/o 99APO.

..... **Respondents..**

**By Legal Practitioner for the
Respondents**

Mr.C.Baruah CGSC

Date of Hearing : 22.03.2017
Date of Order : **22.03.2017**

ORDER

(B.P.Katakey,J)

The applicant, who has been dismissed from service vide order dated 01.05.2000 by the Summary Court Martial (SCM) and which order has been confirmed by the confirming authority on 10.02.2000, has filed this application challenging the order dated 27.04.2014 passed by the officiating Director General Assam Rifles treating his order of "dismissal from service" as "discharge from service" with effect from the date of his dismissal and directing payment of all pensionary benefits in terms of CCS (Pension) Rules, 1972, on the ground that the order of dismissal and subsequent confirmation having been interfered with by this Tribunal vide order dated. 21.01.2014 passed in T.A. 08/2013, the respondent authority could not have substituted the order of dismissal to discharge from service. According to the applicant, the order of dismissal having been set-aside by the Tribunal by the aforesaid order, he was entitled to restatement in service with full back wages and other service benefits since the respondent authority did not initiate any de novo enquiry and /or proceedings

[2] We have heard Mr.H.Chandrakumar, learned counsel for the applicant and Mr. N Baruah, learned CGSC appearing for the respondents.

[3] The learned counsel appearing for the applicant referring to the aforesaid order dated. 21.01.2014 passed by this Tribunal has submitted that since this Tribunal set-aside the order of dismissal of the applicant with further direction to take necessary consequential action as per law, the respondent authority could not have passed the order dated 27.04.2014 simply substituting the order of dismissal from service as discharge from Service without initiating fresh proceedings against the applicant. Referring to Rule 54 (2) & (3) of the Fundamental Rules, it has also been submitted by the learned counsel for the applicant that as the order of dismissal passed against the applicant has been interfered with by this Tribunal, the respondent authority is bound to release the pay and allowances to the applicant from the date of dismissal till he attained the age of superannuation on 30.06.2015, since the respondent authority has decided not to proceed against the applicant afresh. The learning counsel, therefore, submits that while setting aside the impugned order dated. 27.04.2014, a direction may be issued to the respondent authority to release the pay and allowances of the applicant from the date of dismissal till 30.06.2015 i.e. the date when he attained the age of superannuation, by reinstating the him in service.

[4] The learned counsel appearing for the respondents, on the other hand, supporting the impugned order dated. 27.04.2014 and the averments made in the counter affidavit filed has submitted that since the applicant has not been exonerated by this Tribunal on merit, the respondent authority has rightly passed the impugned order having regard to the fact that more than 14 years have elapsed from the date of passing of the order of dismissal till such order was interfered with by this Tribunal by the aforesaid order dated 21.01.2014.

The learned counsel, therefore, submits that the applicant is not entitled to claim made in the OA.

[5] A charge sheet was issued to the applicant on 27.04.2000. A summary court martial was, thereafter, directed. The SCM on 01.05.2000 upon recording the finding of guilt had sentenced the applicant for dismissal from service on the basis of the guilty pleaded by the applicant. The said order of dismissal from service, finding and sentence of the SCM as well as the subsequent confirmation order dated 10.10.2000 were put to challenge in WP(C) 369/2001 before the Hon'ble Gauhati High Court, Imphal Bench. The said Writ Petition was disposed of vide order dated 21.05.2013 by the Hon'ble High Court of Manipur at Imphal, after creation of the said Hon'ble High Court, transferring the said proceedings to this Regional Bench of AFT for decision. On being transferred, the said proceeding was registered and numbered as TA-08/2013. This Tribunal vide order dated. 21.01.2014 has set aside the findings and the sentence passed by the SCM on the basis of the plea of guilt, on the ground of non-compliance of the mandatory provisions for recoding the plea of guilt. Consequently, the order of confirmation dated 10.10.2000 has also been set-aside. The Tribunal, however, directed the respondents to take "further necessary consequential action as per law forthwith". The respondents, thereafter, passed the impugned order dated 27.04.2014 converting the order of dismissal to discharge from service w.e.f. the date of his dismissal.

[6] This tribunal having set aside the order of dismissal and also the SCM proceedings, the respondent authority could not have passed the impugned order 27.04.2014 converting the order of dismissal to the order of discharge without initiating any fresh proceedings.

[7] The fact remains the decision of the SCM and also consequential confirmation order have not been set aside by this Tribunal on merit, which, however, has been set aside on the ground of technicalities i.e., non-compliance of the mandatory provisions for recording the plea of guilt.

[8] Rule 54 of Fundamental Rules applies in case where a Govt. Servant is dismissed, removed or compulsorily retired is reinstated as a result of appeal or review. Sub-rule (2) of the said rule provides that if a Govt. Servant who is dismissed, removed, compulsorily retired has been fully exonerated, he shall be paid full pay and allowances subject to sub-rule (6) to which he would have been entitled to had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal and compulsory retirement, as the case may be. Sub-rule(3) of the said Rule stipulates that in case of falling under sub-rule (2), the period of absence from duty including period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

[9] In the instant case, as noticed above, the applicant has not been fully exonerated from the charge against him and not on appeal or review by the Governmental authority. The order of dismissal from service has been interfered with by this Tribunal on the technical ground i.e. non-compliance of mandatory provisions for recording the plea of guilt. Hence, Rule 54 of Fundamental Rules is not attracted in the instant case.

[10] Rule 54(A) of the Fundamental Rules deals with the eventuality of interference of order of dismissal, removal or compulsory retirement of Govt. servant by a court of law, which provisions are applicable in the instant case since the applicant's dismissal has been interfered with by this Tribunal on the

ground stated above. Rule 54 (A) (2) (i) of the Fundamental Rules provides that where dismissal, removal, compulsory retirement of a Govt. Servant is set aside by the Court solely on the ground of non-compliance with the requirement of Clause (1) or Clause (2) of article 311 of the Constitution of India and where he is not exonerated on merits, the Govt. Servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances 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, as the competent authority may determine, after giving notice to the Government Servant on the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the said notice.

[11] Sub Rule (7) of Rule 54 provides that the amount determined under the proviso to sub-rule (2) or sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53. Rule 54 (A) (2) (i), therefore, makes it obligatory to issue notice on the Government servant proposing the quantum of pay and allowances.

[12] In the instant case, it is not the case of the respondents that such notice was issued to the applicant prior to passing of the impugned order dated 27.4.2014, though issuance of such notice allowing the applicant to make representation is the mandatory requirement.

[13] In view of what has been discussed above, we set aside the impugned order dated 27.4.2014 and direct the respondent authority to issue a notice to the applicant proposing the quantum of pay and allowances, having regard to

the provision of Rule 54 (7) of the Fundamental Rules and giving him sixty days notice to make a representation. In case such representation is made by the applicant, the same shall be considered and disposed of by the respondent authority by passing a speaking order having regard to the observations made hereinabove. The same shall be done within a period of 3 (three) months from the date of receipt of the representation. The order that may be passed, as directed above, shall immediately be communicated to the applicant. Needless to say, if any favorable order is passed by the respondent authority, the pension of the applicant may accordingly be revised. The applicant, however, shall be paid the existing pension as fixed till it is revised, if the occasion of such revision arises.

[14] The applicant will be at liberty to approach this Tribunal again, if he has any grievances on the order that may be passed by the competent authority.

[15] The OA is accordingly allowed to the extent indicated above. No costs.

[16] Mr.N.Baruah, learned CGSC appearing for the respondents has made an oral prayer to grant leave to appeal before to Hon'ble Supreme Court. Since our order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER(A)

MEMBER (J)

MC

