

Form No. 4  
{See rule 11(1)}

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

1. ORIGINAL APPLICATION NO. 30 OF 2019



Ex-WO B Gogoi

.. Applicant

Versus

Union of India & Ors.

.. Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.12.2024</u>  <u>Hon'ble Mr. Justice Shailendra Shukla, Member (J)</u>  <u>Hon'ble Lt Gen P. Gopalakrishna Menon, Member (A)</u></p> <p>On the case being taken up for hearing, Mr. D.Nag, Ld. Counsel for applicant representing arguing counsel Mr. P.D. Nair, for applicant and Mr. P.Sharma, Ld. Counsel for the respondents through Video Conferencing are present.</p> <p>Judgment was pronounced in open Court, whereby O.A. has been allowed.</p> <p>Learned counsel for the respondents made an oral prayer for LTA.</p> <p>Considered. There is no point of law of general public importance involved in the matter. Hence, oral prayer for LTA stands rejected.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">   (Lt Gen P. Gopalakrishna Menon)  Member (A)  Sh </div> <div style="text-align: center;">   (Justice Shailendra Shukla)  Member (J) </div> </div>



# ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

## ORIGINAL APPLICATION NO. 30 OF 2019

Ex Warrant Officer B Gogoi (273239)  
Village Nowshalia, Airport Road,  
PO Barbheta, District- Jorhat,  
Assam, Pin-785 004.

.. Applicant

, Versus

1. The Union of India,  
Represented by the Secretary,  
Govt. of India, Ministry of Defence,  
New Delhi-110 011.
2. The Chief of the Air Staff,  
Air Head Quarters (Vayu Bhawan),  
New Delhi-110 106.
3. The Directorate of Air Veterans,  
Subroto Park, New Delhi-110 010.
4. The AF Central Accounts Office,  
Subroto Park, New Delhi-110010.

.. Respondents.

.....  
Mr. PD Nair a/w. G. Alam, H. Rohman, D. Nag, Advocates for the Applicant.

Mr. P. Sharma, CGSC for the Respondents.  
.....

**CORAM : SHAILENDRA SHUKLA, MEMBER (J) AND  
LT GEN P GOPALAKRISHNA MENON, MEMBER (A)**

Judgment reserved on : 04.10.2024

Judgment pronounced on : 10.12.2024



**JUDGMENT** (Per Shailendra Shukla, Member (J))

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs:-

"(a) to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why a direction should not be issued;

(b) to reconsider tenure of reinstatement of applicant till his actual superannuation at attaining age of 57 i.e. in March 2002;

(c) to make a clear and transparent calculation afresh of his service benefits which includes monetary and all incidental benefits including his promotions to next higher rank of Master Warrant Officer and then to Honorary Flying Officer with full pay and allowances;

(d) to pay Rs.83 lakhs towards damages and compensation for loss of his reputation and image, for loss of his colourful service tenure, for sufferings meted by him and his family for a period of 23 years since 1996:

(e) to allow the instant Original Application with cost.

(f) to pass such further or other order(s) as this Tribunal may deem fit and proper in the facts and circumstances of the case:

(g) upon cause or causes being shown and after hearing the parties and the show cause (if any) be pleased to make the Rule absolute and/or may be pleased to pass any other order/orders as this tribunal may deem fit and proper."

2. Facts of the case narrated succinctly are that the applicant was enrolled in the Indian Air Force as an Airman in the year 1964 and was promoted from time to time to next higher ranks and last promotion was to the rank of Warrant Officer



in the year 1994. Till November, 1991 he was working in the Air Force Station, Pathankot and then he was transferred to Air Force Station, Tambaram, Chennai in the capacity of Junior Warrant Officer. During August, 1994 he was promoted as Warrant Officer while working at Air Force Station, Tambaram.

3. While working in Air Force Station, Tambaram, on the basis of a complaint dated 02.02.1995 lodged by a fellow Airman alleging charges of molestation of his baby child, the applicant was removed from service by the respondents on 24.02.1996 vide order dated 13.02.1996. The applicant being aggrieved, preferred a Writ Petition before the Madras High Court assailing the arbitrary and illegal removal from service. Thereafter, the Hon'ble High Court vide judgment dated 20.03.1998 allowed the writ petition by quashing the impugned order of removal from service with all benefits. The High Court further directed to give paper promotion to the applicant if he was entitled and to revise the seniority and to pay all monetary benefits. After receiving copy of judgment, he went to join the duty, but the respondents declined to join him saying they have preferred an appeal against the order and stay has been granted by the Court. The Division Bench of High Court however dismissed the appeal of the respondents on the ground of non-service of notice to the affected party.

4. Thereafter, the applicant made a representation on 09.12.2010 for grant and release of all service benefits and monetary benefits. The respondents replied on 17.01.2011 stating that they have filed SLP before the Hon'ble Supreme Court.



The applicant further states that the Hon'ble Supreme Court vide order dated 04.03.2011 dismissed the SLP on the ground of delay. Thereafter, the applicant made a representation on 24.05.2011 and sought the above benefits. The respondents vide letter dated 30.06.2011 forwarded the said representation to competent authority with request to release of service benefits.

5. The applicant states that after several reminders, the respondents vide letter dated 26.12.2011 demanded pre-receipted contingent bill with bank address and account number for payment action but the said contingent bill was blank without mention of any amount and the date was also inserted on expenditure column with some guess work. The same was done intentionally and deliberately by the respondents with ulterior motive to evade the legitimate dues of the applicant. The applicant immediately by his representation dated 05.01.2012 showed his complete dissatisfaction with the conduct of the respondents and clearly mentioned non acceptance of the contingent bill as it was left blank with some guessing dates and requested for issuance of draft/cheque w.e.f. 24.02.1996 to 31.03.1999. On receipt of representation, the respondents forwarded a contingent bill with some imaginary calculations based on their own consideration and interest for a period of their own choice in as much as in utter violation of the order of the Hon'ble High Court. The applicant again made representation dated 06.03.2012 rebutting the respondents conduct and calculations arrived at in preparing the contingent bill. The applicant also mentioned that basic pay for his



rank and category was Rs.8000/- p.m. as fixed by 5th Pay Commission declared in January, 1996 and also claimed the benefits upto his actual superannuation dated i.e. 31.03.2002.

6. In the meantime, the respondents sent a letter dated 06.03.2012 to SBI for disbursal of pensionary benefits by issuing PPO dated 05.03.2012 and mentioned therein to recover entire amount already paid through earlier PPO before making payment. The applicant immediately had written to the bank not to take into account the PPO dated 05.03.2012 as the same has not shown pension calculations for 72 months and 9 days i.e. from 24.02.1996 to 31.03.2002 and requested the respondents to release payment as per the order of High Court. Thereafter, the respondents replied to applicant in their parawise comments but it nowhere reflects any valid reason for non-extension of service till actual superannuation at the attaining age of 57 years as per MoD letter dated 04.09.1998.

7. Being aggrieved, the applicant had made another representation dated 12.02.2013 replying to comments of the respondents raising his valid claims for further extension of service to his actual superannuation till year 2002, promotion to next higher rank and release of all monetary benefits.

8. The respondents vide letter dated 23.05.2013 denied extension of service as the applicant was not physically present in service and closed the matter at their own whim and caprice. The applicant again made a representation and on



receipt of fresh representation of the applicant, the respondents have re-opened the case vide letter dated 08.01.2014 for calculation of interest part and sent a contingent bill with some vague calculations pursuant to the order of the High Court. Upon finding except release of meagre amount of interest, the applicant made another representation for release of entitlement and dues as per order of the High Court. Thereafter, the applicant issued legal notice but the respondents replied it in a vague manner. Even after clear cut directions from the Hon'ble Madras High Court regarding reinstatement, promotion, back wages and other monetary benefits, the respondents have failed to comply with the directions. Hence, this OA.

9. In reply, learned counsel for the respondents has submitted that personal file of the applicant has been destroyed by BOO on instructions issued by Air HQ vide letter dated 18.03.1994. In the absence of personal file, no parawise comment is feasible to be offered in the instant matter. However, from the available records, it is revealed that the applicant was enrolled in Air Force on 26.03.1964 and removed from service on 24.02.1996 and was reinstated in service w.e.f. 24.02.1996 vide Hon'ble Madras High Court's order dated 20.03.1998. The applicant was granted 03 years notional extension of engagement upto 31.03.1999 (re-expiry on 25.03.1999) on the basis of government sanction issued vide letter dated 04.10.2011. The applicant was not promoted to next higher rank of MWO as his seniority has not come up for



promotion during promotion panel year 1996-97, 1997-98 and 1998-99. If the applicant had been in service, then also he would not have been empanelled for promotion during his period of notional extension of engagement as the last airman empanelled in these promotion panel years was senior to him. Further, the applicant was discharged from service w.e.f. 31.03.1999 on completion of his terms of engagement. As such, the applicant is not entitled for any relief as claimed in his OA. Hence, he prayed for dismissal of the OA.

10. In his rejoinder, the applicant submits that his personal file could not have been destroyed in the year 1994 as he was removed from his active service on 24.02.1996. He further states that in the annexure to the affidavit filed by the respondents, the name of the applicant is shown as Ex JWO B. Gogoi, whereas, the applicant at the time of his illegal removal from service was in the rank of Warrant Officer and presently also he is drawing pension as a Retired Warrant Officer. It appears that the respondents have spoken about destruction of file of someone other than the applicant. The applicant further submits that the High Court of Judicature at Madras in his judgment dated 20.03.1998 has issued clear directions that the applicant should be given paper promotion, if he is entitled to get any promotion and to revise the seniority and also to pay all monetary benefits thereon. The applicant is very much entitled to promotion to next higher rank of Master Warrant Officer and then to Honorary Flying Officer, in view of the order of the Hon'ble High Court. The respondents have made no mention of the reason



for non-extension of service till actual superannuation i.e. 31.03.2002 and release of dues until then. The affidavit filed by the respondents is silent as regards the claim of damages by the applicant for loss of his reputation and loss suffered by him due to his illegal removal from service and as such, the conduct of the respondents towards the applicant is highly prejudicial and devoid of justice. The respondents have not come up before the Tribunal with clean hands, but with sole intention to deprive him from his legal and legitimate rights.

11. We have heard both the learned counsel and perused the documents placed on record. The following questions emerged for consideration.

- 1) Whether the respondents ought to have made payment of salary and other monetary benefits till the date of superannuation of the applicant on attaining age of 57 years in the month of May 2002, instead of only till 1999 ?
- 2) Whether the respondents wrongly failed to accord promotions to the applicant to the higher ranks of Master Warrant Officer and then to honorary Flying Officer with full pay and allowances ?
- 3) Whether the respondents are liable to pay damages and all compensation to the tune of Rs. 83 Lakhs to the applicant for loss of his reputation and image and for loss of his colourful service tenure, resulting in sufferings metted out to him and to his family ?



**Regarding Q.No.1 :**

12. The applicant submits that till the date of superannuation in the month of May 2002, the respondents ought to have made payments of salary and other monetary benefits to him.

13. In this regard, it would be appropriate to consider the directions made by the Hon'ble High Court in Writ Petition No.2598/1996. The relevant directions pertaining to this question are as under :

i) The Writ Petitioner is entitled to get all the back wages from the date of his removal from service till he is reinstated together with all the attendant benefits and all other monetary benefits, including surrender leave facility etc., if any;

ii) The Writ Petitioner is entitled to get continuity of service right from the date of his removal from service till he is reinstated as if he is in continuous service.

14. In view of the above directions, the responsibility of the respondents was to give back wages to the petitioner from 24.02.1996 (date of removal from service) till the date of reinstatement. In this matter, there is no separate order of reinstatement by the respondents. The respondents on 30.01.2012 have sent a contingent bill with some calculations along with the interest. There is however no specific order of reinstatement of the applicant. The applicant submits that he would be entitled to back wages and all other benefits till the date of his



superannuation till 31.03.2002 and it was wrong on the part of the respondents to consider his case only till 1999. The respondents on the other hand have stated that the applicant was granted notional extension of service for three years which ended on 31.03.1999 and therefore his case could not be considered till the date of his superannuation in the year 2002 i.e. till attaining the age of 57 years. His term would any way have ended on 31.03.1999 only and therefore his entitlement was only upto March 1999 and not till March 2002. The above submission of both the parties were considered. In this regard, the reason assigned by the respondents of not granting further extension of service from 01.04.1999 to 31.03.2002 has been shown in communication dated 15.01.2013 (Annexure-21) by the respondents to the applicant wherein it has been mentioned that since the applicant was not physically present in service, grant of further extension is not feasible. The applicant has stated that the respondents in fact had removed him from service and thereafter the respondents had contested the Writ Petition filed by the applicant and went on to file Writ Appeal and also preferred a SLP before the Apex Court which shows that they were still not inclined to take any action in favour of the applicant, but they ultimately had to comply with the orders of the Hon'ble High Court when they lost their SLP before the Apex Court. Thus, there was no occasion for the applicant to remain physically present in service. Had the respondents asked him to remain physically present, he would complied with and had he not complied, he would have forfeited the right for extension of service. However, there was no such directions issued by the respondents and



therefore the respondents could not have declined further extension from 1999 to 2002.

15. The above submissions were considered. There is substance in the submission of the applicant. There was indeed no notice issued to the applicant to remain physically present before the respondents for further extension of service and the belligerent stance of the respondents left no choice to the applicant regarding marking his presence before the respondents. Thus, it was the respondents who were enjoined to give benefits of salary and other monetary benefits to the applicant till 31.03.2002. This question is answered in the affirmative.

**Regarding Q.No.2 :**

16. Regarding this question, the directions of the Hon'ble High Court need to be perused which pertains to grant of promotion to the applicant. The directions are as under :

*"In case, if the petitioner is entitled to get any promotion in the meanwhile, the respondents are directed to give paper promotion to him and to revise the seniority and also to pay all the monetary benefits thereon."*

17. Therefore, the question arose is whether the petitioner was entitled to get any promotion or not. The applicant states that he was entitled to be promoted to the post of Master Warrant Officer and then to Honorary Flying Officer. Contesting this submission, the respondents have stated that the applicant was not



promoted to next higher rank of Master Warrant Officer as his seniority had not come up for promotion during promotion panel year 1996-1997, 1997-1998 and 1998-1999. It is further stated that if the applicant had been in service, then also he would not have even empanelled for promotion during his period of notional extension of engagement as the last airman empanelled in these promotion panel years was senior to him.

18. Considered this submission. It has now been determined that the applicant was entitled to continue in service till March 2002. Hence, it is to be seen whether he would have been empanelled for promotion during 1999-2000, 2000-2001 and from 2001-2002. This data is not available; hence the respondents are directed to consider his promotional prospects during these three years. If he is found eligible and entitled during these three years, then his entitlement to promotion could not have been denied and in that event, the respondents shall have to give paper promotion to him, revise his seniority and also to pay all the monetary benefits to him. Respondents need to consider the case for promotion and if accorded promotion from 1999 to 2002, his seniority be revised and payment of monetary benefits be also given to him.

**Regarding Q.No.3 :**

19. It appears that despite dismissal of SLP by the Hon'ble Supreme Court on 04.03.2011, the respondents continued to avoid dues to the applicant and it was only on 30.01.2012 after repeated representations from the applicant, the



respondents forwarded contingent bill to the applicant. It also appears that in the Writ Petition filed by the respondents before High Court and SLP filed before Supreme Court, the respondents exhibited extreme irresponsible conduct in as much as in the Writ Appeal the respondents did not serve the opposite party i.e. the applicant for 10 years, resulting in dismissal of Writ Appeal and SLP also was filed extremely belatedly, resulting in its dismissal on the ground of delay. This itself shows the malafides of respondents in the sense that they were not inclined to honour the directions made by the Hon'ble High Court in Writ Petition No. 2598/1996. In view of such clear signs of inappropriate delaying tactics of the respondents, we are constrained to impose damages of Rs. 1,00,000/- (Rupees One Lakh) upon the respondents to be paid by the respondents to the applicant.

20. On final analysis, the O.A. stands disposed of in following terms :-

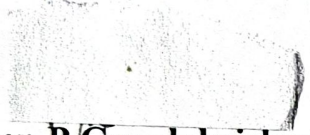
- 1) The applicant is entitled to be given salary and other monetary benefits till 31.03.2002 as directed by Hon'ble High Court.
- 2) The applicant is entitled for continuity of service from the date of removal till 31.03.2002.
- 3) The respondents need to consider the case of the applicant for promotion from the year 1999 to 2002 and after according promotion, his seniority shall have to be revised and payment of monetary benefits shall also be accorded to him. In case of denial of promotion, applicant shall have liberty to file fresh O.A.



4) In view of the fact that the respondents did not pay applicant his dues despite dismissal of SLP by the Hon'ble Apex Court, the respondents shall pay damages of Rs. 1,00,000/- (Rupees One Lakh) to the applicant. The amount shall be deposited in the Bank account of applicant who shall provide the details thereof.

5) This order be complied with within four months from the date of receipt of copy of this order, failing which interest @ 8% per annum shall be charged on the respondents.

21. No order as to costs.

  
(Lt Gen R. Gopalakrishna Menon)  
Member (A)

  
(Justice Shailendra Shukla)  
Member (J)

Date : 10.12.2024

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