

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6453-6356 OF 20201
(DIARY NO. 10458/2021)

NAIB SUBEDAR GIRISH KUMAR

... Appellant(s)

VERSUS

UNION OF INDIA & ORS.

... Respondent(s)

O R D E R

Leave to appeal is granted.

Delay condoned.

Heard the learned counsel for the appellant.

These appeals are against the order dated 04.01.2021 passed by the Armed Forces Tribunal, Regional Bench, Lucknow in MA No. 477 of 2020 in re MA No. 36 of 2019 in re OA No. Nil of 2019 along with OA No. 303 of 2013 rejecting the application of the appellant for leave to appeal under Section 30 read with Section 31 of the Armed Forces Tribunal Act, 2007 against the impugned judgment and order dated 05.10.2015 in O.A. (Original Application) No. 303 of 2013, the common judgment and order dated 23.05.2017 in Ex.A. No. 65 in re OA No. 303 of 2013, the common judgment and order dated 13.08.2019 in M.A. (Miscellaneous Application) No. 36 of 2018 in re OA No. (Nil) of 2018, a common judgment and order dated 26.11.2020 in Ex.A. No. 129 of 2019 in re OA No. 303 of 2013.

The appellant joined the Army Ordnance Corps on 26th July, 1986 and was promoted from time to time. On 1st October, 2010, the appellant got promoted to the rank of Nayab Subedar.

However, as he was placed in lower medical category, the appellant was neither granted further promotion to the rank of Subedar nor retained in service. On or about 30th November, 2013, the appellant was discharged.

The appellant filed O.A. No. 303 of 2013 before the Regional Bench of the Armed Forces Tribunal at Lucknow challenging his discharge and also praying for promotion.

The said O.A. No. 303 of 2013 was disposed of by the following directions by the Tribunal :

"Accordingly, the impugned Order dated 27.08.2013 (annexure A-1 (v) to the OA) is set aside with consequential benefits. The applicant shall be entitled to 50% of salary payable to him up to extended period of service, i.e., 25.07.2014, with all consequential pensionary benefits within 3 months from the date of production of certified copy of this order."

The appellant was granted relief of 50% salary upto 25th July, 2014 with consequential pensionary benefits. The appellant filed an Execution Application No. 65 of 2017 in OA No. 303 of 2013 seeking promotion to the rank of Subedar for the purpose of computation of pensionary benefits. The Execution Application was dismissed after which the appellant filed a fresh application seeking the same relief of promotion. The second appeal was held not maintainable after which the appellant filed a fresh Execution

Application in OA No. 303 of 2013 which has been dismissed by the impugned order dated 26th November, 2020. The application of the appellant for leave to appeal was dismissed by the learned Tribunal by its order dated 4th January, 2021.

The appellant had filed OA No. 303 of 2013 questioning his discharge as illegal and also the refusal to grant the appellant promotion. The relief of promotion was not granted to the petitioner. The petitioner was only directed to be paid 50% of salary till his extended period of service, i.e., till 25th July, 2014 with consequential pensionary benefits. The said judgment and order having assumed finality, the subsequent applications were clearly barred by *res judicata* and/or analogous principles. There can be no question of interfering with the impugned judgment and order dated 05.10.2015 in OA No. 303 of 2013 after six years.

We find no grounds to interfere with any of the impugned judgment and/or orders.

The appeals are, accordingly, dismissed.

Pending applications, if any, stand disposed of accordingly.

....., J.
(Indira Banerjee)

....., J.
(J.K. Maheshwari)

New Delhi;
October 25, 2021.

ITEM NO.4 Court 8 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 10458/2021
(Arising out of impugned final judgment and order dated 05-10-2015
in OA No. 303/2013 23-05-2017 in EA No. 65/2017 13-08-2019 in OA
No. nil/2018 26-11-2020 in EA No. 129/2019 passed by the Armed
Forces Tribunal)

NAIB SUBEDAR GIRISH KUMAR Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(IA No.128352/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.128350/2021-CONDONATION OF DELAY IN FILING
APPEAL and IA No.128348/2021-LEAVE TO APPEAL U/S 31(1) OF THE ARMED
FORCES TRIBUNAL ACT, 2007)

Date : 25-10-2021 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Sumit Kumar, AOR
Mr. Rajesh Pathak, Adv.
Ms. Kumari Supriya, Adv.
Mr. Hemant Kumar, Adv.
Ms. Harshita Sinha, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave to appeal is granted.

Delay condoned.

The appeals are dismissed in terms of the signed order.

Pending applications, if any, stand disposed of accordingly.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed order is placed on th file)