

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 528 of 2017

Thursday, this the 18th day of January 2018

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 2977497-LExSep Ram Bahadur Singh, S/o Shri Vaudev Singh, R/o House No. 2C/23 VindravanYojna Rae Bareilly Road, Lucknow-226029.

....Applicant

Ld. Counsel for the: **Shri ParijaatBelaura, Advocate**
Applicant

Vs.

1. Union of India through Secretary, Ministry of Defence, New Delhi- 110011.
2. Chief of Army Staff, Army Headquarter Ministry of Defence, Government of India, South Block New Delhi- 110011.
3. Officer in Charge, Defence Security Corps Records PIN- n901277 C/o 56 APO.
4. The Principal Controller of Defence (P), DraupadiGhat Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Advocate Respondents **and Shri A.K. Sahu, Advocate**

ORDER (Oral)

1. Counter affidavit filed by the respondents is taken on record. The learned counsel for the applicant does not intend to file rejoinder affidavit. Hence, we proceed to dispose of finally this matter after hearing Shri ParijaatBelaura, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Legal Cell Incharge and Shri A.K. Sahu, Ld. Counsel for the respondents.

2. Admittedly, applicant was enrolled in the Army as Sepoy on 23.01.1980. On account of certain family dispute, coupled with the fact applicant was charged with bigamy, his services were dispensed with after serving a show

cause notice by order dated 25.01.1996 i.e. after rendering service for the period of 14 years and 6 months.

3. Later on applicant moved a statutory representation dated 12.12.2013 with the prayer that six months' period required to complete 15 years of service for payment of pensionary benefits be condoned. In the representation dated 12.12.2013 the following relief has been claimed :-

“Since a great injustice has been caused to me with the ignominious discharge befallen on me and all doors to consider redressal and justice closed, may this helpless and forlorn soldier appeal to your august office and kindness for mercy and condone the period of six months less service which falls short of 15 years where in I could be granted minimum pension and thereafter survive with the meagre substance source.”

4. The respondents while filing counter affidavit have not disputed that the applicant had submitted said representation for condonation of the period to complete 15 years of service for payment of pensionary benefits. Since the respondents did not decide the appeal of the applicant, he preferred petition, bearing O.A. No.216 of 2016, which was decided finally by an order dated 29.08.2016, directing the respondents to decide the statutory appeal of the applicant. The order dated 29.08.2016 is reproduced as under :-

“Present Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Ashish Saxena, Ld. Counsel for the respondent, assisted by Maj Soma John OIC Legal Cell.

We have heard Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Ashish Saxena, Ld. Counsel for the respondent, assisted by Maj Soma John OIC Legal Cell.

With the consent of Ld. Counsel for the parties we decide the O.A. at the admission stage.

It has been submitted by Ld. Counsel for the applicant that against the impugned order of discharge dated 25.02.1996 passed on the

ground of plural marriage the applicant preferred statutory complaint dated 12.12.2013 followed by reminder.

Without entering into the merits and controversy involved in the case and also without recording any finding on the delay caused, we dispose of the O.A. finally directing the appropriate authority to decide the statutory complaint preferred by the applicant by speaking and reasoned order expeditiously, say, within four months from the date of presentation of certified copy of this order along with copy of the earlier representation. However, the question of delay we keep open for consideration before the appropriate forum.

Subject to above, O.A. is **disposed** of finally.

No order as to costs.”

5. A plain reading of the order of the Tribunal (supra) indicates that the respondents were directed to decide applicant's statutory complaint dated 12.12.2013 (supra) by passing a speaking and reasoned order with regard to condonation of six months' period so that the applicant may be paid pensionary benefits.

6. The submission of the applicant's counsel is that the respondents have not considered while deciding the statutory representation, the aspect of condonation of six months' period to complete 15 years of service for payment of pensionary benefits and decided the same by a non- speaking order. Learned counsel for the applicant has also relied upon a Division Bench final order of the Tribunal by Armed Forces Tribunal, Regional Bench Kolkata dated 13.04.2015 passed in T.A. No.60 of 2012 **Anadi Nandan Mukhopadhyay vs. Union of India**, a copy of which has been filed as Annexure No.12 to the petition.

7. In response to the arguments advanced, it has been submitted by the learned counsel for the respondents Shri A.K. Sahu and Dr.Shilendra Sharma Atal, Legal Cell Incharge, Armed Forces Tribunal, Regional Bench, Lucknow

that in earlier O.A. No. 216 of 2016 the prayer of the applicant was to set aside the order of discharge. It is submitted that since the prayer was for setting aside the order of discharge, there was no occasion to decide applicant's statutory appeal for condonation of period of six months to complete 15 years of service for payment of pensionary benefits.

8. We have heard and considered the rival contentions raised by both the parties at length and perused the record. It has not been disputed by the learned counsel for the respondents that the respondents or the competent authority has right to condone the period of one year for the purpose of payment of pensionary benefits in case a Member of Army has not completed 15 years of service for payment of pensionary benefits. It is also not disputed that the applicant had submitted aforesaid representation, which was looked into by the Tribunal while passing the order dated 29.08.2016. It is also apparent from the record that the Tribunal did not consider what relief was claimed and also did not enter into the merits of the controversy. The solitary direction of the Tribunal was for deciding the representation of the applicant dated 12.12.2013 by a speaking and reasoned order expeditiously, say, within four months from the date of presentation of certified copy of the said order alongwith copy of the said representation.

9. At the face of record direction of the Tribunal was to decide the representation of the applicant and what is pleading on record and what relief has been claimed by the applicant do not make a ground to take different decision than what has been directed by the Court or Tribunal. More so the Tribunal did not enter into the controversy to adjudicate upon it. Direction of the Tribunal was to decide the representation dated 12.12.2013. This fact has been noticed by the authority concerned while referring order dated

29.08.2016 passed in O.A. No. 216 of 2016, as is apparent from the 1st Para of the impugned order dated 07.10.2016, which is reproduced as under :-

“In deference to the discussion passed by the Hon’ble AFT Regional Bench Lucknow vide order dated 29 Aug 2016 in O.A. No. 216/2016, the “Mercy Appeal against order of discharge on 25 January 1996 passed by OIC DSC Detachment Factory Kharmaria, Jabalpur” (as per order of Hon’ble Court direction referred as statutory complaint) filed by you on 12 Dec 2013 has been examine by the Competent Authority in details in the light of relevant rules and regulations on the subject and has decided to issue this reasoned speaking order to you.”

10. From the material and pleadings on record, discussed herein above, there seems no room of doubt that the respondents while adjudicating the controversy have looked into applicant’s representation dated 12.12.2013, which is foundation of the order of the Tribunal while finally deciding the controversy at the admission stage. There appears serious commission and omission on the part of the respondents while passing the impugned order. Respondents have not applied mind while complying with the direction of the Tribunal dated 29.08.2016, passed in O.A. No. 216 of 2016 in its letter and spirit to condone six months’ period for the purpose of payment of pensionary benefits. What happened prior to the passing of order of discharge of the applicant, is not concern of Court or Tribunal. In case he was entitled for pensionary benefits after the order of discharge, which is not punitive one, it was incumbent upon the respondents to consider the impugned order of discharge without going back to the cause for passing the order of discharge. Of course in case applicant’s conduct was so bad then it was open to the respondents to pass an order of dismissal, so that the applicant may not get any retiral benefits even if he has completed the qualifying minimum period of service. But the respondents themselves have not taken such a view or have taken a lenient view as argued on behalf of the respondents, now it is not open for them to look into the backgrounds or reason. Army Act or Rules it

itself speaks for payment of retiral dues after the order of discharge is passed and as such the applicant is entitled for statutory benefits. In the present case the order of discharge might have been passed for bigamy but in any case right to avail pensionary benefits and law over the point is one and same and it may not be correct to discriminate any person in the matter in the Armed Forces. Once a person is entitled for payment of pensionary benefits after discharge then provision must be considered judiciously for payment of pensionary benefits, more so when no punitive order has been passed.

11. Under the aforesaid facts and circumstances, it was incumbent upon the respondents to consider applicant's application for condonation of the period of six months, keeping in view the fact that the applicant has rendered 14 years and 6 months' service in the Army. The period of service rendered by the applicant shall be deemed satisfactory for the reason that the respondents have not taken any punitive action against the applicant and in such circumstances applicant's application for condonation of the period should be considered judiciously by exercising discretion taking into account the service rendered by him in the Army.

12. In case the argument of the respondents is accepted that the respondents considered the order of the Tribunal dated 29.08.2016 and arrived at a conclusion that his application for condonation of the period could not have been accepted keeping in view his discharge from service, it would amount to permit the respondents to sit in appeal over the order of the Tribunal as an appellate authority, which shall be highly contemptuous and disgraceful for the administration of justice and uphold the majesty of law.

13. In the present case since the respondents have not complied with the order of the Tribunal in letter and spirit and the applicant has been compelled

to approach the Tribunal second time, keeping in view the decision in **Salem Advocate Bar Association vs. Union of India**, reported in (2005) 6 SCC 344 imposition of cost is must in this case. Relevant portion of the aforesaid judgment is reproduced as under :-

“So far as awarding of costs at the time of judgment in concerned, awarding of costs must be treated generally as mandatory in as much as the liberal attitude of the Courts in directing the parties to bear their own costs had led parties to file a frivolous case in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but losses on number of other issues or points which were unnecessarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.”

14. Apart from above Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in **A. Shanmugam V. AriyaKshetriyaRajakulaVamsathuMadalayaNandhavanaParipalana Sangam represented by its President and others**, (2012) 6 SCC 430. In the case of **A. Shanmugam** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. **Indian Council for Enviro-Legal Action V. Union of India**, (2011) 8 SCC 161;
2. **Ram Krishna Verma V. State of U.P.**, (1992) 2 SCC 620;

3. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. SahiOretrans (P) Ltd.,*** (1999) 2 SCC 325;
5. ***Padmawati V. HarijanSewak Sangh,*** (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.,*** (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue,*** 1984 (supp) SCC 505.

15. In view of above, we assess the cost of Rs.50,000/-, which shall be deposited by the respondents in the Tribunal within two months from today and shall be released in favour of the applicant through cheque by the Registry.

ORDER

16. O.A. is allowed. The impugned order dated 07.10.2016, contained in Annexure No.1 to the petition is set aside with all consequential benefits. Respondents are directed to reconsider the application of the applicant keeping in view the prayer made by him for condonation of the period of six months to complete 15 years of service for payment of pensionary benefits expeditiously, say within three months from today and communicate the decision to the applicant.

Cost is quantified at Rs.50,000/-, which shall be deposited in the Tribunal within two months from today and shall be released in favour of the applicant through cheque by the Registry.

(Air Marshal BBP Sinha)
Member (A)

Dated: 18th January, 2018

JPT

(Justice Devi Prasad Singh)
Member (J)

