

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No-1**Transferred Application No. 1469 of 2010**Thursday the 21st day of April, 2016

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Ram Harsh S/o Late S.K. Pandey, R/O Village : Bela Sadar, Post-
Abhiyakala, District- Sultanpur.

..... Applicant

By Shri Rakesh Johri and Shri Rajiv Manglik, Counsel for the applicant.

Versus

1. Union of India through through Secretary, Ministry of Defence, New Delhi.
 2. The Chief of the Army Staff, New Delhi.
 3. The Director General, Medical Services, Army Headquarters, New Delhi
 4. The Army Medical Corps Records, Lucknow
- Respondents
- By Bhanu Pratap Singh, Standing Counsel along with Major Soma John,
Deoartmental Representative.

ORDER

1. Writ Petition No. 16478 of 2001, filed before the Hon’ble Allahabad High Court, has been received by this Tribunal on 15.11.2010 and registered as above.

2. In this writ petition the petitioner seeks the relief of quashing of the order dated 16.3.2001, annexed as Annexure ‘13’ to the writ petition, and to

pay pension with effect from 5.8.1991 along with penal interest at the rate of 18% per annum.

3. The facts of the case, in brief, are that the petitioner was enrolled in the Army on 6.8.1971. He was thereafter promoted to the rank of Naik on 14.9.1990 but his extension of two years was not granted to him due to lack of ACR criterion, a decision which he challenged in the Hon'ble High Court by means of a writ petition. This writ petition was subsequently dismissed. On 2.8.1991 he was deprived of the rank of Naik by a summary trial for an offence under Section 63 of the Army Act. This order too was challenged by the petitioner before the High Court. The petitioner was given a movement order dated 16.7.1991 asking him to report to the AMC Centre on 7.11.1991 for discharge drill. The petitioner failed to do so and was dismissed from service on 20.4.1997, being a deserter. His request for pension from ~~5.8.1971~~ ^{6.8.1971} to 6.8.1991 was denied by an order dated 16.3.2001. ^{CA R. Subramaniam: 16/11/12} Aggrieved against, the present writ petition, which has now been registered as T.A. No. 1469 of 2010, has been filed by the petitioner.

4. The petitioner is represented by S/Shri Rajeev Manglik and Rakesh Johri.

5. The petitioner had, feeling aggrieved, filed plethora of writ petitions on a number of occasions. In the present writ petition the petitioner has listed all these writ petitions, filed by him earlier, and the appeal preferred by him against the decisions of those writ petitions. The relevant appeal,

being Appeal No. 352 of 1998, by which he challenged the decision of the Hon'ble Single Judge where he was reverted to the rank of Naik. This appeal was eventually decided on 14.7.2000. The petitioner states that he is entitled to pension from 5.8.1971 to 6.8.1991, i.e. for 20 years of service, which has been denied to him. He states that the respondents were in full knowledge of the address of his house, which had been allotted to him by MH, Allahabad, and which he vacated in August, 1999. He further states that even knowing his whereabouts fully the respondents intentionally had not supplied/handed over to him his dismissal order and, therefore, there is no question of his being declared deserter. The petitioner states that not only was he in occupation of the house allotted to him by MH Allahabad but also he was in receipt of rations from MH Allahabad. The petitioner further claims that he cannot be dismissed from service with effect from 7.11.1991 since he was not in service on that date.

6. The respondents are represented by Shri Bhannu Pratap Singh, Standing Counsel, along with Major Soma John, Departmental Representative.

7. The respondents in their counter affidavit have admitted the writ petitions filed by the petitioner. He was deprived of the rank of Naik on 2.8.1991, a decision which he challenged in the High Court. The retirement order by AMC Records was issued vide order dated 16.7.1991 wherein the petitioner was asked to report to the Centre on 7.11.1991, an order which he

did not comply with, was declared a deserter and thereafter was dismissed from service with effect from 7.11.1991.

8. Heard both the sides and perused the documents.

9. From labyrinth of the writ petitions and appeals challenging the decisions on the writ petitions it emerges that the petitioner was deprived of the rank of Naik on 2.8.1991, which he challenged by means of Writ Petition No. 23709 of 1991, which goes against him vide judgment and order dated 7.4.1998. Writ Petition No. 8983 of 1992, order by then Hon. Alok Chakraborty, J. of the Allahabad High Court was challenged by the petitioner by Civil Appeal No. 352 of 1998. The relevant extract of the judgment and order dated 24.4.2000 by the Division Bench of the Hon'ble High Court in Civil Appeal No. 352 of 1998 are reproduced below :-

“The facts stated above would show that as a soldier the appellant was entitled to continue in service till 6-8-1991 as he had joined the Army on 6-8-1991. He got an extension in service for a period of two years on account of his promotion to the post of Naik. He was reverted from the post of Naik to the post of Soldier on 2-8-1991. This order was challenged by him by filing writ petition No. 23709 of 1991, which was dismissed by the Court on 20-11-1991. The order reverting him from the post of Naik to Soldier, therefore, attained finality. In

view of this order, the appellant could not claim any legal right to continue in service beyond 6-8-1991."


10. As emerges from the aforementioned judgment and order that the High Court had held that the petitioner cannot claim service beyond 6.8.1991, which implies that he was to be considered in service from 5.8.1971 to 6.8.1991.


11. As regards the apprehension roll issued by the AMC Centre and Records and the respondents' statement that they were not aware of the whereabouts of the petitioner, we find that the respondents responded in 1992 and 1993 to the statutory appeal, filed by the petitioner communicating their response at the petitioner's house address, which had been allotted to him by MH Allahabad. Also the petitioner has annexed copy of the Ration Card issued to him by MH Allahabad on which he continued to draw rations. The factum of the petitioner vacating the Government accommodation in August 1999 has not been denied by the respondents. Therefore, there is no substance in the contention of the respondents that they were not aware of the whereabouts of the petitioner.

12. In sum, the petitioner's service is to be regarded from ~~5.8.1971~~ ^{6.8.1971} to 6.8.1991 and we are of the view that he is entitled to pension after 6.8.1991. *GR. udham 16/12*

13. Accordingly, this writ petition is allowed to the extent that the respondents are directed to pay pension and all other retiral benefits to the petitioner, considering him to be in service upto 6.8.1991, within a period

of three months from the date a certified copy of this judgment and order is produced before the competent authority. No order as to costs.


(Lt. Gen. A.M. Verma)
Member (A)
21st April 2016


(Justice Abdul Mateen)
Member (J)
21st April 2016

PG.