RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 161 of 2018

Tuesday, this the 23rd day of April, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

L/Nk/ AA Wilson Andrews G (No. 13999792F), S/o Sri M. George William, R/o Village Meelapuunavasal, P.O. Keelapuunavasal, Tehsil Thiruvaiyaru, District Thanjavur (TN).

…. Applicant

Ld. Counsel for the: **Col A.K. Srivastava (Retd)**, Advocate.
Applicant

Versus

1. The Secretary, Govt of India (MoD), South Block, DHQ P.O. New Delhi-110001
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ P.O. New Delhi- 110001
3. Officer Commanding, AMC Records, Lucknow (U.P.)-226002
4. Principal Controller of Defence Accounts, PCDA (P), Draupadi Ghat, Allahabad- 211014

...Respondents

Ld. Counsel for the: **Shri Amit Jaiswal**, Advocate**.**
Respondents.

ORDER

"(Per Hon'ble Mr Justice SVS Rathore, Member (J)"

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers :-

"(a) Issue/ Pass an order or direction of appropriate nature to quash/set-aside the respondents letter dated 15.11.17 rejecting applicant's representation to re-instate him in service w.e.f. 05.02.2017 and not w.e.f. 20.07.2017 as reflected incorrectly in AMC Record letter dated 15.11.2017 as applicant overstayed leave w.e.f. 05.02.2017.

(b) Issue/ Pass an order or direction of appropriate nature to quash/set-aside order of dismissal from service in respect of the applicant w.e.f. 20.07.2017 passed by the respondents and reinstate him in service with all consequential benefits w.e.f. 20.07.2017.

(c) Issue/ Pass an order or direction of appropriate nature to grant him service pension w.e.f. 20.07.2017 by condoning short fall of 1 year and 15 days, considering the fact that he had almost 14 years service with 'Excellent' conduct and repeatedly tried to rejoin duty but was not allowed to rejoin and was dismissed from service w.e.f. 20.07.2017.

(d) Issue/ Pass an order or direction of appropriate nature as this Hon'ble Tribunal deems appropriate in favour of the accused.

(e) Allow this application with costs and interest."

2. In brief the facts of the case are that the applicant was enrolled in AMC as an Ambulance Assistant on 15.07.2000. He served the Army for a period of 13 years and 245 days i.e. one year and 20 days short to earn pension after completing minimum 15 years of service. As per the facts mentioned in the O.A. applicant was married on 08.09.2009 during leave. The applicant joined his duty after leaving his wife with his parents. Subsequently he came to know that his wife quarrels on trivial issues with his parents. The applicant applied for leave and tried to improve her attitude. The wife of the applicant also used to elope with some unknown persons and the applicant came to know that his wife is having extra marital relations with some other person. The applicant was blessed with a son on 30.06.2011.

Subsequently he was informed that his wife has left his house, so the applicant took leave and went to his home where he found that his wife is at home. Again on 22.12.2013 applicant's mother informed that his wife has left the house. The applicant was granted 30 days casual leave from 06.01.2014 to 04.02.2014. During leave applicant approached the parents of his wife. Because of the family conditions the applicant requested his seniors to get his casual leave converted into annual leave. The applicant due to compelling reasons over-stayed leave at home. Thereafter he tried to get converted his casual leave into annual leave but could not get regularised the said period of over-stayed leave. Because of the absence applicant was declared deserter and an apprehension roll was sent to the Police authorities. He reported to his Unit MH Deolali on 23.04.2015 and requested the Sentry at the Gate to allow him to go inside. The applicant thereafter again on 23.04.2015 tried to meet his Company Commander and the Registrar of his Unit but he was not allowed to enter the premises. The applicant lastly reported to his Unit MH Deolali on 25.07.2017 where he was informed that he has been dismissed from service on 20.04.2017.

3. Though the applicant in his O.A. has made different prayers for his reinstatement but during the course of arguments the only prayer made by the learned counsel for the applicant is that his dismissal from service be converted into discharge and the period of short fall of 01 year and 20 days to earn pension to complete

the 15 years of minimum service be condoned and the applicant be given pensionary benefits.

4. In the counter affidavit it is pleaded that the applicant was dismissed from service under Section 20 (3) of the Army Act, 1950. He had 13 years, 07 months and 19 days of service to his credit. The fact that he was granted 30 days casual leave in the year 2014 is admitted by the respondents. It is pleaded that the applicant did not report to his duty station and he over stayed the leave from 07.03.2014. After expiry of leave an apprehension roll was issued to the civil authorities. The applicant never reported to his duty and ultimately he was dismissed from service after expiry of period of 03 years from the date of his desertion i.e. 07.03.2014.

5. On behalf of the applicant written arguments have also been filed wherein reliance has been placed on the pronouncement of a Co-ordinate Bench of Armed Forces Tribunal, Regional Bench, Jabalpur in O.A. No. 71(J) 2017 Inre MA/21(J)/2016 Inre MA/115/2016 **Namrata Chauhan vs. Union of India and others** dated 15.11.2017. In the case relied upon by the learned counsel for the applicant the Tribunal has taken into consideration Army Rule 17 which reads as under:-

> "Dismissal or removal by Chief of the Army Staff and by other officers. —Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the

> particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:
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> Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient <u>or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order</u> the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.
>
> (Underlined by us)

6. In the facts of that case the deserter died before expiry of the period of 10 years and therefore it was held that notice was not served on him. A careful reading of Army Rule 17 shows that a person against whom apprehension roll has been issued within 03 years from the date of his desertion and the Police has not been able to apprehend or bring him back, how a notice can be served on such a person which would only be a paper formality. Apart from it the submission of the applicant is that his dismissal be converted into discharge as the punishment of dismissal is very harsh. Applicant was an experienced Army personnel having more than 13 years of service to his credit, so he was very much aware of the fact as to what long unauthorised absence from duty means in Army. In a very recent judgment in Civil Appeal No. 3095 of 2017 **Union of India & others vs. Ex. No. 6492086A Sep/Ash Kulbeer Singh** decided on 11.03.2019 Hon'ble Apex Court has set aside the judgment passed by a Co-ordinate Bench of this Tribunal wherein the order of dismissal after 302 days of

absence was converted into discharge was held to be bad in the eye of law and accordingly the same was set aside.

7. The submission of the learned counsel for the applicant that the dismissal be converted into discharge as the punishment is very harsh simply means that the applicant is admitting his absence for more than 03 years and, therefore, if a person is absent for a long period of 03 years then he must face the consequences because such an act is extremely in gross violation of strict Army discipline. Hon'ble Apex Court in the aforementioned case of **Kulbeer Singh** regarding punishment observed as under:-

> "Insofar as the second submission is concerned, it is evident from the statement, which was extracted earlier, that the respondent had admitted his absence for 302 days without leave. The statement contains a justification for the absence. From the record, it is evident that the respondent did not make any effort to apply for extension of his leave. Absence of 302 days from his duty by a member of the Armed Force could not be condoned. We are clearly of the view that the Armed Forces Tribunal was in error in coming to the conclusion that the punishment which was imposed was harsh. The only basis for the finding was that the respondent had put in twelve years of service. This was all the more a reason why any responsible member of the Armed Force should not have absented from service without permission.
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> The Tribunal clearly misdirected itself in law in coming to the conclusion that the punishment of dismissal from service was harsh and disproportionate."

8. In view of the recent pronouncement of Hon'ble Supreme Court aforementioned on the subject, we do not find any substance in this O.A.

9. There is yet another question to be considered in this case whether a person who is dismissed from service can claim pension. Hon'ble Apex Court considered this point in the case of **Shish Ram vs. Union of India & others** reported in Supreme Court Reports (2011) 13 (Addl.) S.C.R. 289 and has held that a dismissed person has no right to claim pension and gratuity. The relevant Para-8 of the said judgment reads as under:-

> "8. Regarding pension and gratuity claimed by the appellant, Regulation 113 (a) of the Pension Regulations, 1961 is quoted hereinbelow:
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> > "An individual, who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date."
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> Regulation 113(a) is clear that an individual, who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. As the appellant had been dismissed from the service under the provisions of the Army Act, he was not eligible for pension and gratuity and the High Court was right in rejecting the claim of the appellant for pension in the impugned judgment."

10. Accordingly, the O.A. is **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: April 23, 2019
JPT