

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 120 of 2017

Friday, this the 27th day of July, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Capt V.P. Singh (IC-17946), son of late Virendra Bahadur Singh, permanent resident of village & Post Sahatwar, District Balia (U.P.) and presently residing at 222 Sitevihar Begariya, Dubagga, Lucknow.

..... Applicant

Ld. Counsel for the Applicant: **Smt Poonam Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India Thal Sena Mukhyalaya, New Delhi.
2. Chief of Army Staff, Headquarters D.N.O. P.O. New Delhi.
3. General Officer Commanding in Chief, Central Command Head Quarter, Lucknow.
4. Commandant, Central Ordinance Depot, Lucknow

..... Respondents

Ld. Counsel for the Respondents: **Dr. Gyan Singh**, CGSC

ORDER

Per Justice SVS Rathore, Member (J)

1. We have heard learned counsel for the parties and perused the record.

2. By means of this OA under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

“(8.1) It is most respectfully prayed that this Hon’ble Tribunal be pleased to pass the order for directing the respondents to pay the applicant, the entire pensionary benefit amount such as provident fund, Army Group Insurance fund, pension gratuity etc along with 18% interest incurred thereon with effect from 25.11.1987 as per order dated 4.5.1987 communicated to the applicant on 3.10.2016 by the respondents (Annexure no.2). And order dated 11.1.2017 & order dated 14.07.2016 of the Military Secretary passed on behalf of the respondents be set aside in the interest of justice.

(8.2) Any other order or direction which this Hon’ble court deems just, proper and fit in the circumstances of the case also be passed in favour of applicant.

(8.3) Allow the cost of Original Application with costs.”

3. In brief, the facts of the case, as averred in the OA, are that the applicant was commissioned in regular Army in the Corps of Military Farms as permanent commissioned officer in the rank of Second Lieutenant on 11.06.1967. The applicant’s service record upto 1980 was of high average, demonstrating that he was an excellent officer. He qualified in the requisite promotion examination called “Part-C” under the Rules for the Army, 1962 and was promoted to the rank of Captain in 1973 . Thereafter he became due for promotion to the substantive rank of Major in 1980 subject to qualifying another promotion

examination called "Part-D". According to the applicant, in the meantime, he developed strained relations with some senior officers of the department on account of some personal reasons, due to which he was subjected to lot of physical and mental inconveniences and hardships at the hands of said officers in the garb of military discipline and expedience of service etc. The applicant was compelled to initiate statutory complaints against them to the Government of India and having deprived of fair and reasonable reliefs, he took recourse to the Court. The applicant litigated upto Hon'ble Supreme Court, but he failed to get any remedy. On 04.05.1987, the applicant was given an order of the Government of India dated 30.03.1987 alongwith the letter of the Commandant, COD Jabalpur dated 04.05.1987 whereby he was called upon to go on retirement with a letter to this effect within 10 days, failing which he shall be compulsorily retired from service on payment of pension and gratuity, if any, admissible. The applicant states that the respondents did not take any decision pursuant to the said order dated 30.03.1987. Feeling aggrieved with the inaction on the part of the respondents, the applicant preferred a writ petition bearing No. 334 of 2003, which on transfer to this Tribunal was renumbered as T.A.No. 62 of 2012. The said petition was disposed of on 07.10.2015 with the following observations and directions:

"7. It would be noted that Section 19 of the Army Act read with Section 19A, the Government of India

has right to issue proper direction, which is binding upon the respondents. Order dated 30.05.1987 being binding in nature, it was incumbent upon the respondents to take a decision. Nothing has been brought on record that the letter dated 30.05.1987 (supra) has been overruled by the Government of India. Hence it has binding effect and still cover the field.

8. *In view of the above observations, we direct the respondent that before taking any decision, they have to take a decision in pursuance to letter dated 30.03.1987 and communicate to the applicant. We further direct the respondents to take a decision in compliance of letter dated 30.03.1987 within two months.*

9. *It may be noted that on account of some flaw in our legal system which resulted in pendency of cases in the High Courts or in different forums, the petitioner cannot be put to suffer. In case proper order would have been passed and Mandamus would have been issued keeping in view the binding nature of order passed by the Government of India, when the writ petition was filed or within reasonable period of filing of the Writ Petition, the dispute would have come to an end. No person should suffer because of pendency of the case.”*

4. It is also pleaded in the OA that the applicant was never dismissed from service in consequence of any disciplinary inquiry; therefore, his compulsory retirement in pursuance of aforesaid letter/order of the Government of India dated 30.03.1987 cannot be treated as dismissal from service by any stretch of imagination and as such, the applicant could not be deprived of pension and other post-retiral benefits. The cause of action for filing the present OA arose on 03.10.2016 when the respondents even after communicating their decision for

compulsory retirement of the applicant with effect from 25.11.1987 withheld the payment of his pension and gratuity and thus did not comply with the Tribunal's order dated 07.10.2015 passed in the aforementioned TA.

5. **Per contra**, the respondents have pleaded in their counter affidavit that the applicant was issued a Show Cause Notice on 27.09.1984 for termination of his service under Army Rules 13-A on failure to pass promotion examination Part-D. According to the respondents, on careful consideration of the applicant's reply to the show cause notice and recommendations of the Chief of Army Staff, he was allowed to clear his promotion examination Part-D upto completion of 20 years reckonable service. The applicant appeared in the said examination held in November, 1986 which was his last chance but failed. The applicant had applied for 05 days' casual leave from 05.05.1987 to 09.05.1987 with permission to suffix 10.05.1987 vide his application dated 04.05.1987. The said leave application of the applicant was received on 05.05.1987 at about 09-30 hrs. The said leave was not sanctioned and the COD Jabalpur vide letter dated 05.05.1987 intimated this fact to the applicant. He was instructed to intimate fresh date to obtain from HQ Central Command. When COD Jabalpur inquired about the whereabouts of the applicant, it revealed that he was not in station. The applicant was then declared 'Absent without leave' (AWL) with effect from 05.05.1987 and apprehension letter was

issued. Thereafter the applicant requested to extend leave from 11.05.1987 to 12.05.1987 but the said leave was not sanctioned and he was intimated accordingly. Again the applicant requested to extend leave from 13.05.1987 to 18.05.1987, but the same was not sanctioned, stating that he was already declared AWL. It is also pleaded that since the applicant was declared AWL with effect from 05.05.1987, he was declared deserter before completion of 20 years of service.

6. On behalf of the applicant, it has been argued that he had gone on leave to visit his father, who was on death bed and at that point of time, only 36 days were left for him to complete his pensionable service of 20 years. However, the respondents acted in a very unfair manner by denying him leave despite the fact that his 60 days authorised annual leave was unutilised at that time and decided to declare him AWL. It has been further argued that in view of the Government Order dated 30.03.1987 and keeping in view the order dated 07.10.2015 passed by the Tribunal in aforementioned TA, the respondents were bound to pass an order of compulsory retirement and, therefore, after completion of 20 years of service, the applicant was entitled to pension and all other post-retiral benefits, which have been illegally denied to him by the respondents.

7. On behalf of the respondents, a senior officer of MS Branch appeared to assist the Tribunal, but during the course of arguments, in reply to a query as to whether at any point of time

post AWL, an order declaring him deserter or dismissing him from service has been passed, he submitted that the applicant was absent without prior sanction of leave; therefore, apprehension letter was issued. He, however, fairly conceded that there is no order of dismissal or discharge or compulsory retirement of the applicant from service.

8. Keeping in view the rival pleadings and submissions made on behalf of the parties, we find it relevant to quote the Government of India order dated 30.03.1987 to decide the issue involved in the instant case. The said letter reads as under:

*“No. 00470/IC-17946/MS8C/1464/D (MS)
Government of India,
Ministry of Defence,
New Delhi, the 30th March, 1987.*

ORDER

Capt VP Singh (IC-17946)MF was issued a Show Cause Notice on 27 Sep 84 for termination of his service under Army Rule 13-A on failure to pass Promotion Examination Part ‘D’. On careful consideration of his reply to the Show Cause Notice and recommendation of Chief of Army Staff he was allowed to clear his Promotion Examination Part ‘D’ up to completion of 20 years reckonable service. The officer appeared in the said examination held in Nov 86 which was his last chance but failed.

The Central Government in exercise of powers conferred by Army Act Section 19 read with Army Rule 13-A hereby order that the said Capt VP Singh (IC-17946)MF shall be called upon to retire and on refusal to do so he shall be compulsorily retired from service on payment of pension and gratuity, if any admissible to him.

By order and in the name of the President.

*Sd/ xxxx
(S. Chaudhary)*

Under Secretary to the Government of India”

9. A copy of the orders passed in Case No. 38178/158/MS7C, which was issued in compliance of the Tribunal's order dated 07.10.2015 passed in aforementioned TA bearing No. 62 of 2012, has also been annexed as Annexure-1 to the OA. Para 9 of the said order reads as under:

“9. NOW THEREFORE, having examined the legal provisions relating to cessation of subjection under the Army Act through compulsory retirement, the pending disciplinary case against the officer inter alia for desertion and in due deference to the Orders of the Hon'ble Tribunal dated 07 October 2015 in TA 62/2012, the competent authority is satisfied that the Govt Order dated 30 March 1987 directing the administrative authorities to call upon the officer to retire or to compulsorily retire from the service was acted upon culminating in the Order dated 25 November 1987 for the compulsory retirement of the Officer.”

10. As per the aforesaid compliance order, it is very clear that the applicant ought to have been compulsorily retired from service. A perusal of the counter affidavit shows that self-contradictory pleadings have been taken by the respondents. Here, it would be relevant to quote para 7 of the counter affidavit, wherein specific averments with regard to the applicant's retirement have been made by the respondents. It reads as under:

“7. That before completion of 20 years of service, the applicant was 'Absent without leave' w.e.f. 05.05.1987 while he was attached with COD Jabalpur for discipline. As per government order the applicant was called upon to submit an application for

retirement within 10 days on receipt of government order issued on 04.05.1987. After that the applicant was declared 'Absent without leave'. Thus he failed to submit application for retirement. After stipulated period the applicant retired on completion of 20 years of service." (underlined by us.)

11. The above averments in unequivocal terms made on behalf of the respondents establish that the applicant was retired after completion of 20 years of service, but admittedly, no pension is being paid to him.

12. Keeping in view the compliance order passed in pursuance of the Tribunal's order aforesaid, it is established that the applicant was compulsorily retired. The order passed by the Government of India dated 30.03.1987 also directs the respondents to pass an order of compulsory retirement of the applicant. It has been argued on behalf of the respondents that since the applicant was not traceable and certain formalities had to be completed before passing an order of compulsory retirement; therefore, a formal order of compulsory retirement could not be passed.

13. Now, at this stage, we feel it expedient to first consider as to what would be the impact of compulsory retirement; whether it would be stigmatic or not. On this issue, reference may be made to the pronouncements of the Hon'ble Apex Court in **State of Gujarat versus Umedbhai M. Patel (2001) 3 SCC 314**, **C.D Ailawadi versus Union of India (1990) 2 SCC 328**

and **Punjab State Power Corpn Ltd versus Hari Kishan Verma** (2015) 13 SCC 156, wherein the Hon'ble Apex Court has held that the order of compulsory retirement is not a punishment. It also does not cast a stigma. In view of aforementioned case laws, it is, thus, clear that the compulsory retirement is not a stigma; meaning thereby that the applicant would be entitled to all post-retiral benefits.

14. Section 19 of the Army Act gives powers to the Central Government to pass orders of termination of service of any person subject to the Army Act. It reads as under:

“19. Termination of service by Central Government. Subject to the provisions of this Act and the rules and regulations made there under the Central Government may dismiss, or remove from the service, any person subject to this Act.”

15. The letter/order dated 30.03.1987 establishes that the Central Government had issued the same under Army Rule 13-A, which reads as under:

“13A. Termination of service of an officer by the Central Government on his failure to qualify at an examination or course.— (1) When an officer does not appear at or, having appeared fails to qualify, at the retention examination or promotion examination or any other basic course or examination within the time or extended time specified in respect of that examination or course, the Chief of the Army Staff or the Military Secretary shall call upon the officer to show cause why he should not be compulsorily retired or removed from the service.

(2) In the event of the explanation being considered by the Chief of the Army Staff or the

Military Secretary to be unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendation of the Chief of the Army Staff or the Military Secretary as to whether the officer should be—

(a) called upon to retire; or

(b) called upon to resign.

(3) The Central Government, after considering the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff 2[or the Military Secretary] may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him."

16. In compliance of the order of Government of India dated 30.03.1987, a letter was issued to the applicant on 04.05.1987, which reads as under:

"CONFIDENCIAL

Tele : 20269/264

Central Ordnance Depot
Post Box No. 20
Jabalpur- 482001

13A/VPS/HQ
Capt VP Singh
Att to COD Jabalpur

04 May 87

REITREMENT URDER ARMY RULE 13A : CAPT VP SINGH (IC-179460), MF ATTACHED TO CENTRAL ORDNANCE DEPOT, JABALPUR

1. You reckon seniority wef 11 Jun 67 and will be completing 20 years of reckonable service on 11 Jun 87. You have not so far passed Promotion Examination Part 'D'. You did not appear in Promotion Examination Part 'D' held in Feb 86 which was your first chance. You appeared in Promotion Examination Part 'D' held in Nov 86 which was your second and last chance (according to revised schedule of Promotion Examination, Promotion Examination Part 'D' was held twice in the year 1986 in Feb 86 and Nov 86 and will be held subsequently in the month of Sep from 1987 onwards) but failed. Accordingly,

vide Govt of India, Min of Def Order No 00470/IC-17946/MS8C/1464/D (MS) dated 30 March 87 (Copy attached) you have been called upon to retire from the service and in the event of your refusal to do so, you will be retired compulsorily from the service.

2. In pursuance of the Govt of India, Min of Def Order referred to in Para 1 above, you are hereby called upon to submit within 10 days of the receipt of this Central Govt Order your application for retirement from the service (quoting Govt Order) in sextuplicate. It is also intimated for your information, that should you fail to submit your application for retirement from the service within the stipulated period of 10 days, you will be compulsorily retired from service and you will be struck off strength from the service on issue of the retirement orders by Army Headquarters.

3. Please acknowledge.

*(PK Dutta)
Brig
Commandant"*

17. We have analysed the sequence of events carefully and find that there is no controversy upto 04.05.1987 i.e.

(a) That the officer was required to pass promotion examination (Part-D) before 20 years of his service to become a Major.

(b) Since the applicant failed to pass this examination in line with Government Order dated 30.03.1987, he was instructed by his Commandant Brig PK Dutta vide letter dated 04.05.1987 to put his application for retirement within 10 days and failure to put up such an application will result in his compulsory retirement from service.

(c) That on the date the letter dated 04.05.1987 was issued, the applicant had already served for 19 years 10 months and 24 days. Thus, he was 36 days short of completing his pensionable service of 20 years.

18. The controversial points in the sequence of events are two-fold i.e. the applicant being declared AWL and his actual date of compulsory retirement. Considering that he was already informed that he could not continue in service beyond 20 years without passing promotion examination (Part-D) and in light of the Government letter dated 30.03.1987, it can be safely said that he was required to be compulsorily retired immediately after completion of 20 years of service i.e. on 11.06.1987. However, the same was not done by the respondents. On the other hand, we fail to understand as to how leave can be denied to an officer, who is earmarked for compulsory retirement and whose father is on death bed and who has the complete quota of 60 days annual leave unutilised. In the interest of substantive justice, we are inclined to regularise the absence of the applicant from 05.05.1987 till he completed his 20 years of pensionable service i.e. till 10.06.1987 as annual leave.

19. The next issue is that when the applicant was required to be compulsorily retired after 20 years of service, we fail to understand as to why the respondents have not done the same on their own i.e. compulsorily retired on 11.06.1987. On the contrary, they have reduced the 20 years of service of a

commissioned officer into thin air by neither following up on the AWL with deserter-dismissal line of action nor retired him compulsorily as per the Government order. In any case, the whimsical reasons on which he was denied leave and declared AWL defines rationality and principles of natural justice. No responsible organisation is expected to treat its employees in such a manner when they are merely 36 days away from earning their pension.

20. In the finality, the writ petition bearing No. 334 of 2003 preferred by the applicant in Hon'ble Allahabad High Court, which on transfer to this Tribunal was renumbered as T.A.No. 62 of 2012 was disposed of on 07.10.2015. Based on the said order of this Tribunal dated 07.10.2015, the respondents have compulsorily retired the applicant with effect from 25.11.1987. However, they have not released his pensionary benefits on the ground that he was absent and a deserter before his release with effect from 05.05.1987.

21. After considering the entire episode and acts of commission and omission by the respondents, we feel dismayed by the rigid attitude of the respondents in finding one reason after another in denying the pension to the applicant since last 31 years. We fail to understand as to where was the need to compulsory retire him from 25.11.1987 instead of 11.06.1987 as per Government Order except to create more problems for the

applicant by stretching his absence without leave to a level where it cannot be regularised by his balance of annual leave.

22. Considering all issues involved in this case, we are of the following considered opinion:-

(a) The applicant is entitled to his service pension with all consequential benefits on retirement after completion of 20 years of pensionable service.

(b) The so-called AWL from 05.05.1987 till 10.06.1987 is to be regularised from his balance of annual leave for that year.

(c) The period of absence from 11.06.1987 till the date of his delayed compulsory retirement by the respondent i.e. 25.11.1987 is to be regularised as extraordinary leave without pay.

(d) If at a later stage, it is found that the applicant has any shortfall in qualifying service by a few days/months, the same is to be condoned.

23. Accordingly, the OA deserves to be allowed and is hereby **allowed**. The respondents are directed to treat the applicant as compulsorily retired with effect from 25.11.1987 and pay all post-retiral dues and consequential benefits to the applicant with effect from 25.11.1987 as per Government Order dated 30.03.1987 read with order dated 4.5.1987 communicated to the applicant on 3.10.2016. The AWL period from 05.05.1987 to

10.06.1987 is to be regularised as annual leave from his quota of Annual Leave. The period from 11.06.1987 to 25.11.1987 is to be regularised as extraordinary leave without pay. This order is to be implemented within a period of four months from today, failing which they shall be liable to pay interest at the rate of 9% per annum on the total amount due from the date of its accrual till the date of its actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

July 27th, 2018

LN/-