

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 376 of 2020**

Thursday, this the 04th day of August, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex No 1494176L Sapper Kamal Singh Ghugatyal S/o late Bhagwat Singh, R/o House No 78A, Ashok Nagar, PO-Milap Nagar, Roorkee, District-Haridwar.

Learned counsel for the: **Shri Vinay Pandey**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer in Chief, Engineering Branch, IHQ Army, Ministry of Defence, Kashmir House, Shah Jahan Road, New Delhi.
3. PCDA (P), Allahabad.
4. Chief Records Officer and Centre Commandant, Bengal Engineering Group and Centre, Roorkee, PIN-900477, C/o 56 APO.
5. The Commanding Officer, Specialist Training Battalion (Depot), Bengal Engineering Group and Centre, Roorkee, PIN-900477, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri Namit Sharma**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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

(i) To issue order, directions to the non applicants to produce complete records in respect of the applicant related to the Medical Disability and SCM proceedings awarding the punishment of dismissal from service.

(ii) To issue order, directions quashing the impugned SCM proceedings and discharge order dated 10.12.2010 and letter dated 23.01.2014 and to reinstate the applicant with full back wages and allowances.

(iii) To issue order, direction deemed appropriate and proper by the Hon'ble Tribunal in the facts and the circumstances of the case in favour of the applicant.

2. In brief the facts of the case may be summarized as under:

The applicant was enrolled in the Indian Army on 08.11.1996. On 10.02.2010 he deserted the unit and voluntarily rejoined on 10.05.2010. He was tried by Summary Court Martial (SCM) and dismissed from service under Section 38 (1) and 39 (a) of Army Act, 1950 w.e.f. 10.12.2010 with one month simple civil imprisonment. Earlier, during the course of his service he was awarded five red ink and one black ink entries on various grounds mainly due to absent without leave and desertion making total absence from duty as 02 years, 07 months and 01 day. After dismissal from service, applicant submitted application dated 27.12.2013 for grant of gratuity and pensionary benefits. This application was replied vide letter dated 23.01.2014 intimating him that since he was dismissed from service he is not entitled to pensionary benefits in terms of Regulation 43 of

Pension Regulations for the Army, 2008 (Part-I). Thereafter, he again submitted application dated 03.11.2017 for grant of pension and gratuity. In response to this application, he was informed vide letter dated 12.12.2017 that a dismissed Army person is not entitled to pensionary benefits as well as gratuity because his entire service was forfeited. Being aggrieved, the applicant filed Dy No 1693 of 2017 before this Tribunal for quashing the impugned SCM proceedings and discharge order dated 10.12.2010. This application was dismissed vide order dated 31.10.2017 due to non prosecution. This O.A. has been filed by the applicant for (i) quashing SCM proceedings and (ii) quashing dismissal order dated 10.12.2010 and reinstate him into service with full back wages and allowances.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 08.11.1996 and he served in the unit in various peace and field areas. He also participated in Op Rhino, Op Parakram and Op Rakshak as is evident from the discharge book (Annexure 6). He further submitted that till the year 2009 when he completed more than 13 years service there was no problem and applicant had no bad entry in his service book. It was further submitted that the problem started soon after his marriage when he started drinking heavily and started leaving the unit lines without any intimation. He submitted that the applicant was brought by his family members for treatment of Alcohol Dependence Syndrome but the Army authorities had

declared him as deserter and punished on trivial grounds. He further submitted that record indicates that the applicant was awarded four red ink entries within a small period of less than six months for similar incidents of absenting himself due to Alcohol Dependence Syndrome and concerned Army authorities treated the absence as mere act of indiscipline and kept on punishing the applicant without caring to note that as to why a jawan who was completely normal and had no previous record of punishments in more than 13 years of service, was time and again absenting himself. He further submitted that the applicant in February 2009 was referred to Command Hospital, Chandimandir where the doctors advised to keep him on sheltered appointment under supervision. It was further submitted that at the time of dismissal from service the applicant was in medical category S3 (Permanent) and was not in a fit condition to defend himself and also he was not afforded any opportunity to defend himself and place records before the Summary Court Martial Proceedings.

4. Learned counsel for the applicant further submitted that respondent No 5 neither sent the applicant for treatment of Alcohol Dependence Syndrome nor did he care to enquire into the history of the applicant which led to onset of Alcohol Dependence Syndrome, but merely treated the alleged absence as military demeanour and punished him with extreme punishment of dismissal from service. It was further submitted that during the Court Martial Proceedings the applicant was provided no

opportunity to produce evidence in his support or explain the reasons for alleged absence. He submitted that the fact of the matter was that the applicant was under treatment in Nirvan Hospital, Haldwani for his Alcohol Dependence Syndrome and not absented or deserted the service as alleged by the respondents. It was further submitted that while awarding harsh punishment under Army Act the respondents failed to take into consideration the medical category of the applicant in which the applicant was placed by the Medical Specialist, especially his mental status.

5. Advancing his submission learned counsel for the applicant further submitted that -(i) the applicant was neither heard by the Commanding Officer and the Centre Commandant/Chief Record Officer nor was he given any opportunity to explain his case, (ii) the respondents never conducted any inquiry to find the cause of Alcohol Dependence Syndrome and (iii) the order dated 10.12.2010 is non speaking which was never served upon the applicant. He submitted that the Commanding Officer has misused his power in gross violation of Rules and Regulations which is evident that the applicant was not provided with any documents related to SCM proceedings. He pleaded for quashing of SCM proceedings and discharge order dated 10.12.2010 and re-instate the applicant in service with all consequential benefits.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 08.11.1996. During the course of his service he was punished on five

occasions on account of various acts of indiscipline. He further submitted that he deserted from service on 10.02.2010 and after rejoining on 10.05.2010 he was tried by Summary Court Martial under Army Act Section 38 (1) and 39 (a) and was dismissed from service with one month simple imprisonment in civil prison. It was further submitted that the applicant was a habitual offender who was setting a bad example and also making negative impact on other disciplined soldiers in the unit and kept committing offences repeatedly. Despite adequate opportunities given to him by the Army, he did not show any improvement and earned more than five red/black ink entries between the period 2003 to 2010. It was further submitted that Army is known for its discipline and any indiscipline activity by any member of the Armed Forces tantamount to breach of security/discipline.

7. Learned counsel for the respondents further submitted that the applicant has put in more than 14 years service in which he absented 02 years, 07 months and 01 day, therefore he has 11 years and 08 months qualifying service at his credit which is insufficient for grant of pension. Furthermore, as per para 43 of Pension Regulations for the Army, 2008 (Part-I) applicant's total qualifying service was forfeited for the purpose of pensionary benefits at the time when he was dismissed from service. He pleaded for dismissal of O.A.

8. Heard Shri Vinay Pandey, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents and perused the material placed on record.

9. The applicant was enrolled in the Army on 08.11.1996 and he was dismissed from service w.e.f. 10.12.2010 under Section 38 (1) and 39 (a) of Army Act, 1950. During the course of his service he was awarded following punishments on various charges:-

S No	Punishment	Date of Offence	Army Act	Unit	Type of Punishment
(a)	07 days pay fine on 23.09.2003 (losing by neglect Identity Card the property of the Govt issued to him for his use)	04.05.2003	Section 54 (b)	133 Wks Engr	Black Ink Entry
(b)	21 days Rigorous Imprisonment in military custody on 12.02.2004 for attempting to commit suicide)	13.05.2003	Section 64 (c)	STB (D)	Red Ink Entry
(c)	14 days Rigorous Imprisonment in military custody on 17.02.2005 for absenting without leave for 13 days	31.10.2004	Section 39 (a)	237 Engr Regt	Red Ink Entry
(d)	28 days Rigorous Imprisonment in military custody and 14 days pay fine on 17.11.2007 for absenting without leave for 558 days	08.01.2006	Section 39 (a)	237 Engr Regt	Red Ink Entry
(e)	28 days Rigorous Imprisonment in military custody and 14 days pay fine on 04.09.2008 for absenting without leave for 05 days	29.08.2008	Section 39 (a)	237 Engr Regt	Red Ink Entry
(f)	Dismissed from service and 01 month imprisonment in civil prison on 10.12.2010 for absenting without leave for 90 days	10.12.2010	Section 38 (1) and 39 (a)	237 Engr Regt attached with STB (D) Roorkee	Dismissal from service

10. From the aforesaid, it is evident that the applicant was punished mainly on the ground of absent without leave. He was awarded minor punishments and retained in service to earn service pension. He was given ample opportunities to improve

himself, but despite providing opportunity time and again he had not shown any improvement and kept repeating the offences. During the entire service, the applicant remained absent from duty due to absent without leave/desertion for 02 years and 211 days. Hence, the qualifying service which the applicant rendered is 11 years, 08 months and 01 day. However, the entire service of the applicant has been forfeited for the purpose of pensionary benefits in terms of Regulation 43 of Pension Regulations for the Army, 2008 (Part-I).

11. We notice that the applicant was admitted in Command Hospital, Chandimandir on 24.02.2009 for psychiatric evaluation and Alcohol Dependence Syndrome. On admission Lt Col TR John, Classified Specialist (Psychiatry), endorsed the following opinion:-

"No-1494176-L Rank-Spr Name-Kamal Singh

SUMMARY AND OPINION OF LT COL TR JOHN, CLASSIFIED SPECIALIST (PSYCHIATRY), COMMAND HOSPITAL (WESTERN COMMAND) CHANDIMANDIR DATED 24 FEB 2009

Diagnosis: Alcohol Dependence Syndrome (ICD 10-F10.2)

This 32 yrs old serving Spr/DPMT/Eng with 13 yrs of combined service is a case of Alcohol Dependence Syndrome (E 10.2).

He was referred for psychiatric evaluation at the instance of unit authorities for psychiatric evaluation. Unit report dtd 14 Jan 2009 mentioned poor socio-occupational functioning. It reported tendency to absent from place of duty and desertion without any cause. It mentioned alcohol dependency. Reported previous attempt at self harm when on ERE. Reported five red ink entries.

Patient reported binges of alcohol use. He accepted drinking for five years. He accepted that he has developed a pattern of binge drinking which culminates in AWOL. He goes without alcohol for two to three months, then take a peg and the dose and frequency rapidly increases over a period of days, he gets into a haze and imdtly he will abscond from unit and go home. He will be brought back from home by relatives and punished. He will then dry out and the cycle will start again. He had last absconded on 28 Dec 2008. He denied any other symptoms.

There was past h/o self harm by taking rat poison in 2003. He had lost money during travel, used alcohol excessively and had a quarrel with brother following which he took the poison. Treated at MH Roorkee but not referred to Psychiatrist. No other significant past history of illness. Hails from a rural family of Uttaranchal. Both parents

are not alive. No significant family history of alcoholism or other mental illness was present. No history of alcohol use by relatives. Personal history revealed multiple punishments since 2004. He had five red ink entries. He was unmarried and ascribed the same to problems with 'kundli'. He claimed that the marriage was scheduled for May 2009. No other psychoactive substance use. No other significant psychoactive substance was elicited.

P/E done at this center was WNL. No features of withdrawal or hepatic involvement were present. MSE revealed a kempt, co-operative individual who was evasive about his alcohol habits. Alcoholic defenses were prominent. No features of delirium were present. Insight into his problem was poor. Biodrives were reportedly normal. He was investigated thoroughly. Serum GGT and MCV were raised. All other lab investigations including hemogram and serum biochemical screen were normal. USS Abdomen was normal. Psychometry revealed alcoholic tendencies. He was finally diagnosed as a case of Alcohol Dependence Syndrome based on the history given by patient and lab investigations. He was treated intensively with forced abstinence, megavitamins, intensive counseling, group therapy and other supportive measures. He was put on Tab Naltrexone as an anticraving drug. He responded adequately to the therapy and became asymptomatic psychologically. Currently he is comfortable and asymptomatic psychologically. There are no features of craving, drug seeking or withdrawal. No features of psychosis present. He has good insight into his alcohol problem. He is well motivated for further service and abstinence".

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12. The aforesaid opinion clearly indicates that the applicant was earlier treated at Military Hospital, Roorkee for Alcohol Dependence Syndrome but was never referred to Psychiatrist. It also makes clear that in the year 2003 he had consumed rat poison and tried to inflict self harm for that he was awarded 21 days Rigorous Imprisonment in military custody on 12.02.2004 under Section 64 (c) of Army Act, 1950.

13. A legal notice dated 23.01.2017 was served by Mr. HS Sharma, Advocate on behalf of the applicant seeking documents related to SCM. In response to said legal notice, requisite documents were provided to the applicant vide letter dated 02.05.2017 but it is intriguing to note that neither applicant nor the respondents have brought the said proceedings on record to establish any procedural irregularity during the SCM proceedings.

14. During the course of hearing learned counsel for the applicant has relied upon order dated 14.04.2016 passed by AFT Chennai in O.A. (A) No 36 of 2015, **Ex Sep (DMT) B Gurumurthy Achari vs UOI & Ors** and order dated 07.07.2014 passed by AFT Chennai in O.A. (A) No 166 of 2013, **A Sudalai Muthu vs UOI & Ors**. We have gone through order dated 14.04.2016 and find that in this case the applicant had rendered more than 12 years service and his dismissal was converted into discharge but in the instant case the applicant has put in 11 years and 08 months service. In the prayer clause applicant has pleaded for his re-instatement into and no pleading for conversion of dismissal into discharge was made. Further, in O.A. No 166 of 2013 applicant had put in more than 16 years service and he was granted pensionary benefits. With the aforesaid observation applicant cannot claim parity with the cited judgments.

15. The applicant has rendered 11 years, 08 months and 01 day qualifying service and that too has been forfeited by awarding SCM. The applicant was a habitual offender and indisciplined soldier during his entire service and was setting bad example and also making negative impact on other disciplined soldiers. He kept committing offence repeatedly showing utter disregard to the law of land as well as to the organization. Army is known for its discipline and any indiscipline activity by any member of Armed Forces personnel tantamount to breach of

security/discipline. Contention of learned counsel for the respondents that applicant is not entitled to pensionary benefits as per para 43 of Pension Regulations for the Army, 2008 (Part-I) is sustainable as it provides that an individual who is dismissed from service under the provisions of Army Act, is ineligible for pension or gratuity in respect of all previous service. For convenience sake the aforesaid para is quoted below:-

"113(a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service."

16. In view of the above, we are of the view that a dismissed Armed Forces personnel is not considered as an ex-serviceman and also not entitled for any pensionary benefits as per the Pension Regulations for the Army.

17. Thus, it is clear that the defence of the applicant, that he was suffering from Alcohol Dependence Syndrome and was undergoing prolonged treatment in Nirvan Hospital, Haldwani for the said ailment, is absolutely without substance. It is true that he was a case of Alcohol Dependence Syndrome as brought out earlier in medical opinion at Command Hospital, Chandimandir, his relatives could have brought him to a nearby Military Hospital for treatment rather than going to civil hospital. Medical treatment papers and certificate issued to this effect by civil hospital are not acceptable in these circumstances.

18. In view of the above discussions, we are clear that the applicant was rightly dismissed from service vide order dated 10.12.2010 which needs no interference. In our considered opinion the applicant is a habitual offender and needs no sympathy.

19. In view of the above, we do not find any merit in the present O.A. which is liable to be dismissed. It is accordingly, dismissed.

20. No order as to costs.

21. Pending application (s), if any, stands disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 04.08.2022

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