

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION NO. 22 OF 2016

Thursday, this the 07th day of February, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

No. 6381295-N Lance Naik S.F.W.L. Lal Chand Ram
S/o Sri Sati Ram
R/o Village – Dinapur, Post – Dinapur
P.S. – Karanda, District – Ghazipur

..... Petitioner

By Legal Practitioner - Shri R. Chandra, Advocate.

Versus

1. The Union of India through Secretary,
Ministry of Defence.
2. Sena Seva Corps Abhilekh (Dakshin).
A.S.C. Records (South) Bangalore.
3. 653 Company A.S.C. (Tk Tptr) Type 'C'
C/o 56 APO through Commanding Officer.

..... Respondents

By Legal Practitioner – Shri Amit Jaiswal,
Learned Counsel for Central Government

ORDER**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. Initially Writ Petition No. 2354 of 2005 was filed before the Hon’ble High Court of Judicature at Allahabad and under the orders of the Hon’ble High Court of Judicature at Allahabad dated 26.05.2016, the same has been transferred to this Court in view of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007 and has been registered as T.A.No.22 of 2016.

2. In the writ petition, the prayers of the petitioner were as under:-

- “(i) Issue a writ, order or direction in the nature of mandamus directing the respondent to release the pension, fund and other pensionary benefit to the petitioner.*
- (ii) Issue any other writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.*
- (iii) Award the costs of the petition in favour of the petitioner.”*

3. In brief the facts of the case, as pleaded in the writ petition, are that the petitioner joined service on 31.10.1985. He was sanctioned casual leaves for five days from 08.05.2001 to 12.05.2001. The petitioner was to report on 13.05.2001. During the course of casual leave, the petitioner became mentally disturb and he could not reach his home. In the year 2003, the petitioner after recovering his health, reported to his unit on 25th March 2003 in pursuance of the letter dated 25.03.2003 Annexure-2 to the T.A. It is pleaded that the petitioner was entitled to service pension as he has completed 15 years of service, but no pension has been sanctioned in favour of the petitioner. Feeling aggrieved thereby, the petitioner filed the aforementioned writ petition.

4. On behalf of the respondents, in the counter affidavit it has been pleaded that the petitioner did not report back after availing casual leave,

therefore, he was declared a deserter and apprehension roll was issued on 28.05.2001 and sent to the District Magistrate and Superintendent of Police, Ghazipur. The petitioner approached ASC Records (South), Bangalore to join on 25.03.2003. He was advised to report to his unit, but the petitioner never approached his unit and continued to remain a deserter. It has also been pleaded in the counter affidavit that even at earlier occasion, the petitioner was awarded punishment of 7 days RI in Military custody on 29.10.1987 for an offence under Section 39 (B) of the Army Act and again on 05.08.1999 he was punished for the same offence and sentenced of 7 days pay fine was inflicted on him. It is submitted that the petitioner was dismissed from service with effect from the date of his desertion and, therefore, his entire service was confiscated, hence he is not entitled to any pension.

5. During the course of hearing, learned counsel for the respondents has produced before us the original record pertaining to the petitioner. A perusal of the same shows that the petitioner was dismissed from service under Army Act Section 20 (3) being deserter w.e.f. 14/5/01 and SOS from Corps Superannuation strength w.e.f. 14/05/04.

6. During the course of hearing, learned counsel for the petitioner has placed reliance on the letter dated 25.03.2003, but the said letter does not show that the petitioner, at any point of time, had reported to his unit. He appeared before the Record Office and he was advised to report to his unit, but the petitioner never approached to his unit. The petitioner never pleaded in the T.A. that he was dismissed from service nor he has challenged his dismissal order.

7. The petitioner has been dismissed from service under Army Act Section 20 (3) being deserter w.e.f. 14.05.2001. He has claimed for pension without challenging his dismissal order. Since he has been dismissed w.e.f. 14.05.2001 after remaining absent for a long period of three years, so the dismissal has become final as the same has not been challenged. Since the petitioner has been dismissed from service, therefore, in view of provisions

contained under Regulation 113(a) of Pension Regulations for Army, his entire service stands confiscated and he has no pensionable service to his credit because of his dismissal order. Therefore, he is not entitled to any pension. We may now consider Reg. 113 (a) of Pension Regulations for Army which is quoted below:

“Reg. 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. 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. “

8. A bare perusal of this provision makes it quite clear that pension is not admissible only when a person is dismissed under the provisions of Army Act, which is not the case here, as discussed above. In this context, we may also quote Reg. 123 of same Pension Regulations, which is also relevant:

*“Reg, 123 (a): A person who has been guilty of any of the following offences:- (i) Desertion, vide Section 38 of the Army Act (ii) Fraudulent enrolment, vide Sec. 34 (a) of the Army Act, shall forfeit the whole of his prior service towards pension or gratuity upon being convicted by court martial of the offence. *****“*

9. Learned counsel for the petitioner has placed reliance on a pronouncement of this Tribunal in the case of **Ex Havildar Bhairab Kumar Rai vs. Union of India & others** (O.A.No.83 of 2015) decided on 15th July 2016, but the perusal of the said judgment shows that the facts of the said case were entirely different in that case. The petitioner has challenged his dismissal order, while in the instant case the petitioner has nowhere challenged his dismissal order, which has become final and so long as the dismissal order remains in existence, the petitioner is not entitled to the relief claimed by him in view of the aforementioned Regulation 123 (a).

10. Accordingly, this T.A. is devoid of merit, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : February , 2019.
PKG