

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 575 of 2020**Friday, this the 14<sup>th</sup> day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 14820155-N Ex-Nk/MT, Subh Narayan Singh S/o Late Shivjee Singh, R/o Vill- Bhaiswara Po- Panjwar Tehsile &amp; dist-Siwan, Bihar -840915, (Presently Residing at- Baisaura (Near Kharga Pur, Primary School, Po-Chinhat, Gomti Nagar Extension, Lucknow).

..... Applicant

Learned counsel for the : **Shri Izhar Mohammad**, Advocate  
**Shri Saurabh Mishra**, Advocate  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of Army Staff, integrated HQ, MoD, Army South Block, New Delhi-11.
3. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (UP).
4. Officer-in-Charge, ASC Records (South), PIN -900493, C/o 56 APO.

.....Respondents

Learned counsel for the Respondents. : **Shri Yogesh Kesarwani**,  
Central Govt. Counsel

**ORDER**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *Set aside dismissal order (after calling the same) W.E.F 12 Dec'2017.*
- (ii) *To grant regular pension wef 01.03.2018 and other retrial dues.*
- (iii) *To pay the arrears of pension wef 01.03.2018 till it is actually paid and also pay 12% interest over the arrears.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.02.1994. He was due to retire in the rank of Naik w.e.f. 28.02.2018. While serving with 957 (I) Tpt Pl ASC he was granted 27 days advance of annual leave for the year 2018 commencing from 11.12.2017. Before the aforesaid leave could expire, the applicant again requested for extension of 20 days leave stating that his father expired. Accordingly, his request was conceded and the leave was extended till 26.01.2018. Thereafter, on expiry of extended leave when he did not join duty, an apprehension roll was issued on 29.01.2018. Earlier, the applicant was convicted for the offences under Section 307, 326, 148 and 149 of IPC and awarded five years and two years rigorous imprisonment by the Learned Addl Distt and Sessions Judge, Fast Track Court, Siwan vide order dated 12.12.2017 with directions that both sentences shall run concurrently. He was enlarged on bail by

the Hon'ble High Court of Judicature at Patna vide order dated 22.02.2018 and reported the unit on 24.02.2018 from where he was locally discharged and a movement order dated 28.02.2018 was issued to proceed his home town. Applicant has filed this O.A. for grant of service pension.

3. Learned counsel for the applicant submitted that applicant was implicated in case crime No 940/1993 under Section 307, 326 and 379 IPC and awarded 7 years rigorous imprisonment by the learned Addl Sessions Judge, Siwan, but he was granted bail by the Hon'ble High Court of Judicature at Patna vide order dated 22.02.2018, therefore, he should be granted pension for the services rendered in the Army as he had completed pensionable service. His further submission is that in the month of June, 2018 when applicant approached ASC Records (South) for grant of pension, he was informed vide letter dated 15.06.2018 that his documents were being processed and he should liaise with the Records. His further submission is that in pursuance to reply of letter sent by wife of the applicant he was informed vide letter dated 10.06.2018 that applicant has been dismissed w.e.f. 12.12.2017 in terms of para 423 of Regulations for the Army, 1987 (Revised Edition) read in conjunction with Sec 20 (3) of Army Act, 1950. His other submission is that procedure for his dismissal is arbitrary on the ground that no show cause notice was issued prior to his

dismissal order dated 12.12.2017 as per Rule 17 of Army Rules, 1954. He pleaded for grant of service pension to the applicant.

4. On the other hand, learned counsel for the respondents submitted that while applicant was on annual leave he made a request for extension of 20 days leave on the ground of his father's death, which was sanctioned till 26.01.2018. His further submission is that an apprehension roll dated 29.01.2018 was issued when the applicant did not rejoin duty on expiry of said leave. Respondents' further submission is that applicant was dismissed from service w.e.f. 12.12.2017 on award of rigorous imprisonment by the Learned Addl Sessions Judge, Siwan vide order dated 12.12.2017 as per para 423 of Regulations for the Army, 1987 (Revised Edition) and Section 20 (3) of Army Act, 1950. His other submission is that applicant is not entitled to pension in terms of Regulation 41 of Pension Regulations for the Army, 2008 (Part-I). He further submitted that as per para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) an individual dismissed from service under the provisions of Army Act forfeit all the previous service, hence he is not eligible for pension or gratuity for his previous service. He submitted that after dismissal from service, the applicant's account was closed with a debit balance of Rs 3,32,191/- and with a credit balance of Rs 4,96,736/- in his Armed Forces Personal Provident Fund (AFPP Fund). To regularise the debit balance, a consent certificate to recover the

debit balance out of his AFPP fund balance, along with documents for payment of Army Group Insurance funds, was sent to the applicant by ASC Records on 24.05.2018. On receipt of consent certificate from the applicant, a sum of Rs 1,64,545/- towards his AFPP fund balance was paid to the applicant vide letter dated 20.09.2018. He concluded submitting that since applicant is still a convict as on date, therefore he is not entitled to service pension and pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. In this case the only question which needs to be answered is whether a convicted Army person who has been dismissed from service is entitled to service pension. In this regard para 41 of Pension Regulations for the Army, 2008 (Part-I) is relevant which for convenience sake is reproduced as under:-

*“Individual Dismissed/Removed or Discharged under the Army Act*

*113. (a) An individual who is dismissed under the provisions of the Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had been retired/discharged on the same date in the normal manner.*

*(b) An individual who is compulsorily retired/discharged or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950 and the Rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will suo-moto apply to cases of dismissal/removal converted into discharge subsequently.*

*(c) All appeals to the competent authority in this regard will be preferred within 2 years of the date of dismissal/removal."*

7. It is not disputed that applicant was awarded 7 years rigorous imprisonment by the Learned Addl Sessions Judge, Siwan vide order dated 12.12.2017 and he was granted bail by the Hon'ble High Court of Judicature at Patna vide order dated 22.02.2018. During the course of hearing learned counsel for the applicant conceded receipt of balance amount of Rs 1,64,545/- towards his AFPP Fund.

8. In regard to applicant's contention that he should be granted service pension on the ground that he has been released on bail by the Hon'ble High Court of Judicature at Patna vide order dated 22.02.2018, we observe that in Criminal Appeal No. 876 of 2021, decided on 07.09.2021 titled **Shakuntala Shukla vs State of Uttar Pradesh**, their Lordships of the Hon'ble Apex Court has held as under:-

*"Even on merits also, the impugned order passed by the High Court releasing the accused on bail pending appeal is unsustainable. The High Court has not at all appreciated and considered the fact that the learned Trial Court on appreciation of evidence has convicted the*

*accused for the offences under Sections 302/149, 201 r/w 120B IPC. Once the accused have been convicted by the learned Trial Court, there shall not be any presumption of innocence thereafter. Therefore, the High Court shall be very slow in granting bail to the accused pending appeal who are convicted for the serious offences punishable under Sections 302/149, 201 r/w 120B IPC."*

9. Thus, from the aforesaid it is clear that since the applicant is still a convict and has not been acquitted till date, he is not entitled to service pension.

10. In view of the above, O.A. has no merit and deserves to be dismissed. It is accordingly, **dismissed** as such.

11. No order as to costs.

12. Miscellaneous Application(s), pending if any, shall stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated: 14<sup>th</sup> January, 2022  
rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**