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

ORIGINAL APPLICATION No. 686 of 2020

Thursday, this the 13th day of January, 2022

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

Smt Soma Kumari, widow of No 13935601A Ex Sep Jagdish Babu, S/o Late Ninu Lal, R/o Village-Nai Basti, Neelmatha (Near Nirankari Bhawan), Post Office-Neelmatha (Dilkusha), District-Lucknow, Pin-226002 (UP).

..... Applicant

Learned counsel for the : **Shri KP Datta**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer in Charge, AMC Records, Lucknow, Pin-226002 (UP).
4. Commanding Officer, Military Hospital, Dalhousie.
5. PCDA (P), Draupadi Ghat, Pin-211014, Allahabad (UP).
6. Manager, Punjab National Bank, CPPC, Allahabad (UP).

..... Respondents

Learned counsel for the : **Ms Appoli Srivastava**, Advocate
Respondents. 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:-

- (a) *To issue/pass an order or directions to set-aside/quash the AMC Records, Lucknow letter No 501032/Pen/SP Rev dated 15.01.2020, in which the applicant has been unjustly denied promotion to the rank of Havildar till 26 years while in service similar to his batchmates during the same periods of service, and Hony Nb Subedar on completion of terms of engagement, is being Annexed as Annexure No A-1 of the Original Application.*
- (b) *To issue/pass an order or directions to the respondents to set-aside/quash the illegal punishment for 14 days pay fine, awarded by then Commanding Officer, Mil Hospital Dalhousie on 04 Oct 1991 for an offence under Sec 39 (b), and relinquishment of rank from Naik to Sepoy wef 13 Sep 1991 due to overstay of leave, with a direction to provide the attendance register of Mil Hospital, Dalhousie for the periods from 13.09.1991 to 26.09.1991, i.e. the periods of OSL shown.*
- (c) *To issue/pass an order or direction to respondents to grant him the seniority of promotion to the rank of Naik, then Havildar notionally upto 26 years of service, and Hony Nb Sub on completion of terms of engagement similar to his batchmates during the same period of service, subsequently enhance rate of pension with all consequential benefits.*
- (d) *To issue/pass an order or direction to respondent No 5 and 6 to revise his service pension at correct rate as per 6th CPC, OROP and 7th CPC, through detailed workout, and due drawn audit report, alongwith arrears of pension with interest @ 18% p.a. from date of discharge w.e.f. 31.05.1992.*
- (e) *To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*
- (f) *To allow this original application with costs.*

2. This O.A. was filed by Ex Sep Jagdish Babu on 30.06.2020 and during pendency of the case applicant died on 09.04.2021 due to COVID-19. Thereafter, name of legal heir of the

deceased soldier viz. Mrs Soma Kumari was substituted vide order dated 29.09.2021.

3. Brief facts of the case are that the deceased soldier was enrolled in Army Medical Corps (AMC) of the Indian Army on 08.05.1972 and he was discharged from service on 31.05.1992 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 on completion of his terms of engagement as he relinquished his paid acting rank of Naik due to punishment awarded on 04.10.1991. He was in receipt of service pension vide PPO No S/015712/1991 (Army) dated 30.03.1992. While posted with Military Hospital (MH), Dalhousie he was granted 10 days casual leave for the period 03.09.1991 to 12.09.2021 with permission to prefix 01.09.1991 and 02.09.1991 being Sunday and Holiday. He was required to report back to MH, Dalhousie on 12.09.1991 (AN) which he failed to report. He voluntarily rejoined duty on 26.09.1991 and on rejoining he was tried summarily by the Commanding Officer awarding him 14 days pay fine and relinquishment of paid acting rank of Naik w.e.f. 13.09.1991 for overstaying leave for the period 13.09.1991 to 26.09.1991. On relinquishing appointment of paid acting rank of Naik, he was discharged from service w.e.f. 31.05.1992 (AN) on completion of his terms of engagement. Applicant's husband submitted an application dated 16.09.2019 to Chief of the Army Staff against his demotion from Naik to Sepoy and grant of pension equivalent to the rank of Naik and

subsequently Havildar and Hony Naib Subedar which was disposed of vide AMC Records letter dated 15.01.2020 (Annexure-I). This O.A. has been filed for grant of pension in the rank of Naik, Havildar and subsequently Hony Naib Subedar by setting aside punishment of demotion awarded to the original applicant by Commanding Officer, MH Dalhousie on 04.10.1991.

3. Learned counsel for the applicant submitted that applicant Smt Soma Kumari, while residing at native place, was suffering from Hepatitis D. Original applicant made a request for grant of leave which was conceded and he was granted 10 days casual leave for the period 03.09.1991 to 12.09.1991. After expiry of leave he could not join duty on account of two reasons, firstly, his wife was ill and, secondly, she was being threatened by local criminals for which she lodged a police complaint on 03.09.1991. His further submission is that due to the aforesaid unavoidable circumstances the original applicant could rejoin the unit on 15.09.1991, but on rejoining he was marched before the Commanding Officer who awarded punishment of 14 days pay fine and demotion from Naik to Sepoy. His other submission is that neither preliminary inquiry was done nor was the show cause notice issued to the original applicant contrary to the laid down procedure. He pleaded for setting aside the impugned order dated 15.01.2020 passed by AMC Records Lucknow, quash impugned punishment dated 04.10.1991

awarded by the Commanding Officer, MH Dalhousie and grant pension of the rank of Nk, Havildar and Hony Nb Sub accordingly with consequential benefits.

4. On the other hand, learned counsel for the respondents submitted that applicant's husband was a habitual offender who was awarded four punishments during his service mainly due to absence without leave. His further submission is that every time before award of punishment he pleaded 'guilty' during hearing of charge conducted under Army Rule 22 and punishment was awarded by following due process. He further submitted that the original applicant reported duty on 26.09.1991 and he was awarded punishment of 14 days pay fine and relinquishment of the rank of paid acting Naik w.e.f. 13.09.1991. He pleaded for dismissal of O.A. in terms of para 16 (j) of AMC Record Office Instructions 41/83.

5. Heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed fact of the parties that the original applicant was enrolled in the Army on 08.05.1972 and he was promoted to the paid acting rank of Naik. He was granted 10 days casual leave for the period 03.09.1991 to 12.09.1991 and on expiry of aforesaid leave he failed to join duty on 13.09.1991. He rejoined unit on 26.09.1991 and was awarded punishment of 14 days pay fine and relinquishment of paid acting rank of Naik. After relinquishment of the rank of paid

acting rank of Naik, he was discharged from service w.e.f. 31.05.1992 on completion of terms of engagement in terms of para 134 (a) of Regulations for the Army, 1987 (Revised Edition) and paid service pension accordingly which was revised from time to time. For convenience sake, para 16 (j) of AMC ROI 41/83 and para 134 (a) of Regulations for the Army, 1987 (Revised Edition) are reproduced as under:-

"Para 16 (j) of ROI 41/83- Retirement after relinquishment of acting rank/appt. Individuals whose overstayal of leave/absence from duty without proper authority/desertion, is not regularised by grant of leave under Leave Rules and they finally relinquish their acting rank/appointment, after being disciplinarily dealt with, will be transferred to pension establishment immediately, if in the meantime they have completed their prescribed service limit of substantive rank or terms of engagement in the case of Sepoys."

"Para 134 (a) Group-II of Regulations for the Army, 1987 (Revised Edition). 20 years service with the colours and 3 years in the reserve or till the attainment of 46 years of age, whichever is earlier."

7. From the aforementioned it is crystal clear that since applicant's husband was awarded punishment for 14 days pay fine and relinquishment of paid acting rank of Naik on account of overstayal of leave and his overstayal of leave (13.09.1991 to 26.09.1991) being not regularised, he was discharged from service on completion of terms of engagement in the rank of Sepoy.

8. The Commanding Officer, MH Dalhousie awarded punishment to the original applicant on 04.10.1991 and

casualty to this effect was notified vide Part II Order No 30/02/1991 dated 07.10.1991 and casualty with regard to overstayal of leave for the period 13.09.1991 to 26.09.1991 was notified vide Part II Order No 30/01/1991 dated 07.10.1991. While perusing the records we find that besides the last punishment awarded on 04.10.1991, he was earlier punished three times also on account of absent without leave (AWL) and overstayal of leave (OSL) as under:-

S.No.	Date of offence	Place of offence	Under AA Sec	Punishment Awarded
1.	03.08.1975	MH, Mhow	Sec 39(b) and (d)	07 days RI
2.	01.11.1975	MH, Mathura	Sec 39(a)	-do-
3.	08.09.1976	MH, Mathura	Sec 39(b)	-do-

9. The aforementioned punishments of the applicant's husband for similar nature of offences committed by him while serving with various units of the Army specify that the original applicant was a habitual offender and he did not make any effort to improve himself in the disciplined organization like Army.

10. We have observed that complaint/representation dated 16.09.2019 submitted to Chief of the Army Staff by the original applicant with regard to his revision of pension was disposed of vide order dated 15.01.2020 and queries raised therein regarding his entitlements were clarified as under:-

"1. x x x x x x

2. As per records maintained with this office, you were retired from service as Sep on 01 Jun 1992 after

rendering 20 years and 01 day of qualifying service. You are entitled revised service pension as follows:-

SNo.	PCDA (P) Allahabad Circular No	Date of effect	Revised Service Pension
(a)	568 dt 13 Oct 2016	01.01.2006	Rs 4940/- pm
(b)	501 dt 17 Jan 2013	01.07.2009	Rs 5291/- pm
(c)	-do-	24.09.2012	Rs 5644/- pm
(d)	555 dt 04 Feb 2016	01.07.2014	Rs 6875/- pm
(e)	570 dt 31 Oct 2016	01.01.2016	Rs 17669/- pm

3. It is intimated that as per circular No 568 dated 13 Oct 2016 Pension Disbursing Authority (PDA) have been authorized to step up the pension of the affected pre-2006 pensioner and also arrears, if any, shall be allowed from 01.01.2006 upto the date where revised pension in terms of PCDA circular No 501 & 555 (OROP) under resp Govt orders happens to be more than this amount, then Retiring/Service and Family Pension as per above orders will continue to be paid as basic pension during that period. There is no need to issue of Corrigendum PPO.

4. You are advised to liaise with your PDA for revision of service pension."

11. While filing rejoinder affidavit learned counsel for the applicant submitted that respondents have neither conducted preliminary inquiry nor show cause notice was issued as per policy letter dated 28.12.1988. We have gone through the aforesaid policy letter and we find that preliminary inquiry and show cause notice are required prior to discharge only when there are allegations against an individual, but in the instant case applicant's husband was discharged from service on completion of his terms of engagement and no allegation was labelled against him. Placing reliance on the Hon'ble Apex Court judgment in the case of **Veerendra Kumar Dubey vs Chief of Army Staff**, (2016) (2) SCC 627 and this Tribunal's

judgment pronounced on 12.02.2018 in the case of **Ex Naik Anil Kumar vs Union of India & Ors**, learned counsel for the applicant submitted that applicant be granted relief as claimed. We have gone through the aforesaid judgments and we find that fact of the case in hand being not similar to the cases referred above, no relief is admissible.

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

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 13.01.2022

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