(Reserved Judgment)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Circuit Bench at Nainital)

ORIGINAL APPLICATION No. 436 of 2018

Thursday, this the 02nd day of May, 2019

"Hon'ble Mr. Justice V.K. Shali, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

Ex. No.4069248 Rfn Rajendra Singh, S/o Sri Chandra Singh, 36 RR, Presently R/o Village- Jaurasi, P.O. Radua (Chandanikhal), Tehsil Pokhri, District Chamoli.

….. Applicant

Ld. Counsel for the Applicant : **Shri Mangal Singh Chauhan, Advocate**.

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chief Controller (Defence Accounts) Pension, Allahabad (U.P.)
3. Chief of Army Staff, Army Head Quarters, New Delhi.
4. Record Officer Garhwal Rifles Regimental Centre, Lansdowne, Pauri Garhwal.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma, Advocate**

ORDER

("Per Hon'ble V.K. Shali, Member (J)")

1. This is an application filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs.

"(a) To set aside the impugned discharge order dated 07.06.1996 passed by the respondent no.4 in contravention of the army rules and the disability pension rules.

(b) To issue a direction to the respondent No.1 to provide the disability pension to the petitioner w.e.f. 07.06.1996 onwards with 18% interest pay the compensation to the petitioner Rs. 2 Lakh for denying the disability pension.

(c) To issue, any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(d) Award the cost throughout."

2. Briefly stated the facts of the case are that the applicant was enrolled in Indian Army on 12.02.1986 and continued to serve the military services till 07.06.1996, on which date he was discharged on the ground allegedly that his services are no more required by the respondents. It is stated by the applicant that the applicant was not medically examined by the respondents physically as well as for mental condition. It is stated by him that while in military service he was posted in Srilanka and after his return he suffered mental disorder due to his deployment in stressful and strenuous assignment. Accordingly, he has prayed for setting aside the order of discharge dated 07.06.1996 and prayed for grant of disability pension with effect from said date of discharge alongwith interest @ 18% and also a compensation of Rs.2.00 lakhs apart from other reliefs.

3. The respondents have filed their reply affidavit and contested the claim. It is not disputed by the respondents that the applicant

was enrolled in Army on 12.02.1986 and was discharged on 07.06.1996. It is the case of the respondents that during short tenure of 10 years the applicant has suffered four red ink entries and accordingly he was issued a show cause notice under Rule 13(3) III (v) of the Army Rules, 1954 being an undesirable soldier. The applicant filed his reply to the said show cause notice and thereafter his services were dispensed with. The respondents have also contested that the applicant is not entitled to disability pension and that he is also not entitled to compensation of Rs.2.00 lakhs.

4. We have heard learned counsel for the applicant as well as the learned counsel for the respondents.

5. The learned counsel for the applicant has strenuously contested that the discharge of the applicant is illegal and has further prayed for grant disability pension to the applicant on the ground that he was allegedly suffering from mental disorder because of the strenuous and high tension job in Srilanka, where he was posted. He has also drawn our attention to the fact that the delay in coming to the Tribunal has alredy been condoned by our learned predecessor Bench, therefore, the question of delay would not come in his way. He has also cited a judgment of the Hon'ble Supreme Court in **Veerendra Kumar Dubey vs. Chief of Army Staff and others** (2016) 2 SCC 627 to contend that the statutory right of the applicant cannot be defeated by subordinate legislation or administrative orders by discharging him under Rule 13(3) III (v) of the Army Rules, 1954.

6. We have gone through the judgment relied upon by the learned counsel for the applicant and the judicial record. We have thoughtfully considered the submission made by the learned counsel for the applicant with regard to setting aside the order of discharge and grant of disability pension. It is also correct that our learned predecessor Bench on 17.09.2018 condoned the delay in approaching the Tribunal on the ground that the applicant has prayed for grant of disability pension, which gives rise to recurring cause of action.

7. It was contended by the learned counsel for the applicant during the course of argument that he had given up his prayer for grant of disability pension and wanted to get reinstatement after setting aside the discharge order.

8. However, he was not able to point out any order wherein his statement made above has been recorded that he is giving up his plea for grant of disability pension. Therefore, the question of disability pension has to be considered on merits as to whether the applicant is entitled to disability pension under military law only if he has been invalided out on account of the disability by the Invalidating Medical Board or there is opinion of the Release Medical Board that he is suffering from any disability attributed to or aggravated by military service.

9. Curiously enough in the instant case not even a shred of evidence has been placed by the applicant on record to show that he was invalidated out on account of any disability muchless the mental disorder nor was there any Release Medical Board proceeding

placed on record. Further the applicant had not completed his minimum tenure of 15 years of service to get the benefit of pension or to indicate that he was entitled to any disability element of the pension.

10. The plea of the applicant that he is suffering from medical problem of mental disorder is only an afterthought. His contention that documents of medical record for the treatment are placed on record alongwith an application seeking condonation of delay also leaves much to be desired. The documents which have been placed on record are OPD, Cards or Prescriptions of the Doctors for treating not only the applicant for fever, for eyesight but also the other documents pertaining to his wife, which belies the case of the applicant that the applicant was suffering from medical ailment at the time of his discharge. This is only an afterthought and the documents relied upon by the applicant seem to have been manufactured by the applicant after his release in a very shady manner, where different names are given. No credence can be attached to these documents.

11. No doubt our learned predecessor Bench has condoned the delay in coming to Tribunal for claiming disability pension but essentially speaking this is not a case of disability pension because the applicant is not getting any disability pension, which can be said to be giving rise to the recurring cause of action. On the contrary he is seeking declaration that he be declared medically invalidated out from service and that too after a lapse of almost 22 years. Therefore,

this aspect of the matter completely deserves outright rejection of the applicant's case for grant of disability pension.

12. The second submission of the learned counsel for the applicant for setting aside the order of discharge shows that in pursuance to the conduct, which was considered undesirable for military discipline, he was issued a show cause notice as he had suffered four red ink entries, three on account of over-staying the permissible leave and 04th one on account of losing by neglect the identity card, which was the property of the Government. The factum that the applicant had absented after availing of leave for a considerable length of time obviously impaired military discipline and if not dealt with sternly by the competent authority will result in indiscipline in the Unit. The discipline and moral of the Unit of the Armed Forces is of paramount importance and it cannot be permitted to be breached on the whims and fancies of an individual. He has rightly been issued show cause notice to which he has failed to give any cogent answer. On the contrary the record which was produced before us showed that after the show cause notice was issued to him he himself sought his release by saying that he is facing the health issues of his wife and therefore would not like to serve the respondents.

13. It was under these circumstances that the respondents were left with no other alternative but to pass the impugned order of discharge. No doubt the judgment relied upon by the learned counsel for the applicant deals with the issue of discharge of a person on account of sufferance of four red ink entries but in the said judgment

it has been observed that the sufferance of four or above red ink entries by an individual does not necessarily mean that the applicant's services are to be dispensed with. It expected that the respondents would make enquiries, see the explanation of the individual and then decide as to what action ought to be taken against such a delinquent. It has also been observed that it need not resultant in discharge of the individual. But that was a case where facts were slightly different. The procedural safe guards were not observed, inasmuch as show cause notice was not considered to be fair and proper and there was no such request by the incumbent that he would not like to serve the organisation because of the illness of his wife. Because of these reasons the facts of that case are distinguishable from the facts of the present case and that case would not be of any help to the applicant on factual matrix. Moreover in the instant case the applicant has been discharged in the year 1996 and file the application after a lapse of almost 22 decades whereas the applicant in the said case was not a soldier like the applicant in the instant case. The Hon'ble Supreme Court in the case of **Haryana Financial Corporation and another vs. Jagdamba Oil Mills and another** AIR 2002 SC 834 has observed that before law laid down in the given case is made applicable to the case in hand, the Court, which obviously includes Tribunal, also must co-relate the facts of the two cases. The law laid in one case cannot be applied like mathematical proposition.

14. For the aforesaid reasons, we feel that the application of the applicant on both the prayers is without any merit and accordingly the same is **disallowed.**

15. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice V.K. Shali)
Member (J)

Dated: May 02, 2019
JPT