

E-Court
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 282 of 2020

Wednesday, this the 15th day of September, 2021

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

No. 15770920H Ex Gnr Amarjeet S/O Shri Mewa Lal, R/O Village &
Post-Dadra, District-Amethi.

.... Applicant

Ld. Counsel for the: **Shri Birendra Narain Shukla**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.
3. Commanding Officer, 323 Air Defence Regiment, C/O 56 APO.
4. Officer-in-Charge, Army Air Defence Records PIN-908803, C/O 99 APO.
5. Chief of Army Staff, Sena Bhawan, DHQ PO-New Delhi-110105.

... Respondents

Ld. Counsel for the **Shri Amit Jaiswal**, Advocate
Respondents. Govt Standing Counsel

ORDER

1. Being aggrieved with denial of service pension and disability pension, applicant has filed the instant O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

(a) The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the order dated 18.05.2018 in part to the extent it denies the payment of service pension to the applicant, as contained in Annexure No A-1 to this O.A.

(b) The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the order discharging the applicant from service w.e.f. 31.12.2016 after summoning the same from the opposite parties.

(c) The Hon'ble Tribunal may kindly be pleased to issue an order or direction commanding the opposite parties to grant the service pension and disability pension to the applicant from 01.01.2017 and to make the payment thereof alongwith arrears and interest.

(d) The Hon'ble Tribunal may kindly be pleased to issue any other order or direction which may be deemed just and proper under the facts and circumstances of the case.

(e) The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.

2. No 15770929H Ex Gnr Amarjeet was enrolled in the Army on 31.12.1999. While serving with 323 Air Defence Regiment, he was granted leave for the period from 04.09.2008 to 03.10.2008. He was to rejoin duty on 04.10.2008 which he failed. Thereafter, on account of overstaying of leave, unit authorities issued apprehension roll. He voluntarily surrendered himself to unit on 24.12.2008 after a gap of 80 days. He was allowed to rejoin duty and occurrence to this effect was

notified vide Part II Order No. 0/0608/003/2009. In the year 2012, on being granted 30 days casual leave which was to expire on 15.06.2012, he did not rejoin duty on due date. An apprehension roll was issued and applicant voluntarily rejoined duty on 18.09.2012 after a gap of 91 days. Occurrence to this effect was published vide Part II Order No. 0/0655/001-003/2012. In the year 2013, he was granted 30 days part of annual leave for the period from 11.03.2013 to 09.04.2013. When he did not rejoin duty after expiry of aforesaid leave, apprehension roll was issued and after 30 days of absence, a Court of Inquiry (C of I) was ordered in accordance with Section 106 of the Army Act, 1950 and applicant was declared deserter w.e.f. 10.04.2013. The occurrence was notified vide Part II Order No. 0/0686/011/2013 and he was Struck of Strength (SOS) from 323 Air Defence Regiment and taken on supernumerary strength of the unit w.e.f. 10.04.2013. Applicant voluntarily surrendered to unit on 03.02.2016 after a gap of 02 years, 08 months and 22 days. Accordingly, the applicant was taken on strength of unit w.e.f. 03.02.2016 and disciplinary proceedings started. The applicant completed his normal terms of engagement on 31.12.2016 and accordingly, he was discharged from service w.e.f. 01.01.2017 (FN) under Rule 13 (3) III (i) of Army Rules, 1954. Prior to discharge from service, since applicant was placed in low medical category S3(T-24)H1A1P1E1 for disability '**Other Non Organic Psychotic Disorder**', his Release Medical Board (RMB) was conducted on 24.12.2016 which assessed his medical category S2(permt)H1A1P1E1 @ 40% for life neither attributable to nor aggravated by military service (NANA).

3. Disciplinary proceedings against applicant were under progress, therefore, he was invoked under the provisions of Section 123 of Army Act, 1950 till the finalization of proceedings. He was tried summarily under Section 38 (1) of Army Act, 1950 on 21.02.2018. After providing copy of summary of evidence and charge sheet, applicant gave his consent to dispense with attendance of witness(es) and pleaded guilty of the charges and did not make any statement at summary trial. The summary trial proceedings were approved by Deputy Judge Advocate General (DJAG), Headquarters 21 Corps and disciplinary case was finalized on 21.02.2018. He was awarded two months rigorous imprisonment in military custody and after completion of aforesaid imprisonment, applicant was despatched to his home. Applicant is stated to have submitted a representation dated 01.11.2018 to Chief of Army Staff ventilating his grievance with regard to payment of service and disability pension but there being no response, this O.A. has been filed for grant of service pension and disability pension.

4. Submission of learned counsel for the applicant is that applicant while in service was suffering from mental ailments for which his medical category was downgraded to S3 (T-24) on 12.02.2013 and that is why after completion of leave on 09.04.2013, he could not rejoin duty as during leave period his condition deteriorated and he underwent psychiatric treatment in BD Seth Memorial Hospital, Sultanpur from where he was shifted to Noor Manzil Psychiatric Centre, Lalbagh, Lucknow where he remained admitted till 22.06.2015. He further submitted that after discharge, he was issued a medical fitness certificate dated 10.11.2015 and when applicant approached to unit to

rejoin duty, he was denied. Thereafter, on intervention of Director Sainik Kalyan Evam Punarvas, U.P., Lucknow he was allowed to join duty on 03.02.2016. After joining applicant was admitted to Military Hospital, Kirkee and transferred to Command Hospital, Southern Command, Pune where he remained admitted till 12.12.2016 for psychiatric evaluation. He was transferred to Military Hospital, Kirkee on 13.12.2016 and after treatment he was despatched to unit on 26.12.2016. The Psychiatrist placed him in low medical category S2 (permt) for disability 'Other Non Organic Psychotic Disorder'. His further contention is that applicant after discharge from service was awarded two months rigorous imprisonment on account of absence without leave which the applicant had not wilfully and deliberately overstayed/deserted from 10.04.2013 but it was his mental ailment for which he could not rejoin duty within time after termination of leave. He has further pleaded that the respondents were fully aware of the fact that applicant was suffering from mental ailment and was placed in low medical category for '**Other Non Organic Psychotic Disorder**', even then he was subjected to summary court martial and denied pensionary benefits which is wholly arbitrary and unjustified. He pleaded for grant of service pension and disability pension to applicant.

5. Per contra, learned counsel for the respondents have orally raised preliminary objection on the instant O.A. stating that the O.A. has been filed for plural remedies which is prohibited under Rule 10 of Armed Forces Tribunal (Procedure) Rules, 2008. He submitted that applicant is not entitled to seek service pension as well as disability pension by filing single O.A.. His further submission is that applicant is a habitual

offender as he had absented without leave on many occasions for a considerable period and in the last leave granted to him for 30 days on 11.03.2013, he did not rejoin duty and surrendered himself on 03.02.2016 after absence period of 02 years, 08 months and 22 days which resulted in his Summary Court Martial in which he was awarded two months rigorous imprisonment after discharge from service. He further submitted that since applicant has not completed minimum pensionable service of 15 years, he is not entitled to service pension in terms of para 47 of Pension Regulations for the Army, 2008. With regard to payment of disability pension, he submitted that since applicant's disability is neither attributable to nor aggravated by military service (NANA), he is not entitled to disability pension. He pleaded for dismissal of O.A.

6. Heard learned counsel for both the sides and perused material placed on record.

7. Before proceeding further, we would like to consider whether the O.A. is maintainable on plural cause of action as objected by learned counsel for the respondents in terms of Section 10 of Armed Forces Tribunal (Procedure) Rules, 2008. We have perused Rule 10 (supra) and we find that since cause of action for grant of service pension and disability pension is one and the same i.e. discharge order, therefore, O.A. is maintainable and objection raised by respondents is rejected. For convenience sake extract of Rule 10 (supra) is reproduced as under:-

*“10. **Plural remedies.** An application shall be based upon a single cause of action and may seek one or*

more relief, provided that they are consequential to one another.”

8. We have scrutinized and found that applicant during his service has absented himself as under:-

Ser No	Period of leave Granted		Absented
1.	04.09.2008	03.10.2008	80 days
2.	17.05.2012	15.06.2012	91 days
3.	11.03.2013	09.04.2013	02 yrs, 08 months and 22 days

9. From the aforesaid, it is obvious that applicant was a habitual offender as stated by the respondents and he never reported duty in time after termination of leave period.

10. Admittedly, the applicant was granted 30 days leave for the period 11.03.2013 to 09.04.2013 and he did not rejoin duty after expiry of aforesaid leave. Applicant's contention that he was getting treatment in BD Seth Memorial Hospital, Sultanpur and Noor Manzil Psychiatric Centre, Lalbagh, Lucknow, is not acceptable on the ground that he could have approached Command Hospital, Central Command rather than getting treatment in civil hospital as Central Command Hospital, is located in Lucknow. On account of Over Staying Leave (OSL) w.e.f. 10.04.2013, an apprehension roll was issued and subsequently a C of I was ordered under Section 106 of Army Act, 1950 which declared him deserter. For convenience sake, Section 106 of Army Act, 1950 is reproduced as under:-

“106. Inquiry into absence without leave.- (1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as

practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter."

11. Applicant voluntarily surrendered on 03.02.2016. Since as per C of I disciplinary proceedings were pending against him, he was summarily punished for two months rigorous punishment in military custody under Section 38 (1) of Army Act, 1950. For convenience sake, Section 38 (1) (supra) is reproduced as under:-

"38. Desertion and aiding desertion.

(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

12. Therefore, we are of the view that applicant was punished on account of desertion from duty and respondents have not violated any rules and regulations on the subject.

13. A perusal of record clearly indicate that since applicant has not completed mandatory 15 years service required for earning service pension as provided in para 47 of Pension Regulations for the Army, 2008 (Part-I), applicant seems to be not entitled to service pension. For

convenience sake extract of para 47 of Pension Regulations for the Army, 2008 (Part-I) is as under:-

“47. MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION- Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.”

14. In view of the above, contention of the respondents that applicant has not completed minimum pensionable service to earn service pension as per Rule 47 of the Pension Regulations for the Army, 2008 (Part-I), is justifiable and we are of the view that applicant is not entitled to service pension.

15. Now we come to other limb of arguments i.e. grant of disability pension to applicant. We have noticed that applicant was discharged from service with 40% disablement for life on account of suffering from **‘Other Non Organic Psychotic Disorder’**, neither attributable to nor aggravated by military service. In this regard we find that applicant’s aforesaid disability had originated in the year 2013 i.e. after completion of 14 years of service (during which he remained absent for 171 days), therefore, in view of the Hon’ble Apex Court judgment delivered in the case of ***Dharamvir Singh Vs. UOI & Ors***, reported in (2013) 7 SCC 316, we are of the view that applicant’s disability **‘Other Non Organic Psychotic Disorder’** is to be aggravated by military service on the ground that the disability was not recorded at the time of his recruitment and it has caused subsequently. The benefit of doubt, therefore, shall be rightly extended in favour of the applicant. We are, therefore, of the considered opinion that the benefit of doubt should be given to the

applicant as per **Dharamvir Singh** (supra) and the disability of applicant should be considered as aggravated by military service.

16. A conspectus of above observation is that applicant is held entitled to disability pension @ 40% for life which shall be rounded to 50% for life with effect from his date of discharge in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

17. As a result of foregoing discussion, the O.A. is **partly allowed**. The applicant shall be granted disability pension @ 50% for life w.e.f. his date of discharge i.e. 01.01.2017. The respondents are directed to pay 50% disability pension to applicant along with arrears within four months from today.

18. Default will invite interest @ 8% p.a.

19. No order as to costs.

20. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15th September, 2021
Rathore