

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 314 of 2020

Thursday, this the 23rd day of September, 2021

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

No. 4439662 Ex Nk Karnail Singh
 S/o Late Bagga Singh
 R/o 17/B, Aresh Vihar Colony,
 Janki Puram (Extension) (Near Shakula Chouraha),
 Lucknow-226021

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Ashok Singh &**
Shri Vikas Singh Chauhan, Advocate

Versus

1. Union of India through its Secretary, Govt. of India, Ministry of Defence, New Delhi – 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, Records The SIKH LI, PIN 900927, C/o 56 APO.
4. Commanding Officer 2 SIKH LI, PIN – 912302, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
 Central Govt Counsel

ORDER

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

- “8.1 To quash/set aside the impugned order dated 13 Dec 2017 as contained in the Annexure No. A-1 to the present application hereby annexed with Compilation No. 1 as a impugned order and passed the order or direction to the respondent authorities to regularizing the period of during which he has remained out service should be treated as leave of the kind due and also grant the service pension along with all retiral benefits that accrue to him under the pension service Regulation applicable in accordance with law.
- 8.2 Issue an appropriate order or direction to the Respondent authorities to release all the due amount of the pensionary benefits alongwith interest and consequential service benefits as available to him by calculating the date of enrolment till completion full service tenure.
- 8.3 Issue and order or direction directing the respondents to give the other service benefits which is applicable under law.
- 8.4 Issue any order or direction in favour of the applicant as this Hon’ble Tribunal may deem fit and proper in the interest of justice.
- 8.5 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.”

2. Brief facts of the case are that applicant was enrolled in the Army on 08.11.1962 and was discharged from service w.e.f. 21.03.1972 under Army Rule 13 (3) III (v) being service no longer required. The applicant rendered 9 years, 4 months and 13 days of service. The applicant has been awarded three red ink entries for the offences committed for ‘Disobedience of lawful orders’, ‘Overstaying

of Leave' and 'Using criminal force to a person in whose custody he was lawfully placed' under Army Act Section 41 (i), 39 (b) and 42(b) respectively. The applicant filed initially his case before the AFT (PB), New Delhi for grant of pension which was dismissed and thereafter, filed another case before AFT (PB), New Delhi for grant of pension which was also dismissed. Thereafter, applicant filed CWP No. Nil of 2017 before the Hon'ble Delhi High Court for grant of pension which was dismissed by the Hon'ble Court vide order dated 26.05.2017. After a gap of approx 47 years from the date of discharge from service, the applicant has filed the present Original Application for grant of service pension.

3. Learned counsel for the applicant submitted that applicant has been discharged from service vide order dated 06.05.1972 in an illegal and arbitrary manner. The Commanding Officer of 2 SIKH LI discharged the applicant on the ground of three red ink entries without issuance of show cause notice as well as without preliminary enquiry which is contrary to the Rules 13 (3) Item III (v) of Army Rules, 1954 because there is no any provision to discharge on the matter of three red ink entries, Hence, the order of discharge is totally illegal and cannot sustain in the provisions of Army Act and Rules provided under law. It is violation of Articles 14, 116 & 21 of the Constitution of India as such the impugned order of discharge is liable to be quashed by this Tribunal in the eye of law. He further submitted that the applicant was reverted to the post of Sepoy from the post of Naik by awarding red ink entry without any proper enquiry. If the applicant

was allowed to be continued in service, he would have got the promotion to the post of Sub Maj and would have retired as Hony Captain. He pleaded for grant of service pension to the applicant by calculating service from the date of enrolment till completion of full service tenure.

4. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service w.e.f. 21.03.1972 after rendering 9 years, 4 months and 13 days of service being service no longer required. The applicant was awarded three red ink entries for the offences committed for 'Disobedience of lawful orders', 'Overstaying of Leave' and 'Using criminal force to a person in whose custody he was lawfully placed' under Army Act Section 41 (i), 39 (b) and 42(b) respectively. On the basis of available information in extract of Long Roll, applicant has been paid DCRG and Gratuity.

5. Learned counsel for the respondents further submitted that after a gap of approx 36 years, the applicant has submitted several applications/representations asking for certain documents. However, on every occasion the applicant was suitably replied that documents pertaining to his service have been destroyed by burning under the provisions of para 595 of Regulations for the Army after expiry of stipulated retention period of 25 years being non pensioner except Extract of Sheet Roll. Being aggrieved, the applicant filed OA No. 91/2012 with MA No. 148/2012 in AFT (PB), New Delhi to set aside order dated 06.05.21972 for illegal discharge from service and grant pension of Honorary Capt. The O.A. was dismissed at admission

stage stating O.A. is hopelessly time barred and cannot be entertained. Thereafter, applicant filed MA No. 531/2013 and MA No. 532 of 2013 in OA 91/2012 at AFT (PBP New Delhi which was also dismissed vide order dated 10.10.2013 on the grounds of limitation. Subsequently, applicant filed CWP No. Nil of 2017 before the Hon'ble Delhi High Court for grant of pension which was dismissed by the Hon'ble Court vide order dated 26.05.2017. Thereafter, applicant forwarded an RTI application dated 25.04.2020 demanding discharge proceedings with discharge order dated 06.05.1972 which was suitably replied by SIKH LI Records vide letter dated 08.05.2019. Since service documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner and has rendered only 9 years, 04 months & 13 days of service, therefore, applicant is not eligible for service pension of all previous service as per para 41 (a) of Pension Regulations for the Army, Part-1 (2008). He pleaded the O.A. to be dismissed being devoid of merit.

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

7. We observe that applicant before filing the present case in this Tribunal has approached Armed Forces Tribunal (PB), New Delhi twice and his applications were dismissed being time barred on the ground of limitations. Thereafter, he approached 3rd time to the Hon'ble Delhi High Court and his case was dismissed on the ground

of limitation. The applicant has approached 4th time to this Tribunal concealing all these facts for approaching AFT (PB), New Delhi and the Hon'ble Delhi High Court for the same ground and for same relief, hence, his application is not maintainable before this Tribunal.

8. Further, service documents relating to the applicant have been destroyed after mandatory retention period of 25 years in terms of para 595 of Regulations for the Army, 1987 and he filed this application after a prolonged gap of more than 47 years from the date of discharge from service, his case cannot be considered at this belated stage.

9. The Original Application deserves to be dismissed and is accordingly **dismissed**.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 23rd Sept., 2021

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