

Court No. 1
(Reserved)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION (A) No. 667 of 2020

Monday, this the 10th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Smt. Firoz Bano, W/O No. 14916915H Mohd. Yunus Khan (Now Deceased), R/O: Vill & PO: Puraina, P.S: Besheswarganj, Distt: Bahraich (U.P.).

..... Petitioner

Ld. Counsel for the : **Shri Vijay Kumar Pandey,**
Petitioner **Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi - 110011.
2. Chief of Army Staff, South Block, R.K. Puram, New Delhi.
3. OIC, Records, Records The Rajput Regiment, Fatehgarh.
4. C.O., 25 Battalian Battalion The Rajput Regiment, PIN – 912125, C/O 56 APO.
5. PCDA (P) Draupadighat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava,**
Respondents. **Central Govt Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed under Section 15 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned Discharge Certificate dated 13.09.2007, charge sheet dated 05.09.2007 & apprehension roll dated 30.08.2007, passed by opposite party no. 3 as contained in annexure No.1, 2&3 to this appeal and also quash the impugned Summary Court Martial Proceedings dated 13.09.2007, after summoning the same from the respondents, and respondents may kindly be directed to pay the entire service benefits with all consequential benefits to the applicant in the interest of justice.

(ii) That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 20, 20,000/ (Rupees TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties.

(iii) Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.

2. Brief facts of the case giving rise to this appeal are that husband of the petitioner was enrolled in the Army on 04.07.1990. He overstayed leave on number of occasions. While overstayed leave, he was apprehended by Central Command Liaison Unit on 21.08.2007 after 747 days. He was tried by Summary Court Martial (SCM) and dismissed from service on 13.09.2007. Being aggrieved, petitioner has filed instant Original Application for grant of service benefits.

3. Learned counsel for the petitioner submitted that petitioner Mohd. Yunus Khan filed this Original Application (A) on 21.12.2016 for grant of service pension. He died on 15.05.2018. After his death Smt Firoz Bano, wife of the petitioner was substituted as petitioner. Mohd Yunus Khan was enrolled in the Army on 04.07.1990 and dismissed from service on 13.09.2007 under Section 39 (b) of the Army Act, 1950 for over staying leave illegally against the principles of natural justice. Husband of the petitioner was performing the duties of CQMH of Headquarter Coy. He was granted 62 days annual leave from 04.05.2005 to

05.07.2005. during the year 2005. There was matrimonial dispute in his sister Smt Naseem Bano's family and he made request to Superintendent of Police, Gonda for taking appropriate action. A notice dated 25.05.2005 was served to the husband of the petitioner to appear before Women Helpline, Gonda on 28.05.2005. Husband of the applicant appeared before office of Women Helpline, Gonda. Matrimonial dispute of his sister was shorted out on 22.11.2005. Apprehension roll dated 07.09.2005 was issued and husband of the petitioner appeared before NCO Academy on 02.11.2005 for joining his service but he was not permitted to join duty. On 16.11.2005, husband of sister of the applicant filed application for divorce before Women Helpline, Gonda and husband of the petitioner appeared before Women Helpline, Gonda as witness. The case was disposed of on 22.11.2005.

4. Husband of the petitioner was arrested by Central Command Lucknow Pro Unit on 21.08.2007. Respondents have wrongly stated that husband of the petitioner was involved in the case of fraudulent enrolment case. There is nothing on record to establish that he was involved in any fraudulent enrolment case. Charged sheet was issued under section 39 (b) of the Army Act, 1950. Summary of Evidence completed on 29.08.2007 and copy of the

same was provided to the husband of the petitioner on 13.09.2007 and petitioner was dismissed from service on 13.09.2007. While dismissing from the service, proper procedure was not followed by the respondents. Summary of Evidence was recorded against the husband of the petitioner without providing opportunity to cross examine. Rule 23 of Army Rules, 1954 was not complied with. Husband of the petitioner was not provided friend of accused. Husband of the petitioner had not pleaded guilty to any charge. Husband of the petitioner was not given opportunity to make a plea in mitigation of sentence and husband of the petitioner was never asked as to whether he wish to produce any witness in his defence. He was not provided copy of court of inquiry, show cause Notice and summary court martial proceedings. The trial, finding and sentence suffer from pre-conceived thoughts and decision, hence not sustainable in the eyes of law. Learned counsel for the petitioner prayed that punishment of dismissal awarded to husband of the petitioner be quashed and petitioner be granted pensionary benefits.

5. On the other hand, learned counsel for the respondents submitted that husband of the petitioner is a habitual offender. He was warned on several occasions to improve his discipline but of no avail. He was awarded punishment for overstaying leave on

three occasions. He was tried under Army Rule 22 and Summary of Evidence was recorded. SCM was held on 13.09.2007 and husband of the petitioner was dismissed from service under the Section 39 (b) 'Without sufficient cause overstaying leave granted to him'. Summary of evidence was recorded in terms of Army Rule 23 (1), (2), (3), (4) and (5) and explained to him in front of independent witness Sub Amar Singh of 25 Rajput. Husband of the petitioner was handed over copy of summary of evidence dated 29.08.2007, Copy of charge sheet dated 05.09.2007, nomination of friend of accused, Trial of SCM and Discharge Certificate dated 13.09.2007 on 13.09.2007. Husband of the petitioner refused to take over copy of Summary Court Martial Proceedings dated 13.09.2007. Learned counsel for the respondents pleaded that husband of the petitioner was a habitual offender and he was not entitled for grant of pensionary benefits and Original Application (A) deserves to be dismissed on the following reasons being devoid of merit and lacking substance:-

(a) In the year 1992, husband of the petitioner was charged with an act of omission prejudicial to good order and military discipline for which he was tried summarily and awarded seven days confinement to line.

(b) In Feb 1999, he overstayed leave for 5 days and he was awarded punishment of 10 days Rigorous Imprisonment.

(c) In September 2000 he overstayed leave for 90 days and he was awarded 28 days Rigorous Imprisonment.

(d) He was granted 62 days Annual Leave from 04.05.2005 to 05.07.2005 and 30 days extension of leave was granted to him upto 04.08.2004. He failed to join duty without sufficient cause. Apprehension roll was issued and husband of the petitioner was apprehended by Central Command Liaison Unit on 21.08.2007 at Lucknow after lapse of 747 days and various suspected documents relating to fraudulent enrolment were covered from him. Considering the gravity and repeated nature of offence his retention in service was not desirable in the interest of maintaining discipline. He was tried by Summary Court Martial and was awarded punishment of dismissal from service.

6. Learned counsel for the respondents pleaded that husband of the petitioner is not entitled any relief and instant Original Application (A) is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the documents available on record.

8. The question before us to decide is whether the husband of the petitioner is entitled for grant of service pension being a case of dismissal after completion of 15 years of physical service.

9. In the case in hand, husband of the petitioner was enrolled in the Army on 04.07.1990. During his service, he overstayed leave on number of occasions. SCM was held and husband of petitioner was dismissed from service on 13.09.2007 under Section 39 (b) 'Without sufficient cause overstaying leave granted to him'. Thus, he rendered about 17 years and 02 months of service out of which he was absent from duty for about 747 days. He physically served in the army for 15 years. Due to divorce case of his sister in the Court of Women Helpline, Gonda and family problems, he could not join duty in spite of granting extension of leave.

10. We have carefully examined the investigation and the Summary Court Martial proceedings and find no infirmity in them. Undoubtedly, overstaying leave or absence of even a single day must be viewed very seriously in the Army. All acts of indiscipline must be punished appropriately. In the instant case, husband of the petitioner may have had a problem at home. We also take note of the fact that he rejoined voluntarily two times thereby hoping for

a lenient view. Since husband of the petitioner had already rendered 15 years of physical service, the punishment awarded to him, in our view, is harsh and deserves intervention. The ratio of law laid down in various judgments relied upon by the petitioner also supports the husband of the petitioner to be treated as discharge from service rather than dismissal from service. Since husband of the petitioner has rendered 15 years of physical service, his dismissal is liable to be converted into discharge from service to enable husband of the petitioner to earn service pension.

11. In the result, O.A. (A) No 667 of 2020 is disposed off finally with the direction that dismissal order of husband of the petitioner is converted into discharge as an exceptional case. Husband of the petitioner shall be granted service pension for the services rendered by him of the rank of Sepoy as admissible in accordance with Pension and other Rules/Regulations in force. After death of husband of the petitioner, she shall be granted family pension as per rule. Due to law of limitation, arrears of pension will be restricted from three years prior to filing of Original Application. The Original Application (A) was filed on 21.12.2016. Let the entire arrears of pension be paid to the petitioner within the period of four months from the date of communication of order. If the same are

not paid within the time stipulated, then the respondents shall also be liable to pay interest at the rate of 8% per annum on the amount due from the date of its accrual till the date of its actual payment.

12. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 10th April, 2023

Ukt/-