

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 250 of 2011

Wednesday, the 26th day of August, 2015

(Court No. 2)

Smt. Januka Devi, wife of Late Ex. No. 9419081 NK Dili Ram Rai,
resident of C/o Ram Murti, House No. 43, R.A. Lines, Top Khana
Bazar, Cantt, Lucknow

..... Applicant

By Shri Rohit Kumar, Counsel for the Applicant.

Versus

1. Union of India, Ministry of Defence through Principal Secretary,
New Delhi.
2. The Senior Record Officer Records, 11 Gorkha Rifles, P.O.
Dilusha, Lucknow.
3. The Commandant, 11 Gorkha Rifles, P.O. Dilusha, Lucknow.
4. Chief of Army Staff, DHQ P.O. New Delhi.
5. General Officer Commanding, 11 Infantry Divisional c/o 56 APO.

.....Respondents.

By Shri Mukund Tiwari, Counsel for the respondents alongwith Capt.
Ridhishri Sharma, Departmental Representative.

ORDER

1. This O.A has been filed seeking the relief of quashing the
impugned termination order dated 24.02.2003 (effective from 31st
March, 2003) signed by the General Officer Commanding, 11 Infantry

Division (contained in Headquarter's 330 Infantry Brigade Letter No. Nil dated 24th March, 2003) with all consequential benefits to the applicant, after summoning the same from the respondents.

2. Facts of the case are that the applicant is the widow of Army No. 9419081 NK Dili Ram Rai of 11, Gorkha Rifles, Regimental Centre, Lucknow. He was dismissed from service on 04.02.2003 under the provisions of Section 20 of the Army Act read with Rule 17 of the Army Rules. The applicant claims that at the time of termination, her husband had completed pensionable service i.e. 15 years, 06 months and 28 days. He was patient of schizophrenia but the army authorities did not consider the said fact. On the death of her husband in May, 2010, the applicant applied for family pension and other retiral benefits, but the respondent no. 2, vide letter dated 15.03.2011, intimated that her husband was not entitled for any retiral benefits, so the same could not be given to her.

3. The applicant is represented by Shri Rohit Kumar. According to him, the General Court Martial (GCM) was held against the applicant's husband after he was charged under Section 69 of the Army Act read with Section 302 and 307 IPC but after recording of evidence, it was found that he had committed the offence while he was not in a fit state of mind. The four charges levelled against him were not proved. In revision, the outcome of GCM was approved. The submission of learned counsel for the applicant is that though in GCM, the husband of the applicant was not held guilty and the said finding of GCM was

confirmed in revision, but in spite of that, a show-cause notice was illegally issued to her husband and his services were terminated by the authority concerned in exercise of powers vested in it under Section 20 of the Army Act read with Rule 17 of the Army Rules arbitrarily and without any justification. It is further submitted that it is a case of termination and not dismissal from service and since the applicant's husband had completed pensionable service, the applicant is entitled to pension and all consequential benefits, to which her husband was entitled, but the same have wrongly been denied to her by the respondents.

4. The respondents are represented by Shri Mukund Tewari and Capt. Ridhishri Sharma, Departmental Representative. Their submission is that even if in GCM, the applicant's husband was held not guilty and that finding of GCM was approved in revision, the authority concerned was well within its power while passing the order dated 04.02.2003 under Section 20 of the Army Act read with Rule 17 of the Army Rules. They further submit that the services of the applicant's husband were rightly dispensed with, hence the applicant is not entitled to any relief as prayed for.

5. We have heard learned counsel for the parties at length and have gone through the original record.

6. While going through the contents of this O.A, we find that neither the show cause notice nor the order of termination is on record. However, learned counsel for the respondents has placed before the

Court the impugned termination order dated 04.02.2003 which reads as under:

“DIRECTIONS OF GERNERAL OFFICER
COMMANDING 11 INFANTRY DIVISION FOR
TERMINATION OF SERVICES IN RESPECT OF NO
9419081Y NK DILLI RAM RAI OF 1/11 GR ATT TO 330
INF BDE CAMP

1. I have considered the reply to the Show Cause Notice submitted by No 9419081Y NK Dilli Ram Rai of 1/11 GR att to 330 Inf Bde Camp and also recommendations of OC Tps, HQ 330 Inf Bde and Cdr 330 Inf Bde on the reply to the Show Cause Notice.

2. I conclude that No 9419081Y Nk Dilli Ram Rai should not be allowed to go scot free for committing such a heinous crime.

3. I, therefore, direct that the services of No 9419081Y Nk Dilli Ram Rai of 1/11 GR be terminated in terms of Section 20 of the Army Act 1950 read with Rule 17 of the Army Rules 1954.

Signed at Ahmedabad on the Fourth day of February 2003.

Sd./-
(N. Thamburaj)
Maj Gen
GOC”

7. A bare reading of the order quoted above would reveal that the officer concerned, namely, Major General N. Thamburaj, GOC had observed that the husband of the applicant should not be allowed to go scot free for committing such a heinous crime, hence in exercise of powers vested in him under Section 20 of the Army Act read with Rule 17 of the Army Rules, he terminated the services of the applicant’s husband.

8. We have gone through the entire evidence on record and the order passed in revision as well as the order of termination. We find that the services of applicant's husband were terminated by the authority concerned in exercise of powers under Section 20 of the Army Act read with Rule 17 of the Army Rules. The punishment awarded was not for the reason that the charges were proved in GCM or findings of GCM were approved in revision under Section 69 of the Army Act read with Sections 302 and 307 IPC. The impugned order of termination, therefore, having been passed in exercise of powers under Section 20 of the Army Act read with Rule 17 of the Army Rules cannot be said to be without jurisdiction or in violation of law. In this view of the matter, we hold that the order of termination is just and proper and calls for no interference.

9. Further argument of the learned counsel for the applicant is that it is a case of termination and not dismissal, but the respondents have wrongly treated it a case of dismissal, owing to which they have denied the pensionary and other service benefits to the applicant's husband though he had completed pensionary service. There is substance in this argument. Record shows that pensionary and other benefits have been denied to the applicant merely because the respondents treated her husband as dismissed in service but the fact is that his services were terminated under Section 20 of the Army Act read with Rule 17 of the Army Rules. Hence, the contention of the respondents that it is a case of dismissal has no legs to stand upon. Paras 16 and 113 (a) of Pension

Regulation for the Army 1961 (Part-1) relate to an individual who is dismissed from service under the Army Act or removed under Army Rule 14. In the instant case, which is a case of termination, the aforesaid provisions will not apply. We, therefore, hold that the applicant's husband has not forfeited pension or gratuity for all his previous service.

10. It is note-worthy that the husband of the applicant was suffering from schizophrenia/ paranoia, in rage of which he had committed the offence. The GCM proceedings were initiated against him in relation to charge under Section 69 of the Army Act read with Section 302 read with Section 307 IPC. On conclusion of proceedings, he was not held guilty and was exonerated. The said finding of GCM was approved in revision. We also find that applicant's husband died in the month of May, 2010 and during the course of service, he was at various occasions admitted in the Army hospitals and was given medical treatment for the disease he was suffering. During GCM proceedings too, he was admitted in Command Hospital of the Army more than once for medical treatment. On conclusion of GCM, he was acquitted of the charges levelled against him. He remained in confinement (close arrest) of the Army during these proceedings from 19.10.2000 to 24.03.2003, which period comes to more than two years. He was serving in the Army since 26.08.1987. In view of the fact that in GCM, he was not held guilty, the period of confinement during GCM cannot be washed off proceedings and the same will be treated to be as service period for the purposes of pensionary and other service benefits to him. Adding this

period to the tenure of service he rendered in the army, the total period of his service comes to 15 years, 06 months and 28 days. The respondents have, thus, committed an error in not accepting the aforesaid period of close arrest of the applicant's husband as period of service.

11. We appreciate the submission of learned counsel for the applicant that it was a case of termination and not dismissal. The impugned order is very clear, by means of which the services of the applicant were terminated. The respondents have wrongly treated it a case of dismissal and as such, denial of pensionary and other benefits to the applicant or his family would amount to injustice to them.

12. In the result, this O.A is party allowed. While upholding the order of termination dated 04.02.2003, we quash the order dated 15.03.2011 to the extent it says that the applicant's husband was not entitled to any type of pensionary benefits and hold that he was entitled to pensionary benefits. Accordingly, we direct that the respondents shall pay family pension and other ancillary benefits to the applicant, from the date she became entitled to. This shall be done within a period of two months from today. There shall be no order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

LN/-