

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 260 of 2014

Monday, the 16th day of November, 2015

Reserved
(Court No. 2)

No. 6376768-M Ex Naik/SHT Bhaju Ram Prasad, son of late Sri Chandra Dev Prasad, resident of village Nashirabad Khurd, P.O. Ratanpura, District Ballia (New name Mau), State-U.P.

..... Applicant/petitioner

By Shri R.Chandra, Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi.
3. The Officer-in-Charge, Army Service Corps (South), Bangalore-560007.
4. Commanding Officer, 502 ASC Battalion, C/o 99 APO.

.....Respondents.

By Shri Rajesh Kumar, Counsel for the respondents alongwith Capt. Soma John, Departmental Representative.

ORDER

1. The petitioner seeks the reliefs of setting aside the dismissal order dated 19.4.2007, annexed as Annexure A-3 to the O.A, and reinstatement in service with all consequential benefits including pension and other retiral benefits.

2. Facts of the case are that the petitioner was enrolled on 9.3.1982 in Army Service Corps (ASC). In 1996, when he was serving with 502 ASC Battalion, he was granted leave from 12.12.1996 to 31.12.1996. He did not report back to the Unit on termination of leave. A Court of Inquiry was held on 31.1.1997 and he was declared a deserter. He did not rejoin the Unit for 10 years and in accordance with the instant provisions, he was dismissed from service after absence of 10 years on 19.4.2007 with effect from 1.1.1997 under the provisions of Army Act Section 20(3) and Army Rule 17.

3. The petitioner was represented by Shri R. Chandra, his learned counsel. The petitioner says that on 29.12.1996 when he was going to his Unit on termination of leave, at about 0420 hrs at Katihar Railway Station he had tea, whereafter he became unconscious. Probably there was some drug in the tea, which brought about this state. After about 4-5 days he was brought home by one RPF personnel who got to know his address from his leave certificate. The petitioner says that he was behaving like a mad man. After he recovered, he reported to his Unit 502 ASC Battalion on 16.6.1997 but was not allowed to join the Unit. On 8.8.1997 he reported to the Records Office of ASC but was not accepted. On 9.8.1997 he reported again to ASC Centre Bangalore where he was taken to JCO Adjutant. Here too, he was not accepted and was not allowed to join. The said JCO Adjutant also instructed the Sentry on the gate not to enter the petitioner's name in the Gate Register. The petitioner's I-Card and Leave Certificate were taken from him at the

gate. On 16.3.1998 the petitioner reported to ASC Centre with his brother-in-law Hav Jai Narayan. Again he was not allowed to rejoin as he had no proof or documents that he was serving in the Army. On 10.4.1998, the petitioner claims, he wrote to the Commandant ASC Centre, to which he received no reply. He again wrote on 16.1.1999 to the Commandant ASC Centre which too went without any reply. On 16.5.1999 he reported to ASC Centre but was not allowed to rejoin. He learnt that he had been dismissed from service under the provisions of Army Act Section 20(3) and Army Rule 17 on 19.4.2007. The petitioner states that the provisions of Army Rule 17 had not been complied with as no show-cause notice was served to him. He further states that he had 14 years 9 months and 22 days of service on 31.12.1996 and there was no reason for him to absent himself without leave as he was eligible to pension just after a few months' time.

4. The respondents were represented by Shri Rajesh Kumar, duly assisted by Capt. Soma John, Departmental Representative. They admitted the basic facts of date of enrollment and posting of the petitioner to 502 ASC Battalion in 1996. The respondents state that the petitioner had four red ink entries, two under Army Act Section 39, one under Army Act Section 54(b) for loss of I-Card and one under Army Act Section 63. After the petitioner had been absent for 30 days, a Court of Inquiry was held as provided under the law. The petitioner was declared a deserter. After absence of 10 years, he was dismissed from

service in pursuance of SAO 9/S of 1989. Since the petitioner was dismissed from service, he is not entitled to pension.

5. Heard both sides and examined the documents on record.

6. Admittedly, the petitioner had been absent from his Unit for more than 10 years. He had over 14 years and 9 months of service. The petitioner claims that he tried to report to the Unit and the ASC Centre several times between 1997 and 1999 but was not allowed to rejoin. He has produced photocopies of two letters that he wrote to the Commandant ASC Centre in 1998. The respondents have not acknowledged these letters.

7. Dismissal from service after an absence of 10 years is legally valid provided the provisions of law have been complied with. In the instant case, the petitioner was dismissed under Army Act Section 20(3) and Army Rule 17. Army Rule 17 reads as follows:

“17. Dismissal or removal by Chief of Army Staff and by other officers. *Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.*

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the

prescribed procedure has not been complied with shall be reported to the Central Government.”

8. Under the provisions of Army Rule 17, the respondents needed to inform the petitioner with regard to his intended dismissal, particularly in the instant case as the individual was on the verge of completing minimum service for being eligible for pension. For sending such information, which could be in the form of a show-cause notice, the last known address of the petitioner was available with the respondents. The respondents should have sent such show cause notice on that address. However, it emerges that the respondents did not serve any show cause notice to the petitioner; instead the competent authority gave a certificate that it was impracticable to serve show cause notice and proceeded to dismiss the petitioner from service.

9. We have examined the certificate given by the competent authority. It reads as follows:-

“6331/DES/Dismiss

*Sena Seva Corps Abhilekh (Dakshin)
ASC Records (South)
Bangalore-560007*

*Sd\ x x x x
(UP Thomas)
Col
Col Records*

17 Apr 2007

The dismissal of the persons whose names appear in the nominal roll containing 69 (Sixty nine) names in all has been sanctioned non 19 Apr 2007 under Army Act Section 20 (3). It has not been practicable to comply with provisions of the Army Rule 17 in their cases.

Bangalore-7

19 Apr 2007

*Sd\ x x x x
(PPS Bal)
Brig
Comdt
ASC Centre
(South)”*

10. The list of persons so dismissed by an order dated 19.4.2007 is attached to the certificate in which name of the petitioner appears at serial No. 60. Language of this certificate indicates that dismissal of said persons had already been sanctioned, as is evident from the first sentence of this certificate. Army Rule 17 provides that the person who is to be dismissed has to be informed first or a certificate must be given. In this case, the said persons appear to have been dismissed first and then the requisite certificate has been signed which, we are inclined to record, is not in accordance with law and, therefore, we hold the dismissal of the petitioner as legally not sustainable.

11. The petitioner had over 14 years and 9 months of service and another few months of service in the Army would have entitled him to pension. The number of attempts made by him to rejoin the Unit or the ASC Centre has not been substantiated by any evidence. However, we are not inclined to totally disregard the claim made by the petitioner and are of the view that he did make an attempt to rejoin the Unit which was not allowed and, therefore, the petitioner deserves a sympathetic consideration.

12. Accordingly, this O.A is partly allowed. The dismissal order dated 19.4.2007, annexed as Annexure A-3 to the O.A, is set aside, so far as it relates to the petitioner. It is directed that the petitioner would be considered to be notionally in service till he reaches the service which entitles him to pension, whereafter he shall be paid his pension on

regular basis. Implementation within a period of three months from the date of receipt of a certified copy of this order by the respondents. It is clarified that the petitioner shall not be entitled to any salary during the period he is considered to be notionally in service. No order as to cost.

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

(Justice Abdul Mateen)
Member (J)

LN/-