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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 218 of 2016

Friday, this the 18th day of February, 2020

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

No. 1550257 Ex Sep Shitla Prasad Singh son of Shri Kanhaiya Singh, resident of Village-Nayak Deeh, Post Office-Soniyapar, District-Ghazipur (UP).

.....Applicant

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, DHQ, PO- New Delhi-11.
2. Chief of Army Staff, Army Head Quarter, New Delhi-11.
3. Officer-in-Charge, Bombay Engineer Group, Kirkee, Pune-3
4. Commanding Officer, Training Battalion No 3, B.E.G. Kirkee, Pune-3.

.....Respondents

Ld. Counsel for the: **Ms Deepti P Bajpai**, Advocate
Respondents. Government Standing Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The present applicant has been filed in terms of Section 14 of the Armed Forces Tribunal Act, 2007 by which the applicant has prayed the following reliefs:-

- (i) This Hon’ble Court may kindly be pleased to quash the dismissal order dated 30.03.1989 after summoning it and quash the letter dated 17.05.2007 and 08.05.2008 issued by the respondent No 3 through which the applicant has been informed about the punishment/dismissal order and denial for pension (Annexure No 1 & 2) with all consequential benefits in the interest of justice.
- (ii) This Hon’ble Court may kindly be pleased to direct the opposite parties may be directed to allow and pay the pension and its arrears along with interest @ 18% till the date of actual payment.
- (iii) In addition to above relief, if this Hon’ble Tribunal may deem fit and proper to grant any other relief, the same may kindly be granted to him including an order consider and decide the last representation dated 26.09.2013, (Annexure No 13 to this original application) by speaking and reasoned order in the interest of justice.

2. Brief facts of the case are that the applicant was enrolled in the Army on 15.07.1978. He was tried summarily for the offences committed under Section 38 (1) and 39 (b) of the Army Act, 1950 and was dismissed from service on 30.04.1989 having rendered less than 11 years of service. From the year 2006 to 2008 applicant is stated to have sent numerous letters to the Record Office for grant of pensionary benefits after dismissal from

service keeping in view of his length of service but in turn the Record Office vide letter dated 17.05.2007 intimated the applicant that he is not entitled to pensionary benefits due to him being dismissed from service. The applicant is also stated to have sent a representation dated 26.09.2013 (Annexure No 13) which has not been decided as yet. After a lapse of 24 years applicant has filed this O.A. for setting aside of his discharge order dated 30.03.1989 and grant of pensionary benefits.

3. Learned counsel for the applicant submitted that the applicant was suffering from Schizophrenia and remained in the unit without proper treatment and in the state of absent mind he reached his village. He further submitted that while at village he was treated in a Charitable Trust and became fit in the year 2005. He further submitted that in the year 1989 while at home he was apprehended by civil police and handed over to the Army authorities where he was tried summarily and dismissed from service on 30.03.1989 without following due procedure. He also stated that since the procedure contained in para 376, 379, 381 of Defence Service Regulations and Section 106 of Army Act, 1950 have not been taken into consideration, the dismissal is bad in the eyes of law. He pleaded that applicant be granted pensionary benefits by quashing the impugned orders dated 30.03.1989, 17.05.2007 and 08.05.2008.

4. The respondents in their counter affidavit brought out that the applicant was enrolled on 15.07.1978 and during his approx

10 years service he had earned 3 red ink entries besides the punishment of dismissal dated 30.03.1989. He further stated that the individual had been given ample opportunities to mend his ways and improve his conduct but he gave no heed. He further stated that in the year 1989 while the applicant was overstaying leave, an apprehension roll was issued and pursuant to that he was apprehended by civil police on 04.03.1989. In the unit he was tried summarily by the Commanding Officer and was dismissed from service by following due process of law. He further submitted that after dismissal from service the applicant remained silent for approx 17 years and on 23.12.2006 he submitted a representation to the respondents stating that he was suffering from Schizophrenia and being under treatment at Charity Hospital, Varanasi he became fit in the year 2005. He further submitted that the applicant has made a fabricated story that he could not have been declared a deserter when he was apprehended by civil police and handed over to the military authorities. His other submission is that the O.A. be dismissed as the applicant is not entitled to pensionary benefits in terms of para 113 of Pension Regulations for the Army, 1961 (Part-I).

5. Heard the learned counsel for the parties at length and also perused the record on file.

6. Coming first to the question of punishments, we find that the applicant during his approx 10 years of service in the Army had earned three red ink entries in his conduct sheet. He was

tried and summarily punished on account of desertion for a duration of 256 days. Details are as under:-

(a) U/S 39(b) of Army Act- 10 days pay fine for overstaying leave (AWL 22 days) on 31.12.1985.

(b) U/S 39(b) of Army Act- 07 days RI for overstaying leave (AWL 11 days) on 27.10.1987.

(c) U/S 39(d) of Army Act- 21 days RI for absent on duty on 30.03.1988.

(d) U/S 39(1) and 39 (b) - Dismissed from service duly tried by Summary Court Martial. The applicant was absent for a period of 256 days and did not rejoin till apprehended by civil police on 04.03.1989.

7. It is not in dispute that earlier he was tried summarily by various Commanding Officers and awarded punishments which were not challenged and had attained finality. Further, he was advised several times to improve himself and mend his ways but he never paid any attention to the advice of his superiors and continued with committing offences on account of overstaying leave. In the year 1989, on account of overstaying leave, a desertion roll was issued and he was apprehended by civil police on 04.03.1989. He was handed over to military authorities and on arrival his dismissal proceedings were carried out and he was dismissed from service as he was setting bad example for others in the Unit.

8. Medical certificate dated 28.03.2005 (Annexure-12) issued by Shri Dwarkadheesh Mandir Dharmarth Trust, Varanasi with regard to his treatment of Schizophrenia indicates that he was under treatment for the said disease during the period 1991 to

2005 whereas the applicant was dismissed from service w.e.f. 30.03.1989. Thus, the certificate does not relate to the period he was apprehended by civil police and dismissed from service. Therefore, an inference may be drawn that the story of his being under treatment is concocted. The fact of being suffering from mental disorder was never informed by the applicant while in service otherwise he would have been treated in military hospital where he would have been given the required medical care. It can thus, be concluded that applicant became deserter and on being apprehended by civil police he was tried summarily by the Commanding Officer and dismissed from service by following due procedure.

9. The other contention of the applicant, as mentioned in para 15 of the O.A. that he was not a deserter as he was tried and punished by the Commanding Officer in the unit, is not sustainable as he was apprehended by civil police on receipt of apprehension roll from the Army authorities.

10. While the argument was in progress, learned counsel for the applicant submitted that respondents should not have destroyed Summary Court Martial proceedings, as brought out by the respondents in para 9 of the counter affidavit that the documents have been destroyed, in terms of Para 595 of Defence Service Regulations for the Army, 1987. We have perused para 592 to 595 of the aforesaid regulation which lays down that SCM

proceedings can be destroyed after three years. Thus, submission of learned counsel for the applicant is refuted.

11. During the course of hearing submission of the applicant that had he been mentally fit, he would have rejoined from leave within time and would not have stayed after expiry of leave. We have perused the medical document placed on record and we find that applicant was under treatment at Shri Dwarkadheesh Mandir Dharmarth Trust for his mental illness but we observe that his relative would have tried to get him admitted in nearby military hospital for treatment rather than getting him treated in civil charity hospital. The above submission does not inspire us confidence that he could not rejoin duty being under treatment in civil hospital on account of his mental illness.

12. While the argument was in progress learned counsel for the applicant has relied upon the decision of the Hon'ble Apex Court dated 03.05.1991 titled **Ex Naik Sardar Singh vs Union of India & Ors** and this Tribunal's order dated 07.02.2018 passed in O.A. No. 248 of 2015 titled **Smt Malti Devi vs Union of India & Ors**. We have gone through the aforesaid pronouncements and we find that the above mentioned judgments are not helpful to the applicant being based on the different facts and circumstances.

13. Applicant's services were dispensed with under Section 38 (1) of the Army Act, 1950. We have perused Section 38 of the Army Act, 1950 and we find that applicant was punished leniently and not severely as held in the Act, which for convenience sake is reproduced as under:-

"Section 38 in The Army Act, 1950

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.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned."

14. In view of the above, we are of the view that applicant overstayed leave/deserted from the Army for a period of 256 days. He was apprehended by civil police on 04.03.1989 and thereafter, Summary Court Martial proceedings were held in accordance with rules and he was dismissed from service. After being dismissed from service, applicant is not entitled to any type of pension in terms of para 113 of pension Regulations for the Army, 1961 (Part-I).

15. Thus, in light of above facts, we find no reason to interfere with the dismissal order of the applicant. The petition is **dismissed**.

16. No order as to costs.

17. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated :18.02.2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)