

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved

E Court No- 1

Original Application No. 481 of 2020

Friday, this the 18th day of February, 2022

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

No 1479290L Ex Hav APS Tomar, Son of Late Shri GP Singh,
Resident of H. No 91, VPO- Narauli, Distt- Sambhal (U.P.)-14.

.....Applicant

Ld. Counsel for Applicant: **Shri Virat Anand Singh,
Advocate**

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), Govt of India, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. CRO, BEG Records, C/o 5 APO.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,
Respondents Central Govt Counsel**

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(i). To direct the respondents to quash the order of dismissal (Not served) from service dated 20.04.2011 and consider applicant for service pension by now discharging him from service and his arrears with interest.

(ii). To direct the respondents to pay the other funds as applicable to him from due date with interest.

(iii). To pass such other order(s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 01.02.1986. He served at different places in peace as well as field station. He was granted 30 days annual leave wef 05.11.2007 to 03.12.2007. On expiry of leave, he failed to report back in his unit on 04.12.2007. A Court of Inquiry was held and applicant was declared deserter. He was dismissed from service on 20.04.2011 on completion of three years of absence period from peace station. He filed mercy petition to reinstate him in service or to grant service pension which was rejected. Being aggrieved, applicant has filed instant O.A. with the prayer to

consider his dismissal as discharge and to grant him service pension with retiral benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army on 01.02.1986. His wife was ill and passed away on 15.12.2006. After death of his wife, applicant became a patient of Schizophrenia. In the year 2007 applicant was granted leave but he failed to join duty due to illness. On 20.04.2011, applicant was dismissed from service under Army Act Sec 20 (3) for being absent without leave. The applicant had small children and sudden death of his wife made him depressed. Keeping in view pathetic condition of the applicant, dismissal order after 21 years of service is excess of punishment. Applicant made representation to reinstate him in service or to grant pension which was rejected by the respondents. His mercy petition was also rejected. Learned counsel for the applicant prayed that dismissal of the applicant be converted into discharge and applicant be granted service pension and other retiral dues.

4. On the other hand, learned counsel for the respondent submitted that wife of the applicant died on 15.12.2006 due to cancer at Army Hospital R&R Delhi Cantt. On 10.05.2007, applicant was admitted in Command Hospital, Western

Command, being absent minded, failing to recognize own relatives including children and misbehaving with subordinates since his return to unit. He was granted leave from 05.11.2007 to 24.11.2007 which was converted into 30 days Advance of Annual Leave upto 03.12.2007. The individual failed to report to unit on 04.12.2007. A Court of Inquiry was held and applicant was blamed for absent without leave and individual was declared deserter. He was dismissed from service on completion of three years of absence period as per provisions of Army Headquarters, Min of Def letter dated 17.02.2011. His total qualifying service was 21 years, 09 months and 15 days after excluding the non qualifying service of 03 years, 05 months and 02 days.

5. Applicant submitted application for grant of pensionary benefits, which was suitably replied and applicant was informed that he is not entitled pensionary benefits. He filed mercy petition which was also rejected. Now he has filed instant O.A. with the prayer to grant service pension. As per para 41 (a) of Pension Regulations for the Army, 2008 (part-I), *an individual who is dismissed under the provisions of Army Act, 1950, or removed under The rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all*

previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/ discharged on the same date in the normal manner and as per Para 41 (b) all appeals to the competent authority in this regard will be preferred within 2 years of the date of dismissal/ removal.

6. Learned counsel for the respondents further submitted that applicant was dismissed from service with effect from 20.04.2011. His mercy petition for grant of service pension has been forwarded to Additional Director General (Pers), Adjutant General Branch, IHQ of Min of Def and its outcome is still awaited. Immediate action will be taken on receipt of sanction/ decision of the competent authority. Learned counsel for the respondents pleaded that O.A lacks merit and is liable to be dismissed.

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

8. The question before us to decide is whether the applicant is entitled for grant of service pension being a case of dismissal after completion of 21 years of service.

9. In the instant case applicant has rendered 21 years of unblemished service. Due to death of his wife and family problems, he became a patient of 'Schizophrenia' and his mental condition was deteriorated and applicant could not join his duty. Court of Inquiry report reveals that he was unable to recognize his own relatives and children in such a condition, how one can perform his duty in the army. Applicant could not represent his case for grant of mercy petition in time as his mental condition was not proper.

10. In view of the fact that applicant was having a good service profile but due to death of his wife and family problems, his mental condition was deteriorated, therefore, the applicant deserves a sympathetic consideration. Keeping in view his service profile, it appears that punishment awarded to the applicant is too harsh. Since applicant has rendered more than 21 years of regular service, his dismissal is converted into discharge and applicant is entitled for grant of service pension with retiral dues.

11. In the result, dismissal order of the applicant is converted into discharge as a case of extreme . Applicant shall be entitled to service pension for the services rendered by him of the rank held at the time of dismissal as admissible in accordance with Pension and other Rules/Regulations in force. Let the entire arrears of pension be paid to the applicant 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.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 18 February, 2022

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