

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH LUCKNOW

ORIGINAL APPLICATION No. 781 of 2021

Friday, this the 12th day of January, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 4088072-H Ex-Rifleman Sunder Singh of 12 Garhwal Rifles

C/o 56 APO

S/o Late Sher Singh Rana

R/o Village – Chowki, Post Office – Nouli,

Tehsil – Kirti Nagar, District – Tehri (Uttarakhand) Pin – 249161

.... **Applicant**

Ld. Counsel for the Applicant : **Shri KKS Bisht**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Directorate General of Infantry/Inf-9, General Staff Branch, Sena Bhawan, IHQ of MoD (Army), C/o 56 APO, PIN – 900256.
4. Officer-in-Charge Records, Records Garhwal Rifles (Liaison Cell), PIN – 900400, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP)- 211014.

... **Respondents**

Ld. Counsel for the Respondents: **Dr. Gyan Singh**,

Central Govt. Standing Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) Issue/pass an order or direction to the respondents to quash/set-aside the illegal letter No. 2295/R&D-2 (Pen) dated 19 Feb 2021 (Annexure No. A-1).*
- (b) Issue/pass an order or direction to the respondents to fix the basic pay of the applicant with his colleagues and the MACP benefits alongwith arrears.*
- (c) Issue/pass an order or direction to the respondents to pay service pension to the applicant from the next date of discharge i.e. from 01 October 2020.*
- (d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) Allow this application with costs.”*

2. Brief facts of the case are that applicant was enrolled in the Army on 23.09.2003. The applicant was granted 36 days Part of Annual Leave (PAL) w.e.f. 03.02.2005 to 10.03.2005 which was further extended upto 09.04.2005 but applicant did not report back to his unit at Binaguri on expiry of leave. A FIR was lodged at New Jalpaiguri Police Station on 28.04.2005 regarding missing of the applicant w.e.f. 06.04.2005. A Court of Inquiry was conducted and applicant was declared ‘Presumed Dead’ w.e.f. 06.04.2005. Records, The Garhwal Rifles paid all terminal benefits to NOK, i.e. mother of the applicant vide Records letter dated 24.03.2006. After 5 years, mother of the applicant informed to Record Office that her son Sunder Singh is alive and reached home on 01.11.2009. This fact was verified by the Records and then a case was taken up with IHQ of MoD (Army) and action to recover terminal benefits paid to the NOK

of the applicant was initiated. The PCDA (P) Allahabad directed to PDA to stop family pension which was stopped. Thereafter, Part II Order of 'Presumed Dead' was cancelled and fresh Part II Order of 'OSL' and 'Desertion' w.e.f. 09.04.2005 was published and Dismissal DO II Order dated 24.04.2015 was published by the Records on completion of 10 years of service from the date of desertion. The applicant filed OA No. 137 of 2014 before this Tribunal which was allowed vide order dated 14.02.2017 and applicant was notionally reinstated into service w.e.f. 06.04.2015 and pay and allowances were released w.e.f. 09.05.2017. Thereafter, applicant was discharged from service w.e.f. 30.09.2020 under Rules 13 (3) III (i) of Army Rules, 1954 on completion of terms and engagement. The applicant having less than 15 years service was not granted service pension. Being aggrieved with non grant of pensionary benefits, the instant Original Application has been filed by the applicant.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army as Sepoy on 23.09.2003 and discharged from service on 30.09.2020 on superannuation. The applicant was granted 36 days PAL from 03.02.2005 which was further extended by 30 days till 09.04.2005. The applicant left home for rejoining duty on 05.04.2005 but could not report back to his unit and went missing. A FIR was lodged by mother of the applicant on 28.04.2005. A Court of Inquiry also held in the unit of the applicant and applicant was declared 'Presumed Dead' w.e.f. 06.04.2005 and thereafter,

consequential benefits were paid to the NOK, i.e. mother of the applicant.

4. Learned counsel for the applicant further submitted that applicant became victim of 'Jahar Khurani' and thus he did not reach to his unit. The mother of the applicant informed Commandant Garhwal Rifles Regimental Centre on 04.11.2009 that her son had reached home on 01.11.2009 and thereafter, Part II Order with regard to 'Presumed Dead' was cancelled and Part II Order dated 03.06.2014 for OSL was published and thereafter, applicant was dismissed from service on 06.04.2015. The mother of the applicant returned back entire amount which was paid to her as NOK. The applicant challenged dismissal order before this Tribunal by filing OA No. 137 of 2014 which was allowed vide order dated 14.02.2017 and applicant was reinstated into service w.e.f. 06.04.2015 and rejoined duty on 09.05.2017 vide Records letter dated 16.12.2017. The applicant after joining service was not granted pay and allowances at par with his colleagues by counting his service from the date of enrolment, hence, he represented his case vide application dated 04.03.2019 but nothing has been done by the respondents. The applicant was discharged from service on 30.09.2020 after completion of 17 years of service but he was not granted any pension or pensionary benefits which is illegal and arbitrary and therefore, impugned order dated 19.02.2021 passed on the representation dated 23.10.2020 of the applicant is liable to be quashed/set aside. The applicant placed reliance on the judgment of this Tribunal in OA

No. 271 of 2016, **Ex-Rect Trilokee Nath Sharma vs. Union of India & Others**, decided on 18.02.2019 in which this Tribunal has directed the respondents to grant pensionary benefits and therefore, he pleaded that applicant is also entitled to pensionary benefits being a similar case.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 23.09.2003. The applicant while posted with 12 Garhwal Rifles at Binaguri in Assam was granted 36 days Part of Annual Leave w.e.f. 03.02.2005 to 10.03.2005 which was further extended upto 09.04.2005 on the request of the applicant but applicant did not report back to his unit on expiry of leave. It was learnt that applicant proceeded from Dehradun to Delhi on 05.04.2005 for his onward journey to his unit location, Binaguri but not reached to his unit. A FIR was lodged at New Jalpaiguri Police Station on 28.04.2005 regarding missing of the applicant w.e.f. 06.04.2005. A Court of Inquiry was also conducted and applicant was declared 'Presumed Dead' w.e.f. 06.04.2005 vide convening order dated 29.05.2005. Records, The Garhwal Rifles paid all terminal benefits (Insurance and maturity benefit of AGIF, ACWF and Family Pension) to NOK, i.e. mother of the applicant vide Records letter dated 24.03.2006.

6. Learned counsel for the respondents further submitted that after approx 5 years, mother of the applicant informed to Record Office that her son Sunder Singh is alive and reached home on 01.11.2009. This

fact was verified by the Records through civil authorities and then a case was taken up with IHQ of MoD (Army) which was replied by IHQ of MoD (Army) vide letter dated 25.06.2010 advising to recover terminal benefits paid to the NOK of the applicant. The mother of the applicant has agreed to refund all terminal benefits and grants to Govt. Treasury. The PCDA (P) Allahabad directed to PDA to stop family pension and to take action to regularisation of payment already paid to mother of the applicant. The entire amount was recovered from mother of the applicant. Thereafter, Part II Order of 'Presumed Dead' was cancelled and fresh Part II Order of 'OSL' w.e.f. 09.04.2005 was published. Part II Order of Desertion dated 03.06.2014 was published by 12 Garhwal Rifles after holding a Court of Inquiry and Dismissal DO II Order dated 24.04.2015 was published by the Records on completion of 10 years of service from the date of desertion.

7. Learned counsel for the respondents further submitted that applicant filed OA No. 137 of 2014 before this Tribunal which was allowed vide order dated 14.02.2017 and applicant was notionally reinstated into service w.e.f. 06.04.2015 and pay and allowances were released w.e.f. 09.05.2017. Thereafter, applicant was discharged from service w.e.f. 30.09.2020 under Rules 13 (3) III (i) of Army Rules, 1954 on completion of terms and engagement. The applicant has rendered only 04 years and 10 months of physical service and therefore, under the provisions of para 21 of Pension Regulations for the Army (Part-1), 2008, applicant having less than 15

years service was not granted service pension which was intimated to the applicant vide Records letter dated 19.02.2021. He pleaded for dismissal of O.A.

8. Heard learned counsel for the parties and perused the material placed on record.

9. In the instant case, we observe that applicant proceeded to rejoin duty after availing leave at home but did not reach unit. For this absence, a Court of Inquiry was held and Part II Order of 'Presumed Dead' was published by the unit and when after five years, mother informed the Army authorities that her son is alive and reached home, then another Part II Order of 'OSL' and 'Desertion' w.e.f. 09.04.2005 was published by the Records. On filing case by the applicant before this Tribunal, applicant was taken on roll w.e.f. 06.04.2015 and his pay and allowances were released w.e.f. 09.05.2017 on physical joining of duty. Thereafter, applicant was discharged from service w.e.f. 30.09.2020 on completion of terms and engagement, as per rules.

10. In the instant case, we observe that :-

(a) Long absence/desertion cause, 'Jaher Khurani', shown in para 4.5 of the O.A., is not supported by any evidence.

(b) The absence of the applicant from 09.04.2005 (date of desertion) to 08.05.2017 (date of joining duty – 09.05.2017) was unauthorised absence from service.

(c) The applicant has served only 4 years and 10 months of service.

(d) For entitlement of service pension, qualifying service must not be less than 15 years as per Para 47 of the Pension Regulations for the Army (Part-1), 2008.

(e) In order dated 14.02.2017 passed by this Tribunal in OA No. 137 of 2014, the absence was not authorised or legalised but without entering into the merit of the case, it was directed to take the applicant on roll, he was permitted to work and it was directed that respondents will be at liberty to take action in accordance with law. It was also mentioned in the order dated 14.02.2017 that without going into controversy, the applicant is protected by Tribunal from any recovery.

(f) In the case of **Trilokee Nath Sharma** (supra), it is clearly mentioned in the judgment that Tribunal has quashed the dismissal order without going into merit of the case. The Tribunal has ordered only to take him on roll with liberty to proceed in accordance with law.

(g) The absence of the applicant from 09.04.2005 to 08.05.2017 was unauthorised absence from service and therefore, applicant was not paid salary (pay and allowances) of the period of his unauthorised absence. Hence, the period of applicant's absence from duty/service will not be included in qualifying service. Therefore, benefit of parity of judgment in the

case of **Trilokee Nath Sharma** (supra), cannot be extended to the applicant being based on different facts and circumstances.

11. Paras 21 and 47 of the Pension Regulations for the Army (Part-1), 2008 are reproduced:-

“SERVICE WHICH QUALIFIES FOR PENSION AND GRATUITY IN RESPECT OF PERSONNEL BELOW OFFICER RANK

21. All service from the date of appointment or enrolment/transfer to man's service and any service rendered before attaining the age of 17 years, from the date of enrolment to the date of discharge shall qualify for pension and or gratuity with the **exception** of:

- (i) any period of service on a temporary establishment or for which a special rate of pay is granted on the understanding that no pension is admissible,
- (ii) any period of **unauthorised absence unless pay and allowances are admitted for the period of absence,**
- (iii) **any period of absence without leave which is regularised as extra-ordinary leave without pay and allowances,**
- (iv) any period intervening between the date of dismissal/discharge/release and that of its cancellation which is regularised as extra-ordinary leave without pay and allowances,
- (v) any period of absence as a prisoner of war, unless pay and allowances are admitted for the period of absence,
- (vi) any period of detention in civil custody before being sentenced to imprisonment or fine, unless the President, as a special case, issues orders reducing the period that shall not count,
- (vii) any period of imprisonment by sentence of a civil court or of a court martial.

MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION

47. Unless otherwise provided for, the **minimum qualifying service for earning a service pension is 15 years.**”

12. Since, the applicant has served only 04 years and 10 months and therefore, he is not entitled to service pension/pensionary benefits as per Para 21 and 47 of the Pension Regulations for the Army (Part-1), 2008.

13. In view of the aforesaid, we are of the considered view that applicant having not served 15 years of mandatory/qualifying pensionable service is not entitled for service pension as per rules.

14. Resultantly, the Original Application is liable to be dismissed and is accordingly **dismissed**.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: January, 2024
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