

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 196 of 2020**Friday, this the 07th day of Jul, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 2676693 Ex GDR (NR) Ram Autar Yadava, S/o Sri Lalji Rai,
R/O: Vill - Bhualipur, PO: Dargah, Distt: Mau - 275306 (UP),
Presently R/O: H. N. B-80, Sector ‘A’ SainikVihar Colony, Nanda
Nagar, PO: Kunraghat, Distt: Gorakhpur – 273008 (UP).

-----Applicant

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

Versus

1. Union of India and Others through The Secretary Ministry of Defence South Block, New Delhi - 110011.
2. Chief of the Army Staff Integrated HQ of MoD (Army) DHQ PO, New Delhi - 110011.
3. Commanding Officer, 05 Grenadiers.
4. OIC Records, Grenadiers Records, C/o 56 APO.

..... Respondents

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

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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). To quash or set aside the Respondent,

- Charge - sheet under AA Sec 39 (b),

-SCM proceedings 18/01/2000, and (copy of SCM not served).

-the punishment of (i) rank se vanchit (ii) naukari se bharkhast

As being excessive in nature.

(B) To issue order or directions to the respondents to consider applicant case as being discharged from service, hence to enable him for service pension and all other consequential and incidental benefits thereto.

(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.

(D) Allow this Application with cost.”

2. There is a delay of 19 years, 10 months and 05 days in filing this Original application. Through this O.A the applicant has prayed for setting aside the dismissal order and grant him service pension along with all consequential benefits. The applicant has also prayed

for condonation of delay vide delay condonation application registered as M.A No. 207/2020. In pensionary matters cause of action does not accrue on a fixed date and accrues from month to month. Considering this aspect and explanation of delay offered by the applicant, being sufficient, delay condonation application is allowed and delay in filing of application is condoned.

3. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 28.07.1982. During the service he was awarded one Red Ink Entry and two Black Ink Entries for the offences committed by him during the year 1995 to 1997. In the year 1998, he failed to report his unit after expiry of sanctioned leave. Apprehension roll was issued. Applicant voluntarily rejoined his duties after overstaying leave. He was tried by Summary Court Martial (SCM) and sentenced to be reduced to rank and to be dismissed from service. Through this instant petition, applicant has prayed to quash the sentence awarded by SCM and consider his case as being discharged from Service thereby enabling him for service pension.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in Army and after successful completion of his training, joined 05 Grenadiers Battalion. While in service he suffered disability of shoulder dislocation during wrestling. He was given treatment but again while getting down from vehicle near firing range in Anantnag

district, he again suffered shoulder dislocation. In the year 1998, while on leave, due to acute medical problems, applicant overstayed leave from 19.08.1998 to 16.09.1998 for which he was charge sheeted. Applicant was under treatment for Testicular cancer and old disability of shoulder dislocation. He was tried by SCM on 01/2000 and was given punishment of reduce to rank and dismissal from service. Applicant had filed mercy petition to respondents on 06.05.2019 for mitigating his punishment from Dismissal to Discharge to enable him entitled for service pension as he has rendered 17 years of service. No reply has yet been received from respondents. Hence, this O.A.

5. Per contra, Ld. Counsel for the respondents submitted that applicant was enrolled in Army on 28.07.1982. He was awarded two black ink entries by way of 07 days Pay fine and 10 days Extra Guard duties for '**Without Sufficient Cause Overstaying Leave**' for the period of 77 days and 67 days respectively under Section 39(b). He was awarded a red ink entry by means of Severe Reprimand again for '**Without Sufficient Cause Overstaying Leave**' for a period of 58 days from 17.09.1997 to 13.11.1997. Applicant was further granted 07 days CL from 19.08.1998 to 25.08.1998 and he again failed to report unit after expiry of leave. Accordingly, Apprehension Roll was forwarded to SP, Ghazipur U.P. and applicant was declared deserter w.e.f. 26.08.1998. Thereafter,

applicant voluntarily rejoined from overstaying leave on 16.09.1999. Applicant was habitual offender and had been committing similar offense under Army Act, 1950 Section 39(b) for which he was already tried summarily thrice earlier. Considering the grave nature of the offence and resulting adverse effect on other ranks of the Battalion, his further retention in the service was not considered suitable. Therefore, he was tried to SCM and sentenced to be reduced to rank and to be dismissed from service on 18.01.2000. After a gap of 19 years, applicant had submitted Mercy Appeal to convert his Dismissal from Service to Discharge to enable him for grant of Service Pension which had been replied by the respondents vide letter dated 13.07.2019.

6. Ld. Counsel for the respondents further submits that as per Para 41 (a) of Pension Regulation for the Army 2008 (Part-I), an individual who is dismissed under the Provisions of Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. The applicant is offender under Army Act, 1950, Section 39(b) on discipline grounds; hence, he is not entitled for grant of any type of gratuity or pension. 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 17 years of colour service.

9. In the instant case applicant has rendered 17 years 05 months and 21 days of service (including 589 days non qualifying service). Due to his ill health (shoulder dislocation) and his treatment of Testicular Cancer, he could not join his duty. Learned counsel for the applicant has pointed out some procedural irregularities in the arguments, but there is no argument as to how his defence has been prejudiced by such procedural irregularities, unless and until any prejudice is caused, every irregularity cannot be a ground to justify the interference of court.

10. The Hon'ble Supreme Court in the case of **Major G.S. Sodhi vs. Union of India** (1991) 2 SCC 382) has observed in para 21 as under :

"It must be noted that the procedure is meant to further the ends of justice and not to frustrate the same. It is not each and every kind of defect preceding the trial that can affect the trial as such."

11. The aforesaid view expressed by the Hon'ble Supreme Court in the case of **Major G.S. Sodhi** (supra) has again been followed by the Hon'ble Apex Court in the case of **Union of India & ors vs.**

Major A. Hussain [1998) (1) SCC 537], wherein the Hon'ble Apex Court has observed as under :-

“ In G.S. Sodhi's case this Court with reference to Rules 22 to 25 said that procedural defects, less those were vital and substantial, would not affect the trial. The Court, in the case before it, said that the accused had duly participated in the proceedings regarding recording of summary of evidence and that there was no flagrant violation of any procedure or provision causing prejudice to the accused.”

12. Now we come to the alternative arguments of the learned counsel for the applicant, which is on the point of disproportionate punishment. Keeping in view the long service of approximately 17 years of the applicant, and nature and gravity of offence, the punishment of dismissal from service is too harsh. In support of his arguments, learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble Supreme Court in the case of **Major G.S. Sodhi vs. Union of India** (Criminal Misc. P.No. 8905 of 1990) decided on 19.03.1991, wherein the Hon'ble Supreme Court has held as under :-

“3. A similar order was also passed in Religious Teacher Ex N. Sub. R.K. Sharma v. The Chief of the Army Staff and Ors. (Cr. M.P. No. 349/80 in W.P. (Crl.) No. 244/80 dated 29.4.80), by a Bench of two Judges of this Court. While dismissing the writ petition, the Bench observed that "the Court Martial has not inflicted a punishment on him of forfeiture of pension or other service benefits and counsel for the other side has assured the Court that whatever the pension and other service benefits are permissible to the petitioner under the law will be given to him.”

4. *In the instant case also, the Court Martial has not inflicted any other punishment of forfeiture of pension or other service benefits of the petitioners. Therefore they are also entitled to these benefits. Accordingly the respondent is directed to pay the entire pension, gratuity and provident fund under the rules to each of these petitioners within three months from the date of receipt of this order. Both the criminal miscellaneous petitions are accordingly disposed of.”*

13. Reliance has also been placed in the pronouncement in the case of **S. Muthu Kumaran vs. Union of India & others** [Civil Appeal No. 352 of 2017] decided on 17.01.2017. In this case, the applicant was involved in the recruitment racket in Jammu and in that background, the Hon’ble Supreme Court has observed in para 11 as under :

“11. No doubt, the dismissal order passed against the Applicant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the applicant. The applicant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the applicant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the applicant cannot seek for any employment or re-employment into the Army. Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the applicant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the applicant would also get an opportunity to lead honourable life in the society.”

14. For all these reasons, we feel that the offence committed by the applicant does not seem to be of so grave a nature and, therefore, punishment of dismissal awarded to the applicant seems excessive. Keeping in view the pronouncements of the Hon'ble Supreme Court, mentioned above, and the facts and circumstances of the case and length of service of the applicant, these aspects of the case are an important distinguishing features which renders the punishment of dismissal from service to be harsh and disproportionate to the offence committed by the applicant. Applicant has rendered about 17 years colour service and considering his ill health, it appears that punishment awarded is too harsh and applicant deserves a sympathetic consideration. Accordingly, dismissal of the applicant is converted into discharge and applicant is entitled for grant of service pension with retiral dues.

15. Resultantly, the Original Application deserves to be partly allowed and is hereby partly **allowed**. The order of dismissal from service of the applicant is hereby modified only to the extent that the order of dismissal shall stand converted into the order of discharge as a case of extreme. Due to law of limitation, arrears of pension will be restricted from three years prior to filing of Original Application. The applicant was dismissed from service on 18.01.2000 and this O.A. was filed on 24.08.2020. Applicant shall be entitled to service pension of Sepoy for the services rendered by him in accordance

with Pension and other Rules/Regulations in force. Let the 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.

16. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

17. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 07 July, 2023
ukt/