

**RESERVED**  
**Court No.2**  
(Ser No.22)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 265 of 2020**

Wednesday, this the 05<sup>th</sup> day of July, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Ex-Havildar Clerk (Store) (6900107-W) Uday Bahadur Singh S/o Late Havildar Singh, resident of Village and Post- Aurandh, District Mainpuri, Pin-205267 (U.P.)

.....Applicant

Ld. Counsel for : **None for the applicant.**  
Applicant

Versus

1. Union of India, through Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Records Army Ordnance Corps, Secunderabad, Pin 900453, C/o 56 APO.
4. Commanding Officer, 223 Army Base Ordnance Depot, C/o 56 APO.
5. Commanding Officer 222 Army Base Ordnance Depot, C/o 99 APO.

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate  
Respondents Central Govt Counsel

## ORDER

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

*(a) Issue/ pass an order/direction to the respondents of appropriate nature to grant pay and allowances from December 1985 to 30.03.1993 in the rank of Havildar, the rank in which he is entitled the pay and allowances for a period of twenty eight years that is and there after the pension and pensionary benefits.*

*(b) Issue/pass an order or direction of appropriate nature to respondents to quash/set aside the Dismissal order w.e.f. 30.04.1989 being per se illegal due to non-compliance of the provisions of Army Act Section 20 read with Army Rule 17 and violated Army Rule 18 (3).*

*(c) Issue/pass an order or direction to quash/set aside the AOC Records letter dated 19.05.2007 and also the pension payment order (PPO) dated 06.01.2014 (Annexure No A-4) being illegal and issue the fresh discharge order and the PPO commensurate to his entitlements as per the provisions relevant on the subject.*

*(d) Issue/pass any other or direction as the Hon'ble Tribunal may deem fit in the circumstance of the case.*

*(e) Allow application to cost.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 13.03.1969. While he was serving with 223 Advance Base Ordnance Depot (ABOD) he was ordered for posting to 222 ABOD vide order dated 27.07.1985. Accordingly, he was relieved by 223 ABOD and despatched to 222 ABOD alongwith 06 days preparatory leave and journey period as per

policy vide Movement Order dated 30.11.1985. Applicant was failed to join duty at new place of posting on due date and remained absent without leave. He was declared as overstaying on leave (OSL) w.e.f. 07.12.1985 by 222 ABOD and subsequently, was declared as a deserter w.e.f. 08.12.1985 by a Court of Inquiry held under Section 106 of the Army Act, 1950. Thereafter, he was dismissed from service after expiry of 03 years w.e.f. 30.04.1989 under Army Act Section 20 (3) read in conjunction with Army Rule 17. At the time of dismissal, applicant had rendered 16 years and 09 months qualifying service. Mercy appeal dated 19.05.2008 for grant of service pension was submitted by the applicant to the Hon'ble President of India and he was sanctioned 70% service pension w.e.f. 19.05.2008 i.e. w.e.f. the date of appeal which was granted vide PPO No. S/0092/2013 dated 06.01.2014 (Annexure CA-17). After receipt of aforesaid pension, on 15.09.2014 the applicant submitted mercy appeal to Min of Def, pension grievance cell, New Delhi through OIC Records, Army Ordnance Corps Records for grant of 100% service pension w.e.f. 30.04.1989 which was rejected and communicated to him vide letter dated

27.02.2015. Thereafter, applicant again submitted mercy appeal dated 26.03.2015 to Min of Def, pension grievance cell, New Delhi through OIC Records, Army Ordnance Corps Records for grant of retirement gratuity for the services which he rendered but the same was rejected vide letter dated 15.06.2015 and communicated to applicant vide letter dated 23.06.2015. On 25.12.2015 applicant further submitted mercy appeal requesting to treat him in service till completion of 24 years as Havildar i.e. till 30.03.1993 and grant pay and allowances in the rank of Havildar till 30.03.1993 and issue of fresh PPO. This mercy appeal was turned down by AOC Records vide letter dated 30.01.2016 stating that 'as per existing policy deserter/dismissed personnel from Army Service are not entitled for service pension, however you have been granted 70% service pension w.e.f. 19.05.2008. Being aggrieved with order dated 30.01.2016 applicant has filed this O.A. for grant of 100% service pension and pay and allowances for the period December 1985 to 30.03.1993 in the rank of Havildar.

3. Applicant's version is that he was enrolled in the Army on 13.03.1969 and while proceeding from 222 ABOD to 223 ABOD he became mentally ill enroute and could reach nowhere. After some time his kith and kins traced him and he was treated in Govt Mental Hospital Mainpuri (UP) and Primary Health Centre (PHC), Bhainsroli, Mainpuri. It was further submitted that during the period of his mental illness, he was dismissed from service and no discharge/dismissal order was provided to him.

4. The applicant further submitted that he was dismissed from service w.e.f. 30.04.1989 under Section 20 (3) of the Army Act, 1950 without complying provisions enshrined in Rule 17 of the Army Rules, 1954. It was further submitted that intimation with regard to his dismissal from service was provided vide letter dated 19.05.2007 and it does not have any sanction and sanctity of law because the provisions contained in Army Rule 18 (3) have not been followed.

5. The applicant further submitted that he was provided 70% service pension w.e.f. 19.05.2008 in the rank of Sepoy which is not correct as he was holding the rank of Havildar at the time of discharge/dismissal

from service. It was also submitted that he deserves pay and allowances in the rank of Havildar from December 1985 to 31.03.1993 and thereafter, service pension in the rank of Havildar. He pleaded for grant of 100% service pension and pay and allowances for the period December 1985 to 31.03.1993.

6. Per Contra, learned counsel for the respondents submitted that applicant was enrolled in the Army on 13.03.1969. While he was serving with 223 ABOD he was ordered for posting to 222 ABOD vide order dated 27.07.1985. Accordingly, he was relieved by 223 ABOD and despatched to 222 ABOD w.e.f. 30.11.1985 (AN) alongwith 06 days preparatory leave excluding journey period but he failed to join duty on due date and remained absent without intimation. He was declared as overstaying on leave (OSL) w.e.f. 07.12.1985 by 222 ABOD and subsequently, declared as deserter by a Court of Inquiry held in terms Army Act Section 106 w.e.f. 08.12.1985. Thereafter, he was dismissed from service after expiry of 03 years w.e.f. 30.04.1989 under Section 20 (3) of the Army Act, 1950 read with Army Rule 17.

7. Further submission of learned counsel for the respondents is that applicant had submitted mercy appeal dated 19.05.2008 for grant of service pension which was allowed and he was granted 70% service pension w.e.f. 19.05.2008. Thereafter, he preferred various representations and appeals but the same were rejected stating that a dismissed Army person is not entitled to any pension in terms of Para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) which stipulates that 'an individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rule made therein as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service'. The learned counsel concluded his submission stating that since applicant has already been granted 70% service pension vide his mercy appeal dated 19.05.2008, he is not entitled to any further relief. He pleaded for dismissal of O.A.

8. Heard Ms Appoli Srivastava, learned counsel for the respondents and perused the material placed on record. Col BP Singh (Retd), learned counsel for the applicant is not present.

9. Applicant was enrolled in the Army on 13.03.1969. During the course of his service while proceeding on permanent posting from 223 ABOD to 222 ABOD he absented without leave w.e.f. 07.12.1985. He was declared a deserter w.e.f. 08.12.1985 by a duly constituted C of I which was conducted in terms of Section 106 of the Army Act, 1950. Three years from the date of desertion he was dismissed from service w.e.f. 30.04.1989 under Section 20 (3) of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954.

10. Respondents while filing counter affidavit have clearly mentioned that during the period of 02.05.1969 to 19.10.1984 since he was punished on three occasions on account of absent without leave/overstaying leave therefore, he falls in the category of habitual offender.

11. As per Para 113 (a) of Pension Regulations for the Army, 1961 (Part-I), an individual who is dismissed from service is not eligible for service pension and gratuity. In the instant case since the applicant was dismissed from service he is not entitled to service pension. However, 70% service pension has been granted by the Hon'ble President of India based on his

mercy appeal dated 19.05.2008. For convenience sake, Para 113 (a) of aforesaid Pension Regulation is reproduced as under:-

*"An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date."*

12. The applicant has submitted various representations and appeals which have been rejected. Finally, prior to filing of this O.A. he submitted mercy appeal dated 25.12.2015 which was returned/rejected vide order dated 30.01.2016. For convenience sake, relevant part of the aforesaid order is reproduced as under:-

*"1. Refer to your petition dated 25 w Dec 2015.*

*2. It is intimated that as per existing policy Deserter/Dismissed personnel from Army service are not entitled for service pension. However, on your mercy application dated 19 May 2008, IHQ of MoD (Army), (AG/PS-4/Imp-I) vide their letter No A/23676/PC/113/OS-8B/87/AG/PS-4/Imp-I dt 28 May 2012 sanctioned 70% of service pension with effect from 19 May 2008 i.e. from the date of your mercy application. Accordingly, PPO was issued vide PCDA (P), Allahabad Pension payment Order No S/0092/2013 dated 06 Jan 2014. In regards to grant of pay and allowances till 30 Sep 1993 (till completion of 24 yrs of service in Hav Rank) is applicable on physical service in the unit. As you are aware, you have been discharged from Army service w.e.f. 08 Dec 1980 and dismissed from service w.e.f. 30 Apr 1989, therefore, you are not*

*entitled to get the pay and allowances till 30 Sep 1993.*

*3. In spite of above, on scrutiny of your documents, it has also been found that Smt Mithlesh Kumari, wife is also requesting financial assistance and endorsement of her name in the PPO. On checking the old correspondence, it seems to be a divorced case with your wife. You are hereby advised to submit a decree of divorce issued by Court of Law or submit joint notification form duly correctly filled alongwith photograph of your wife duly authenticated by your PDA/DPDO through Your Zila Sainik Board for consideration of family pensionary benefits.*

*4. In view of the above, your petition alongwith connected documents are returned herewith unactioned."*

13. In view of the above, we find that the Hon'ble President of India has taken a lenient view in granting 70% service pension to the applicant on the basis of his length of service which he is in receipt of, but we are of the view that the applicant is not entitled to any further pensionary benefits. The O.A. lacks merit and is dismissed, as such.

14. No order as to cost.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 05.07.2023  
rathore

**(Justice Anil Kumar)**  
**Member (J)**