

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 317 of 2020

Thursday, this the 3rd day of March, 2022

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

821177-R NC(E) Naresh Kumar Safaiwala
S/o Late Babulal
R/o 15D Deviganj, Chunnilal Ka Hata, Kanpur Nagar

.... **Applicant**

Ld. Counsel for the Applicant : **Shri S.S. Yadav &**
Ms. Mamta Pandey, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Air Marshal, Commanding in Chief, Central Air Command, IAF.
3. Gp Capt, HQ CAC IAF, Bamrauli, Allahabad.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Govt Counsel

ORDER (Oral)

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

- “(a) Issue an order or direction quashing the impugned order dated 12.08.2010 passed by respondent No. 2.
- (b) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the case.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 29.01.1991 in the trade of Safaiwala. During the service, the applicant has been awarded punishments for two black ink entries and nine red ink entries. The applicant's case was forwarded to competent authority under the 'Habitual Offender' policy and accordingly, a Show Cause Notice dated 22.01.2010 was issued to show cause as to why he should not be discharged from the service under Rule 15(2) (K) of the Air Force Rules, 1969 read with Rule 15 (2) of the Air Force Rules, 1969. The applicant submitted his reply dated 23.02.2010 which was not found sufficient by the competent authority. Thereafter, a detailed speaking order dated 12.08.2010 was issued by Air Officer Commanding-in-Chief, Central Air Command and applicant was discharged from the service w.e.f. 12.08.2010 being a 'Habitual Offender' under Rule 15 (2) (K) read with Rule 15 (2) of the Air Force Rules, 1969. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 29.01.1991 in the post of Safaiwala. The applicant faced malicious environment and false and frivolous allegations were levelled by the authorities on several occasions, however, applicant always replied the same positively and maintained his good conduct but on 22.01.2010, respondent No. 3 issued a Show Cause Notice to the applicant with malicious intention and without providing any opportunity of hearing, the services of the

applicant has been terminated by the respondents with illegal and arbitrary order dated 12.08.2010.

4. Learned counsel for the applicant further submitted that prior to passing of the impugned order, neither a Show Cause Notice has been explained in Hindi nor any endorsement obtained by the authorities for satisfaction of the applicant to show that applicant is well aware about the proceedings initiated against him and is capable for defence, hence, the entire proceedings initiated against him are vexatious, illegal and against the principles of natural justice and liable to be quashed by the Hon'ble Tribunal. The termination order was challenged by the applicant before Central Administrative Tribunal, Allahabad bearing O.A. No. 136/2015 which was dismissed by the Tribunal vide order dated 29.04.2015 for lack of jurisdiction.

5. Learned counsel for the applicant also submitted that applicant has been awarded punishments for his black and red ink entries during the period of AWL and OSL. He has been discharged from service just before 5½ months in completion of 20 years of pensionable service and therefore, the shortfall period may be condoned under the provisions of Pension Regulations. She pleaded to quash termination order of the applicant dated 12.08.2010 and to grant service pension to the applicant.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Air Force on 29.01.1991 in the trade of Safaiwala. During the service, the applicant has been awarded punishments for 02 black ink entries and 09 red ink entries.

The applicant's case was forwarded to competent authority under the 'Habitual Offender' policy and accordingly, a Show Cause Notice dated 23.12.2005 was issued. The reply of the applicant dated 28.02.2006 was considered and he was given one more chance to improve himself. Thereafter, applicant again indulged in acts of indiscipline and became Absent Without Leave (AWL) on five different occasions. He was issued a Show Cause Notice dated 22.01.2010 to show cause as to why he should not be discharged from the service under Rule 15(2) (K) of the Air Force Rules, 1969 read with Rule 15 (2) of the Air Force Rules, 1969. The applicant submitted his reply dated 23.02.2010 which was not considered sufficient by the competent authority. Thereafter, a detailed speaking order dated 12.08.2010 was issued by Air Officer Commanding-in-Chief, Central Air Command and applicant was discharged from the service w.e.f. 12.08.2010 being a 'Habitual Offender' under Rule 15 (2) (K) read with Rule 15 (2) of the Air Force Rules, 1969 as "His service no longer required – unsuitable for retention in the Air Force". He pleaded for dismissal of O.A.

7. We have heard Ms. Mamta Pandey, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the material placed on record.

8. We find that applicant has been discharged from service before 5 months and 17 days of service to complete his terms of engagement. Therefore, it was not desirable on the part of

respondents to discharge the applicant from service before allowing him to complete his terms of engagement.

9. We also find that applicant was AWL and OSL on several occasions for which he has been awarded two black ink and nine red ink entries punishments for his offences. Since, the applicant has been punished for his offences of AWL and OSL and therefore, after treating the total periods of absence as regularised, total service of the applicant comes to 19 years, 06 months and 13 days as the applicant was enrolled on 29.01.1991 and was discharged from service on 12.08.2010. Therefore, only 5 months and 17 days of service will be short in 20 years of pensionable service being NC (E) to enable him to grant service pension.

10. The issue regarding condonation of deficiency in minimum qualifying service regarding service pension has been dealt with not only by different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of **Shiv Dass vs Union of India and Others** in Civil Appeal No 274 of 2007, decided on 18.01.2007, and it has been held therein that deficiency in qualifying service upto 1 year is condonable. Taking note of the above and also that there is deficiency of less than 1 year in qualifying service of the applicant and the said deficiency is condonable under Rule 114 (a) of the Pension Regulations for the Indian Air Force, we find that applicant's claim regarding condonation in deficiency in his qualifying service to grant service pension deserves to be allowed.

11. Accordingly, O.A. is allowed. Shortfall of 5 months & 17 days in minimum qualifying service of the applicant in getting service pension is condoned and applicant is held entitled to get service pension from the date on which applicant completes 20 years of pensionable service i.e. 29.01.2011.

12. The respondents are directed to grant service pension to the applicant from the date on which applicant completes 20 years of pensionable service i.e. 29.01.2011. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass** (supra) the arrears will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 09.04.2019. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: March 2022

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