

**Court No.3**

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

**Transferred Application No. 62 of 2012**

Wednesday, This the 7<sup>th</sup> day of October 2015

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Capt. V.P. Singh (IC 17946)  
Son of Late Virendra Bahadur Singh,  
Permanent r/o village Sahatwar District  
Balua (U.P.) and presently residing at  
"Karanbhai Bhavan" Kanchanpur Matiyari,  
Chinhat, Lucknow.

the Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence,  
Govt. of India Thal Sena Mukhyalaya, New Delhi.
2. Chief of Army Staff, Army Hqrs, D.H.Q., P.O. New Delhi.
3. General Officer Commanding in Chief,  
Central Command, Hqrs., Lucknow.
4. Commandant, Central Ordnance Depot,  
Jabalpur.

...Respondents

Ld. Counsel for the : **Shri D.S. Tiwari, Central**  
Respondents **Govt Counsel assisted by**  
**Capt Ridhishri Sharma, OIC,**  
**Legal Cell.**

**ORDER (ORAL)**

1. Heard Smt Poonam Singh, Ld. Counsel for the Applicant and Shri D.S. Tiwari, Ld. Counsel for the Respondents assisted by Col Ajay Sahai of Army Headquarters.
2. This T.A has been transferred from High Court of Allahabad, Lucknow bench, Lucknow bearing Writ Petition No. 334 of 2003 and has been renumbered as T.A. No. 62 of 2012.
3. Factual controversy relates to year 1987. The applicant a Capt of Indian Army appears to have moved application for grant of leave and thereafter approached for compulsory retirement. From the record it appears that Ministry of Defence, Government of India has passed order dated 30.03.1987 in pursuance of Army Rule 13A. Army Rule Section 19 read with Section 22 and 23 of the Army Act, 1950 provides that the applicant shall be called up to retire and on his refusal to do so, he shall be compulsorily discharged from service on payment of pension and gratuity, if any admissible to him. The order of Government of India in its totality is reproduced as under:

*“Capt VP Singh (IC-17946), MF was issued a Show Cause Notice on 27 Sep 84 for termination of his service under Army Rule 13-A on failure to pass Promotion Examination Part ‘D’. On careful consideration of his reply to the Show Cause Notice and recommendations of the Chief of Army Staff he was allowed to clear his*

*promotion examination Part 'D' up to completion of 20 years reckonable service. The officer appeared in the said examination held in Nov 86 which was his last chance but failed.*

*The Central Government in exercise of powers conferred by Army Act Section 19 read with Army Rule 19-A hereby order that the said Capt VP Singh (IC-17946) MF, shall be called upon to retire and on his refusal to do so he shall be compulsorily retired from service on payment of pension and gratuity, if any admissible to him”.*

4. It appears that in compliance of letter dated 30.03.1987, the applicant has not joined, hence with effect from 04.05.1987 respondents proceeded to declare him deserter. The applicant approached Allahabad High Court by filing Writ Petition No. 12981 of 1997 whereby the High Court observed that since the petitioner has not been compulsorily retired, and no decision has been taken in pursuance of order dated 30.03.1987 and subsequent order dated 04.05.1987, it is not open for interference. The High Court further noticed that since no decision has been taken with regard to the controversy, it declined to interfere with the same. Subsequent order dated 04.05.1987 passed by Central Ordinance Depot, Jabalpur, as contained in Annexure No. 12, is reproduced as under:

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Tele : 20269/264

Central Ordnance Depot  
Post Box No 20  
Jabalpur-482001

134/VPS/HQ

04 May 87

Capt VP Singh  
Att to COD, Jabalpur

RETIREMENT UNDER ARMY RULE 13A : CAPT VP SINGH  
(IC-17946), MF ATTACHED TO CENTRAL ORDNANCE  
DEPOT JABALPUR

1. You reckon seniority wef 11 Jun 67 and will be completing 20 years reckonable service on 11 Jun 87. You have not so far passed Promotion Examination Part 'D'. You did not appear in Promotion Examination Part 'D' in Feb 86 which was your first chance. You appeared in Promotion Examination Part 'D' held in Nov 86 which was your second and last chance (according to revised schedule of Promotion Examinations, Promotion Examination Part 'D' was held twice in the year 1986 in Feb 86 and Nov 86 and will be held subsequently in the month of Sep from 1987 onwards) but failed. Accordingly, vide Govt of India, Min of Def Order No 00470/IC/17946/MS8C/1464/D (MS) dated 30 Mar 87 (copy attached) you have been called upon to retire from the service and in the event of your refusal to do so, you will be retired compulsorily from the service.
2. In pursuance of the Govt of India, Min of Def Order referred to in Para 1 above, you are hereby called upon to submit within 10 days of the receipt of this Central Govt Order your application for retirement from the service (quoting Govt Order) in sextuplicate. It is also intimated for your information, that should you fail to submit your application for retirement from the service within the stipulated period of 10 days, you will be compulsorily retired from the service and you will be struck

*off strength from the service on issue of the retirement orders by Army Headquarters.*

3. *Please acknowledge.*

*sd/- x x x x x x x  
(PK Dutta)  
Brig  
Commandant*

Copy to

*Military Secretary's Branch (MS-8C)—This has reference to  
Army Headquarters*

*DHQ, PO : New Delhi-110011*

*their letter No 00470/*

*IC-17946/MS-8C*

*dt 22 Apr 87 and even No*

*dt 24 Aug 97.*

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5. In view of the above, since the respondents have not taken any decision over order dated 30.03.1987, the applicant has preferred the present T.A.

6. It has been submitted by learned counsel for the applicant that proceedings have been initiated to declare the applicant a deserter and dismissed him from service. The fact remains the question with regard to desertion from 05.05.1987, i.e. subsequent to order dated 30.03.1987. In case the respondents would have taken decision in response to letter of Ministry of Defence, no such situation would have arisen resulting in present situation. Moreover, after lapse of almost 27 years, why the respondents have not taken any decision, whatsoever it may be in accordance with law, and now they are proceeding ahead to declare the applicant a deserter. It was incumbent upon the respondents first to take decision in pursuance to letter dated 30.03.1987.

7. It would be noted that Section 19 of the Army Act read with Section 19A, the Government of India has right to issue proper direction, which is binding upon the respondents. Order dated 30.05.1987 being binding in nature, it was incumbent upon the respondents to take a decision. Nothing has been brought on record that the letter dated 30.05.1987 (supra) has been overruled by the Government of India. Hence it has binding effect and still cover the field.

8. In view of the above observations, we direct the respondents that before taking any decision, they have to take a decision in pursuance to letter dated 30.03.1987 and communicate to the applicant. We further direct the respondents to take a decision in compliance of letter dated 30.03.1987 within two months.

9. It may be noted that on account of some flaw in our legal system which resulted in pendency of cases in the High Courts or in different forums, the petitioner cannot be put to suffer. In case proper order would have been passed and Mandamus would have been issued keeping in view the binding nature of order passed by the Government of India, when the writ petition was filed or within reasonable period of filing of the Writ Petition, the dispute would have come to an end. No person should suffer because of pendency of the case.

10. Accordingly, we are of the view that it shall be obligatory on the part of the respondents to first take a decision in view of

letter dated 30.03.1987 and communicate the decision to the applicant and thereafter to proceed further. The order passed by the Government of India in the name of the President should not be taken lightly and must be implemented by the respondents immediately. Such casual approach on the part of the respondents is deprecated.

11. T.A. is disposed of accordingly.

No order as to costs.

(Air Marshal Anil Chopra)  
Member (A)  
ukt

(Justice D.P. Singh)  
Member (J)