

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 554 of 2018

Friday, this the 22nd day of October, 2021

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

- 1/1 Rajdheer Kumar
S/o Late Ranbir Kumar (818409-L Ex NC (E))
R/o 58/4, Lal Bihara, Post Office - Bamrauli,
Allahabad
- 1/2 Poonam Devi,
W/o Late Ranbir Kumar (818409-L Ex NC (E))
R/o 58/4, Lal Bihara, Post Office - Bamrauli,
Allahabad

.... Applicants

Ld. Counsel for the Applicant : **Shri Rang Nath Pandey,**
Advocate.

Versus

1. The Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi.
3. Air Officer Commanding in Chief, Central Air Command, IAF, Bamrauli, Allahabad.
4. SPSO for Senior Officer in Charge Administration, Headquarters, Central Air Command, Indian Air Force, Bamrauli, Allahabad.
5. Officer Commanding (U) Basic Flying Training School, C/o 29 Wing, IAF, Bamrauli, Allahabad.

... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,**
Central Govt 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, whereby the applicant has sought following reliefs:-

- “a) To quash the impugned order dated 7.8.2003 passed by respondent No. 4 vide order no. CAC/3049/22/NCs(E) against the applicant by which applicant has been discharged from service under Rule 15 clause 2(k) read in conjunction with 15(2) of AF Rules, 1969 (Annexure No. A-1 to compilation no. I).
- b) To direct the respondent concerned to grant all the consequential benefits including admissible monthly pension and arrears on the pension including pay and allowances to the applicant.
- c) To direct the respondent concerned to pay the dues of leave encashment for the period of 198 days to the applicant.
- d) To grant any suitable order or direction which this Hon’ble Tribunal may deem fit and proper under the present facts and circumstances of the case.
- e) To award the cost of the proceeding to the applicant.”

2. The present O.A. was filed by Ranbir Kumar who died on 21.05.2020 during pendency of Original Application and, after his death, his wife Smt. Poonam Devi and son Rajdheer Kumar have been substituted in his place by Tribunal’s order dated 02.12.2020.

3. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Indian Air Force on 30.06.1986 in the trade of Sweeper. Due to hard work and irregular timings of

work husband of the applicant (Poonam Devi) suffered from ailment of Tuberculosis and was treated by various hospitals of Indian Air Force and was placed in low medical category BEE (Temporary) in the year 1994. The husband of the applicant having burden of his entire family members being combined family and due to sudden demise of his father, husband of the applicant started taking liquor and became habitual drinker and on some occasions he was declared absent from duty and was tried summarily which resulted award of five red ink and one black ink entries and husband of the applicant was declared habitual offender. Accordingly, under the provisions of Chapter III, Rule 15 Clause 2(k) of the Air Force Rules, 1969, husband of the applicant was discharged from service w.e.f. 22.08.2003. Being aggrieved, the present Original Application has been filed for grant of pensionary benefits.

4. Learned counsel for the applicant submitted that husband of the applicant was issued only one undated warning letter by Commanding Officer, BFTS, Air Force on 24.11.1997 which alleged to have been issued on 11.11.1997 and a show cause notice dated 18.12.2002 by which he was informed that why he should not be discharged from service under Rule 15(2)(g)(ii)/Rule 15(2)(k) read in conjunction with Rule 15(2) of Air Force Rules, 1969 whereas applicant has been discharged from service under the provisions of 15(2)(k) of the Air Force Rules, 1969 and by perusal of the discharge order dated 07.08.2003 it is also crystal clear that applicant has been discharged by a non speaking order under the heading of 'Habitual

Offender' in a very casual and hurried manner without affording him opportunity and without complying provisions of policy letter dated 18.12.1996 which is against the provisions of Article 14 of the Constitution of India. The applicant was not issued second warning letter which is mandatory as per the provisions of policy letter dated 18.12.1996.

5. Learned counsel for the applicant placed reliance on the judgment of this Tribunal in OA No. 125 of 2013, **Corporal Abhishek Pandey vs. Union of India & Others**, decided on 21.07.2017 and T.A. No. 77 of 2013, **Jainendra Kumar vs. Union of India and Others**, decided on 27.01.2017, O.A. No. 65 of 2020, **Smt. Chandrawati vs. Union of India and Others**, decided on 06.04.2021 and the Hon'ble Apex Court judgment in **Vijay Shanker Mishra vs. Union of India** 2016 (12) SCALE 979 and pleaded that applicant's case is also covered with aforesaid judgments and therefore, discharge order of husband of the applicant be quashed and pensionary benefits alongwith arrears be paid to the husband of the applicant upto the date of death of her husband and thereafter, family pension be granted to the applicant.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service w.e.f. 22.08.2003 vide discharge order dated 07.08.2003 under the provisions of Air Force Rules 1969, Chapter-III, Rule 15, Clause 2(k) being service no longer required under the category of 'Habitual Offender' following the procedure as laid down in Air HQ policy letter dated 18.12.1996.

Learned counsel for the respondents pleaded that O.A. may be dismissed.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. From perusal of Show Cause Notice dated 18.12.2002 issued by BFTS, AF Bamrauli, Allahabad and Discharge Order dated 07.08.2003, issued by Central Air Command, IAF, Bamrauli, Allahabad, it emerges that husband of the applicant has been discharged from service according to Air Force Rules, 1969 after completion of more than 17 years of service. Since husband of the applicant has been discharged and not dismissed from service, he is entitled to pensionary benefits for the services rendered in the Air Force as per Para 102 (c) of Pension Regulations for the Air Force, 1961.

9. Accordingly, Original Application deserves to be allowed and is allowed. The husband of the applicant is entitled to service pension from the date of discharge from service. The respondents are directed to grant service pension to husband of the applicant from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and others** (2007 (3) SLR 445), the arrear of service pension will be restricted to three years preceding the date of filing of the instant O.A till the date of death of the soldier i.e. 21.05.2020. The date of filing of this O.A is 05.04.2018. Since the husband of the applicant has died on 21.05.2020, the applicant, Poonam Devi being

widow is entitled for family pension from the next date of death of her husband i.e. w.e.f. 22.05.2020. The respondents are further directed to grant family pension to the applicant w.e.f. the next date of death of her husband i.e. 22.05.2020 for life. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: October, 2021

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