

**Court No. 1**

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

**Original Application No. 701 of 2020**

Tuesday, this the 26<sup>th</sup> day of October, 2021

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

Samay Singh (No. 210234F)  
S/o Shri Mohan Singh  
R/o Village and Post – Chhata,  
District – Mathura (UP) – 281401

..... **Applicant**

Ld. Counsel for the Applicant : **Dr. Abhay Kant Upadhyay,**  
**Shri Karuna Kant Upadhyay &**  
**Shri Raj Kumar Mishra, Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Naval Staff, IHQ of MoD (Navy), South Block, B-28, New Delhi – 110011.
3. The Commodore Bureau of Sailors, Chhetah Camp, Mankhurd, Mumbai – 400088.

... **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 petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “(a) Issue/pass an order or direction of appropriate nature to the respondents to provide ex-serviceman status to the applicant w.e.f. 19.10.2009.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to provide medical facilities through ECHS and also the financial benefits accrued therein, if any.
- (c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with exemplary costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 28.07.2004 and was dismissed from Naval service on 19.10.2009 on disciplinary grounds after rendering 05 years, 02 months and 22 days of service. As per Sailors Induction to Retirement Management System (SIRIM) records, applicant was marked 'RUN' and was summarily tried by the Commanding Officer, INS Venduruthy under Section 49 (2) (b) of Navy Act 1957 and was found guilty. The applicant was thereafter, awarded punishment of 'Dismissal' from Naval service vide order dated 19.10.2009. Subsequently, he was issued with a discharge book vide letter dated 26.04.2011. The applicant was paid Rs. 60,929/- as survival benefit from Naval Group Insurance Fund at the time of dismissal vide letter dated 29.01.2010. Therefore, as per para 78 of Navy Pension Regulations, 1964, applicant is not entitled for service pension as he has not rendered 15 years mandatory regular service in the Navy. According to KSB Sectt. letter dated 28.11.2014, applicant cannot be granted ESM status. Since the applicant has been dismissed from service on disciplinary grounds, therefore, he is not eligible for ECHS benefits. Being aggrieved the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Navy on 28.07.2004 and was released from Naval service on 19.10.2009 after rendering 05 years, 02 months and 22 days of service under the provisions of Regulation 13 for the Navy, 1965, Part II. The applicant was dismissed from service on account of absentia continued due to prolonged severe illness of his wife as there was no one else to look after her. He became depressed and could not leave his wife in such a critical condition and thereby he remained absent from duty for a prolonged period.

4. Learned counsel for the applicant further submitted that para 19 of the Discharge Book clearly contemplates that his family members as on date of release, are entitled to receive medical/dental treatment admissible under ECHS. The policy issued by Govt. of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel and Training) from time to time i.e. 27.10.1986, 27.03.1987 and 14.04.1987 clearly contemplates that "Ex-serviceman" means a person, who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union".

5. Learned counsel for the applicant also submitted that the above mentioned provisions are amendment to Ex-Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979, rules amended by the Hon'ble President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Therefore, from the above provisions the applicant is entitled to ex-

serviceman status as well as medical facilities through ECHS and also the financial benefits accrued therein.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Navy on 28.07.2004 and was dismissed from Naval service on 19.10.2009 on disciplinary grounds after rendering 05 years, 02 months and 22 days of service. As per Sailors Induction to Retirement Management System (SIRIM) records, applicant was marked 'RUN' and was summarily tried by the Commanding Officer, INS Venduruthy under Section 49 (2) (b) of Navy Act 1957 and was found guilty. The applicant was thereafter, awarded punishment of 'Dismissal' from Naval service vide order dated 19.10.2009. Subsequently, he was issued with a discharge book vide letter dated 26.04.2011. The applicant was paid Rs. 60,929/- as survival benefit from Naval Group Insurance Fund at the time of dismissal vide letter dated 29.01.2010. Therefore, as per para 78 of Navy Pension Regulations, 1964, applicant is not entitled for service pension as he has not rendered 15 years mandatory regular service in the Navy.

7. Learned counsel for the respondents further submitted that applicant was dismissed in medical category SHAPE-1, therefore, he is also not entitled for any disability pension. Therefore, in accordance with Central Organization ECHS letter dated 27.09.2017, applicant is not entitled for ECHS facilities as it is applicable to those who are in receipt of service/family/disability/reservist pension and fulfils other required conditions. He further submitted that Govt. of India, Ministry

of Defence letter dated 07.03.2019 although has extended benefits to premature retiree ESM who are not in receipt of pension. However, as per para (iv) of the ibid letter, the ESM should not have been discharged on disciplinary grounds. Since the applicant has been dismissed from service on disciplinary grounds, therefore, applicant is not eligible for ECHS benefits.

8. Learned counsel for the respondents also submitted that definition of ESM has been laid down vide KSB Sectt letter dated 28.11.2014 which states that "An Ex-serviceman means a person who has served in any rank whether as a combatant in the Regular-Army, Navy and Air Force of the Indian Union and retired after earning pension/awarded disability pension/released due to reduction in establishment/ or released from service after completion of period of engagements. Hence, applicant being not fulfilling the required criteria, he cannot be granted ESM status. He pleaded that O.A. may be dismissed.

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

10. We find that applicant was summarily tried for his offence of absentia and was dismissed from service under the provisions of Section 49 of Navy Act 1957 being found guilty. As per para 78 of Navy Pension Regulations, 1964, applicant is not entitled for pensionary benefits and since the applicant is not in receipt of any pension or disability pension, he cannot be granted status of ESM

