

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

34.

OA 1502/2018

Ex L/CK (S) Narayan Rajput Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Anil Kumar Srivastava, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyani, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
30.08.2024

The applicant vide the present OA makes the following prayers:-

*“(i) to allow this application and quash the impugned orders of the respondents dated 04/11/2013 and 15/11/2016 at annexures A-6 and A-8 and direct the respondents to grant service pensionary benefits to the applicant w.e.f. 09 Oct 2004, with consequential benefits.
(ii) To grant any other relief(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case; and/or
To allow costs throughout against the respondents in favor of the applicant.”*

2. During the course of submissions addressed on behalf of the applicant, it is brought forth that the records of present OA itself speak eloquently to the effect that vide order dated 12.04.2018 in OA 8/2014, copy of which is placed at Annexure-A9 to the present OA, it was observed to the effect:-

“The respondents have handed over a copy of the order dated 15.11.2016 passed pursuant to the order dated 30.08.2016, wherein the

representation dated 18.02.2016 made by the applicant for grant of pensionary benefits by the respondents was re-considered, in the light of the policy letter as well as the precedents relied upon by the applicant. The respondents have passed a detailed and speaking order and a copy of the same is addressed to the applicant, which learned counsel for the applicant has stated has not been received by the applicant. However, a copy of the said order has been handed over to the Tribunal today as well as a copy thereof has also been supplied to the counsel for the applicant.

2. We have gone through the order passed by the respondents on 15.11.2016 in extenso and also taken note of the earlier precedents cited by the applicant.

3. In the light of the aforesaid order, so far as the present application is concerned, nothing survives. However, in case the applicant still feels aggrieved, he shall be free to take such recourse as may be available to him in law.

4. With these directions, the present application stands disposed of.”

3. The prayers that are premised in the present OA relate to the very same issues as were *sub judice* in OA 8/2014 and the document bearing no. PN/7232/12/151502-Z dated 15.11.2016 is the document which was taken into consideration vide the order dated 12.04.2018 in OA 8/2014 of the AFT(PB), New Delhi which has been reproduced herein above. The mention of the impugned order dated 04.11.2013 in the prayer clause is also categorically stated in the order dated 30.08.2016 in OA 8/2014 whereby it had been observed to the effect:-

“2. It is the contention of the petitioner that despite formulation of the policy dated 28.02.2008 for consideration for grant of pension to the dismissed PBOR, the respondents have not considered the representation made by the petitioner in terms of the said policy decision and have passed the impugned order only on the ground that the

offence, for which the petitioner was charged and found guilty, is highly deplorable and unbecoming of an Army Force personal. It is also the case of the petitioner that despite the order dated 30.01.2013 passed in O.A No. 613 of 2010, the respondents, without considering the request of the petitioner in terms of the policy decision, have rejected the representation filed by the petitioner by the impugned order dated 04.11.2013.

8. In view of the above, while keeping the O.A pending before this Tribunal, we direct the respondents to reconsider the representation dated 11.02.2013 filed by the petitioner in terms of the aforesaid policy dated 28.02.2008 and the guidelines issued for such consideration as stipulated in Paragraph 3 of the said policy and to pass a speaking order within a period of six weeks from today. The order that may be passed shall be produced before this Tribunal on the next date fixed. It is, however, made clear that in the event of failure to do so, the O.A would be taken up for final disposal based on the materials available on the records of the case. Needless to say that while passing the speaking order, the precedents cited by the petitioner in the representation dated 11.02.2013, apart from the other conditions, shall also be considered.”

and whereby the OA 8/2014 had then been kept pending which was finally adjudicated vide the order dated 12.04.2018 in OA 8/2014 expressly observing to the effect that in so far as that OA which related to the order dated 15.11.2016 which is even impugned in the present OA now before us, nothing survived. Though undoubtedly it was observed vide para-3 of the order dated 12.04.2018 in OA 8/2014 that in case the applicant still felt aggrieved it was open to him to take such recourse as may be available to him in law, the said recourse cannot be by filing another OA before this very Tribunal before which the matters stand already adjudicated and the principles of *res judicata* apply wholly in

relation to the letter dated 04.11.2013 and 15.11.2016 of the respondents.

4. In view thereof, learned counsel for the applicant seeks to withdraw the present OA 1502/2018, seeking liberty to seek redressal in accordance with law before the writ courts i.e. the Hon'ble High Courts or before the Hon'ble Supreme Court. The OA 1502/2018 is thus dismissed as withdrawn with liberty granted as prayed.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(REAR ADMIRAL DHIREN VIG)
MEMBER (A)**

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