

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

32.

OA 1508/2019

Nk Dalip Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. JP Sharma, proxy for
Mr. VS Kadian, Advocate
For Respondents : Maj A.R. Subramaniam, OIC Legal Cell

CORAM

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

ORDER
10.05.2024

The applicant vide the present OA instituted on 11.09.2019 had made the following prayers vide prayer clauses (a), (b) and (c) to the effect:-

“(a) Quash and set aside the impugned discharge order on medical grounds vide letter No CA-1/1612/LMC/DO/Ser-167/2019 dated 29.07.2019. and/or direct respondents to complete his service in DSC to make him eligible for service pension. And/or

(b) Direct respondents to condone the deficiency/short fall of service to make the applicant eligible for grant of service pension from Defence Security Corps.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. Vide an interim prayer vide paragraph 9 thereof, it was prayed to the effect:-

“In the facts and circumstances of the present case, it is therefore most respectfully prayed that the Hon'ble Tribunal may be graciously pleased to stay the Discharge Order dated issued vide DSC letter No CA-1/1612/LMC/DO/Ser-167/2019 dated 29.07.2019 vide which the applicant will be discharged from service wef 30.09.2019, as the applicant is having the prima facie case, balance of connivance is also in favour of the applicant and there will be a irreparable injury/loss if the interim relief is not being granted till final disposal of the Original Application being a strong case.”

3. Vide order dated 30.09.2019, it was directed to the effect “for the time being the applicant will not be discharged till next date of hearing.” The said interim order, vide order dated 12.06.2020 was directed to continue with the matter having been re-notified for 23.07.2020. Vide order dated 05.08.2020, it was observed to the effect:-

“Learned counsel for the respondents has placed before a copy of the letter No. NER/13890271/LC-2 us dated 30th May, 2020. The same is taken on record.

In para 3 of this letter it is mentioned "that the applicant will be completing his 15 years service in DSC on 24 Aug 2020 and he will be eligible for Second Service Pension for the service rendered in DSC. In view of the aforesaid learned counsel submits that the stay may be vacated.

Taking note of the above the stay granted on 30th September, 2019 is modified to the extent that the applicant

can be discharged immediately on the day he completes fifteen years of service.

Adjourned and list again on 16th September, 2020.”,

Vide Para 3 letter no. NER/13890271/LC-2 dated 30.05.2020 submitted on the record by the respondents, it had been submitted to the effect that the applicant would be completing his 15 years of service in DSC on 24.08.2020 and he would be eligible for second service pension for the service rendered in the DSC and it was thus prayed on behalf of the respondents that the stay imposed be vacated.

4. Vide order dated 05.08.2020 reproduced hereinabove, it was thus observed to the effect that taking note of the same, the stay granted on 30.09.2019 was modified to the extent that the applicant can be discharged immediately on the date he completes 15 years of the service.

5. The proceedings on the record dated 09.01.2023 indicate to the effect that the PPO had already been issued in the matter and vide order dated 09.01.2023 copy thereof was directed to be placed on the record. Counsel for the applicant submits that he has received the copy of the PPO today. Copy of the said PPO along with letter dated 24.01.2023 has been submitted on record on behalf of the respondents.

6. In view of the prayers that had been made on behalf of the applicant vide Paragraphs 8 (a), (b) and (c) referred to hereinabove, there is nothing that survives in the present OA, in view of the issuance of the PPO in as much as the applicant's length of qualifying service in the Defence Security Corps has been for a period of 15 years.

7. A submission is however made on behalf of the applicant that the prayer made by the applicant also seeks the grant of the disability element of pension with it having been submitted to the effect that the same be considered whilst considering prayer clause (c) as made in Para 8. The said submission cannot be accepted as it relates to a separate cause of action which is also separate from the prayers in prayer clauses (a) and (b) which were specifically in relation to the eligibility for service pension in view of service in the DSC. It is open however, to the applicant to seek redressal if any, in relation to the prayer seeking grant of disability element of pension in accordance with law. The OA 1508/2019 is disposed of.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)