

**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 337 of 2010**

**W.P.(C) No. 8987 of 2003 of Delhi High Court**

**IN THE MATTER OF:**

**Shambhu Dayal** .....**Applicant**  
Through : Mr. Prabodh Kumar, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Mr. Ankur Chhibber, counsel for the Respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 25.07.2011**

1. The petition was filed before the Hon'ble Delhi High Court on 17.11.2003 and later on it was transferred to the Armed Forces Tribunal on 19.01.2010.

2. The applicant vide his petition initially has sought for quashing the discharge order letter dated 04.02.2003 (**Annexure P-10**) passed under the provisions of Air Force Rules 1969 in Rule 15 (2) (K) read with 15(2) which reads as "*his service no longer required – unsuitable for retention in the Air Force*" with consequential relief of reinstatement. As an alternative prayer, applicant has sought status of

ex-serviceman along with payment of pension, gratuity and all other consequential benefits.

3. The applicant, thereafter, had filed an application for amendment in prayer clause of the writ petition before the Hon'ble Delhi High Court which was allowed by this Tribunal vide order dated 04.08.2010. By way of amendment, the applicant had sought quashing of Para 145 of the Pension Regulations for the Army 1961 (Part I) by which 20 years qualifying service (without weightage) is required for pension to Non-Combatant Enrolled [NC(E)] under the Regulations of 1961, being arbitrary, illegal and violative of fundamental rights and as such ultra vires the Constitution of India.

4. The brief facts of the case are that applicant joined the Indian Air Force as Non-Combatant Enrolled [NC(E)], Laskar on 06.11.1984 under Air Force Instruction (AFI) 12/69 for an initial term of 15 years, extendable upto 20 years. During his service tenure, applicant was awarded three months detention in DCM proceedings on 28.10.1987 for absence without leave from 01.08.1987 to 28.04.1988. On 17.05.1996, the applicant was again held guilty for consuming liquor and passing rude remarks against wife of NC(E) Balbir Raj at 0100 hrs on 15.05.1996 and he was "*confined to Camp for 14 days*".

5. On 16.11.1998 as the 15 years term of his service was coming to an end, he was granted an extension of 5 years to qualify 20 years minimum service for pension.

6. On 26.02.1999, the applicant was awarded another Red Ink Entry and was punished 14 days detention. On 18.03.1999, the applicant was given a warning as there was three Red Ink Entries in his conduct sheet and as such, he was on the threshold of falling in the category of a habitual offender (**Annexure P-2**). On 26.08.2000, the applicant was awarded yet another "*Red Ink Entry and punished with 14 days of detention*".

7. On 11.12.2000, the applicant was informed by his Station Adjutant that his case for discharge from service was being forwarded to Command HQ being habitual offender (**Annexure P-3**). On 08.01.2001, the applicant was issued a Show Cause Notice (SCN) as to why he should not be discharged from service under Rule 15(2)(K) read in conjunction with Rule 15(2) of the Air Force Rules, 1969 under the habitual offenders policy dated 14.08.1984 and 18.12.1996 and the applicant was asked to submit his reply within 10 days from the receipt of SCN (**Annexure P-4**).

8. On 29.10.2001, the applicant was again held guilty for keeping and plying private vehicle in camp area without permission and thus

was awarded yet another Red Ink Entry and was punished with 14 days of Confinement to Camp.

9. On 24.01.2001, the applicant replied to the SCN mostly on compassionate grounds stating therein that he being the sole bread earner of his large family, consisting of old parents, illiterate wife, young sister and three school going children.

10. On 13.03.2001, the applicant was informed by his Station Commander that he was given one more chance to improve himself and also warned that addition of any punishment entry would render him liable to discharge (**Annexure P-5**). On 12.12.2001, the applicant was issued a fresh SCN as despite the second warning, there was another Red Ink Entry in his conduct on 18.09.2001 (**Annexure P-6**).

11. In December, 2001 the applicant replied to the SCN and requested for one last chance to improve, against mostly on compassionate grounds (**Annexure P-7**). On 03.03.2001, the applicant was posted to 42 Wing, Mohanbari, Assam.

12. On 16.12.2002, the applicant was once again issued a fresh SCN on the same lines of the previous one, mentioning the last Red Ink Entry dated 18.09.2001 and was asked to show cause why he should not be discharged from service (**Annexure P-8**). On 11.11.2002, the applicant submitted reply to this SCN and again

sought one last chance for improvement on compassionate grounds **(Annexure P-9)**.

**13.** On 04.02.2003, the applicant was discharged from service under the provisions of Air Force Rules, 1969 Chapter 3, Rule 15(2) (K) read with Rule 15 (2) mentioning that *“his service no longer required – unsuitable for retention in the Air Force”* **(Annexure P-10)**.

**14.** The applicant filed Civil Writ Petition No. 2573 of 2003 before the Hon’ble Delhi High Court for quashing his discharge order dated 04.02.2003 and the conduct of the respondents in denying pension, gratuity, PF and other consequential benefits to the applicant who had completed almost 18 years of service. When the writ petition came up for hearing before the Hon’ble Delhi High Court on 21.04.2003, the Hon’ble Court was pleased to allow the applicant to withdraw the petition on the assurance given by the Central Government Standing counsel that the respondents shall take a final decision on the petitioner’s request regarding payment of pension and gratuity etc within a period of four weeks with liberty to take recourse to appropriate proceedings in case the applicant has any grievance with the decision taken by the respondents **(Annexure P-11)**.

**15.** The applicant received a letter dated 04.07.2003 from Air Force Record Office stating therein that *“As per para 145 of the Pension Regulations for the Army 1961 (Part I) applicable to NCs (E) of IAF,*

*minimum qualifying service to earn service pension for NC(E) is 20 years and you have served for 17 years and 192 days of qualifying service only. Hence, you do not qualify for grant of service pension.*

**(Annexure P-12).**” Thereafter the applicant filed present writ petition challenging again the very discharge order and in alternate for quashing the para 145 of Pension Regulations, 1961 with consequential grant of pensionary benefits and status of “ex-serviceman”. The respondent in their reply cleared the position as under:

*“3. As per para 145 of Pension Regulations for the Army 1961 (Part I) (Applicable to NCs(E) of IAF). Minimum qualifying service to earn service pension for NC(E) is 20 years. You have served for 17 years & 192 days of qualifying service only. Hence, you do not qualify for grant of service pension.*

*4. You are only entitled to NE benefits viz. Service Gratuity and Death-cum-Retirement Gratuity, which should amount to approx Rs. 1,27,758/-. The exact amount will be informed to you by AFCAO. On this matter AFCAO has already initiated correspondence with you vide their letter no. CAO/10103/803297/2//3/NEAS dated 04 Jul 2003.*

*5. The status of Ex-serviceman cannot be extended to you because you are not in receipt of any kind of pension. Therefore, you do not fall in the category of ex-serviceman as per the definition of ex-serviceman issued by the Min of Def. Dte Gen of resettlement.”*

**16.** Learned counsel for the applicant argued that initial term of engagement of applicant was 15 years, therefore, having completed his term of engagement, applicant should be entitled to pension rather than for 20 years as has been projected by the respondents vide **Annexure P-12**. He has also stated that Hon'ble Supreme Court has laid down well settled law with regard to right of pension in several cases. In the cases of **Deoki Nandan Prasad Versus State of Bihar** 1971 Sup SCR 634 and **D.S. Nakara Versus Union of India** 1983 (2) SCR 165, the Hon'ble Supreme Court have ruled that pension is a right and the payment does not depend on the discretion of the Government. It is well settled principle of service jurisprudence that pension is deferred payment for the services rendered and that the pension has to be proportionate to the services rendered. Learned counsel for applicant submitted that in the present case, the applicant had rendered almost 18 years of service, therefore, he is entitled for pension and since he had completed his terms of initial engagement. Besides, learned counsel argued that applicant should be given status of ex-serviceman and be entitled to other facilities that of ex-serviceman enjoy in order to recognize his service for 18 years.

**17.** Learned counsel for the applicant further argued that respondents are relying on the para 145 of the Pension Regulation for the Army which was promulgated in 1961 that is also arbitrary, unjust and against the fundamental rights. However, the Army has done

away with NC(E), therefore, this para 145 is no longer operational and needs to be deleted and on this basis his pensionary benefits should not be denied.

**18.** Learned counsel for the respondents argued that apparently there are no disputes as regards the facts of the case. The applicant was very correctly warned twice about his being considered as habitual offender and an action thereof has been taken by the respondents in the manner it has been prescribed in the policy letter dated 14.08.1984 and 18.12.1996 by the Air HQ. It was further contended that the said policy of 14.08.1984 was also upheld by Hon'ble Apex Court in the case of **Union of India and Others Versus Corporal A.K. Bakshi and Another** (1996) 3 SCC 65. Thus, he was rightly discharged under the provisions of Air Force Act. It was submitted by learned counsel for the respondents that from the arguments of learned counsel for the applicant, it is obvious that applicant is not contesting for his dismissal. Further more he had withdrawn his earlier writ petition filed in the Hon'ble Delhi High Court. He is contesting for grant of service pension and status of 'ex-serviceman' which have been denied to him under the para 145 of the Pension Regulations for the Army 1961 (Part I) and as per prevailing rule at that time.



**19.** Learned counsel for the respondents cited judgment of **Union of India and Others Versus Rakesh Kumar SC 2002(1)** dated 30.03.2001 in which in paragraph no. 21 their Lordships held that:

*“Therefore, by erroneous interpretation of the Rules, if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory Rules, In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory Rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground or hardship. If Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate Rules but Court cannot direct payment of pension on the ground of so called hardship likely to be caused to a person who has resigned without completing service for getting pensionary benefits.”*

**20.** Learned counsel further argued that para 145 of the Pension Regulations 1961 has been co-opted in Pension Rules and Regulations of the Air Force after NC(E)s were being enrolled, it was considered that the same rules as that of NC(E) in the Army will be followed, therefore, separate rules were not framed. As such it cannot be said that the rules are arbitrary and unjust as it is applicable to all NC(E)s in all the three services. Although as of now there are no

NC(E) in the Army and the Navy and, therefore, the rule has become redundant, however, in the revised addition, rules have not been deleted.

21. Learned counsel for the respondents further argued that the applicant had been enrolled under AFI 12/69 (**Annexure R-4**) which clearly states at paras 24 and 145 as under :

*“24. **Pension** – Retiring, disability and family pensions will be admissible at the rate and under the rules prescribed for similar categories on the Army side. In the case of non-combatants drawn from serving civilian employee who have to their credit pensionable civilian (temporary and permanent) service, orders will issue later in regard to continuing of such service for pension as NC(E).”*

*145. The minimum qualifying service earning a service pension is 20 years. (without weightage)”*

22. Learned counsel for the respondents further argued that since the applicant has not completed qualifying service of pension, he has not been given pensionary benefit. Since he is not entitled to pension, he has not been considered as ex-serviceman as per the existing notification (**Annexure R-8**). However as and when rules are amended or changed, his case will be considered for being designated as an ex-serviceman. During the course of arguments, it was also contended by learned counsel for the respondents that on being discharged, the applicant was only entitled to Rs.1,30,794/- as terminal benefits, which

also include Rs.85,172/- and Rs.42,586/- towards service gratuity and death-cum-retirement gratuity respectively. It was also contended that the same were duly paid to the applicant vide cheque No.652059 dated 18.12.2003 and forwarded to his banker vide Air Force Central Accounts office letter No.CAO/10103/803297/02/03/NEAS dated 18.12.2003. There was no rebuttal to this effect by applicant nor any claim was raised in this respect during the course of arguments.

**23.** Learned counsel for the respondents relied on the judgments passed by this Tribunal in the case of **Rajpal Balmiki Versus the Air Officer Commanding & Ors.** in T.A. No.66 of 2009, wherein it was observed that the regulation for the regular Airman and the NC(E) are different and, therefore, will be applied differently. Further it was observed that NC(E) personnel are only entitled for pension on completing 20 years qualifying service and not after 15 years as is applicable to airmen.

**24.** Having heard both the parties at length and examined the documents in original, we are of the opinion that the issue is of dismissal of service on having earned six Red Ink Entries and the respondents having taken recourse of the policy letter dated 14.08.1984 and 18.12.1996 by the Air HQ. The applicant has been considered as a habitual defaulter, therefore, the respondents have got all the rights to have dismissed the applicant from service. The applicant in replies to show cause notices has not disputed award of

punishments except for the last one in which he claimed that it was for a trivial matter. However he has not taken recourse to any representation while he was in service for this award of Red Ink punishment. We are, therefore, not inclined to interfere in this case as in the award of six last punishments, he already had 5 Red Ink Entries for which a warning was also issued to him. He was discharged after SCMs on the basis of different punishments. The said policy has been upheld by Hon'ble Supreme Court in **Corporal A.K. Bakshi and Another** (supra). Thus, the contentions raised in this respect are not sustainable.

**25.** We have also considered the issue of application of Regulation 145 of the Pension Regulations for the Army 1961. Having been co-opted by the Air Force for NC(E) as a general order, the application of this Regulation is not, in any way, arbitrary and against the fundamental rights. It is a different matter as of now the Army has no use for this Regulation since they are no longer dealing with NC(E). The Regulation 145 states that *"the minimum qualifying service for earning a service pension is 20 years (without weightage)"*. This was applicable in AFI 12/69 under which the applicant was enrolled as NC(E). This regulation falls under Sub Section II Non Combatants (Enrolled). The contention that the applicant was initially enrolled for 15 years and, thus, on completion of said term he becomes eligible for pension is not sustainable. The initial period for engagement has no

nexus with pension. For pensionable service the applicant was required to complete 20 years qualifying service as provided in Para 145 of said Regulations of 1961. The judgments cited by learned counsel for the applicant in **Deoki Nandan Prasad** (supra) and **D.S. Nakara** (supra) cited by learned counsel for the applicant are not helping his contentions. On the contrary, the judgment given by Hon'ble Court No.1 of this Tribunal in **Rajpal Balmiki** (supra) is relevant and supports the conclusion drawn by us.

**26.** While considering the prayer qua the grant of status of ex-serviceman to the applicant, we are bound by the policy, rules and orders on the subject Notification of Government of India dated 27 Oct 1986 (**Annexure R-8**) prevailing at the relevant time which states that :

“(c) ‘ex-Servicemen’ 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 but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces; and

“(i) *who has retired from such service after earning his/her pension; or*

*(ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded, medical or other disability pension;*

*(iii) who has been released, otherwise than on his own request, from such service as a result of reduction in establishment; or*

*(iv) who has been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes the personnel of the Territorial Army of the following categories, namely :-*

- (i) pension holders for continuous (embodied) service;*
- (ii) persons with disability attributable to military service; and*
- (iii) gallantry award winners”*

**27.** In view of the foregoing, we do not find any infirmity in the impugned orders and are not inclined to interfere in the case. The T.A. is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court  
on this 25<sup>th</sup> day of July, 2011.**