

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

27.

RA 8/2019 with MA 879/2019 in TA 646/2009

Union of India & Ors.
Versus

.....Applicant

Ex.Hav (GD) Nancha Ram Jat

.....Respondents

For Applicant : Mr. J.S.Yadav, Advocate

For Respondents : Mr. N.L.Bareja, Advocate

CORAM:

HON'BLE MS.JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT. GEN.PHILIP CAMPOSE, MEMBER (A)

ORDER

MA 879/2019

Vide this application, the applicant-respondent seeks condonation of delay of 5 days in filing the application for review of the order dated 14.01.2019. In view of the averments made in the application, in the interest of justice, application is allowed and delay in filing review application is condoned.

M.A. stands disposed off.

RA 8/2019

Vide this application, applicant-respondent seeks review of the order dated 14.01.2019 alleging inter alia that in para 9 of the judgment, the Tribunal had observed: "*Since there was no order for reduction of the rank nor forfeiture of the past service for the purpose of pension/gratuity or forfeiture of pay and allowances in terms of AAs 71, in the aforesaid backdrop, we deem it appropriate that the ends of justice would be fully met if we convert*

the sentence of dismissal from service to discharge of service." It was submitted that as per Regulation 113 of the Pension Regulations for the Army 1961, dismissal by way of Court Martial under Army Act is ineligible for pension and gratuity in respect of all previous service. Under Section 71 of the Army Act read with Regulation 113 of the Pension Regulation for the Army, there is no separate requirement of awarding a specific sentence for forfeiture of past service or for reduction of rank or forfeiture of pay and allowances as held by the Hon'ble Supreme Court in **Ex. Sub Jogender Singh versus Union of India** (2001 (9) SCC 602) and **Union of India versus Sub Ram Narain and others** (1998) 8 SCC 52. In view of this legal position, the order suffers from an error apparent on the face of record and therefore, the order dated 14.01.2019 be reviewed or modified.

Notice of the application was given to the respondents-applicants. Reply to the application has not been filed. However, the application is orally contested by counsel for the respondent-applicant.

We have heard Mr. J.S.Yadav, Advocate for the applicant-respondent and Mr. N.L.Bareja, Advocate for the respondent-applicant.

Learned counsel for the applicant-respondents referred to Regulation 113 for submitting that a person who is dismissed from service is not entitled for pension or gratuity in respect of his previous service. Reference is also made to Section 71 of Army Act 1950 for submitting that there is no specific requirement for imposing restriction in this Section for forfeiture of pensionary

benefits. Reliance is placed on the aforesaid judgment. As such, it was submitted that the order converting the punishment from dismissal to discharge is an error apparent on the face of record which requires review/modification.

Per contra, learned counsel for the Respondent-applicant, at the outset, submitted that the review application is not maintainable as Section 15 of the AFT Act does not provide for review of the decision rendered in an appeal against the order, the decision or sentence passed by the Court Martial. Reliance is placed on an order dated 23.04.2019 passed by the AFT (PB), New Delhi in RA 52 of 2018 **Union of India and others** versus **Lt Col Rajan Sawhney** and RA 20 of 2018- **Satbir LSCDII** versus **Union of India and others**.

It was further submitted that there is no error apparent on the face of the record which warrants review/modification of the order. It was urged that after considering all the circumstances of the case, the Tribunal in its wisdom converted the sentence from dismissal to discharge. Under Section 15(6) of AFT Act, 2007. The Tribunal is competent to substitute the findings of the Court Martial and passed sentence afresh and therefore, there is no warrant for review of the order. Reliance is also placed on a judgment dated 08.09.2011 passed by the AFT (PB), New Delhi in TA 453 of 2009- **Ex. Nk Jit Ram** versus **Union of India and others** where reference was made to HQ letter dated 17.07.1999 which empowers conversion of dismissal into discharge in appropriate cases.

We have given our considerable thoughts to the respective submissions of counsel for the parties and has perused the record.

Perusal of record goes to show that the appellant was tried by SCM on charge framed against him under AAs 69 read with Section 354 IPC and was convicted for the said offence. He was awarded the following sentence:-

- a) To suffer RI for three months and 28 days in civil prison;
- b) To be dismissed from service.

The punishment was promulgated on 12.06.2000 itself as the applicant was sent to civil jail and the sentence was duly completed. After resorting to the remedies available to the applicant under the Act, he filed CWP (C) No. 12353 of 2005 before the Hon'ble High Court of Delhi which was eventually transferred to this Tribunal.

During the course of arguments, learned counsel for the applicant did not challenge his conviction, however, prayed for grant of pensionary benefits as he had served for more than 19 (Nineteen) years and had unblemished record in the Army. While upholding the conviction of the applicant, keeping in view the general character of the applicant which was opined to be exemplary coupled with the fact that he had unblemished service record of 19 years, the sentence of dismissal was converted into discharge from service. Since, he had completed the qualifying service for entitlement to pension, as such, respondents were

directed to grant him pensionary benefit. However, the arrears were restricted to 3 years preceding the passing of the order.

Thereafter, the present application in question has been moved by the applicant-respondents for reviewing of the order.

As regards the legal submission regarding maintainability of the application, the power of the Tribunal to review order passed in an appeal under Section 15 of the AFT Act 2007 challenging the order passed by the competent authority in a Court Martial was extensively dealt with by this Tribunal in **Rajan Sawhney**(Supra) and **Satbir LSCD II**(Supra) and it was observed that there was no statutory provision in AFT Act which enable the Tribunal to review/recall/revoking order. The decision/order rendered in appeal filed under Section 15 of the AFT Act and emerging from the findings and sentence passed by the Court Martial as prescribed in Section 14(4) (f) of the AFT Act is limited to correction of clerical or arithmetical error.

In view of this order, application for review of the order passed in the instant case which was on an appeal filed against the order of SCM is not maintainable.

Even on merits of the case we do not find any cogent ground for review of the order as Section 15(6)(a) empowers the Tribunal to substitute the findings of the Court Martial. For the sake of convenience, this Section is reproduced as under:-

Section 15 : Jurisdiction powers and authority in matters of appeal against court martial-

(1) xxxxxxxx

(2) xxx

(3) xxxxxxxx

(4) xxx

(5) xxxxxxxx

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to

(a) substitute for the findings of the court-martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or"

Moreover, in the HQ letter dated 17.7.1999, referred in **Ex. Nk Jit Ram** (Supra), the relevant portion was reproduced as under:-

"3. In view of the foregoing, the following decisions have been arrived at:-

(a) A punishment of dismissal awarded to a JCO/OR can be converted to discharge in deserving cases from the date his dismissal came into effect, by the authority competent to pass order under Army Act Section 164(2).

(b) A punishment of dismissal awarded to an officer can be converted to release by the Central Government from the date his dismissal came into effect.

(c) HQs Command may make recommendations to the above effect in deserving cases while forwarding post confirmation petitions to this HQ.

4. *In view of the legality and uniformity of expression, the directions in all such cases be worded as under:-*

" I remit the sentence of dismissal awarded by the Court and direct that the petitioner shall be deemed to have been discharged with effect from the date his dismissal took effect."

That being so, even as per this letter, the sentence of punishment can be converted into discharge in deserving cases. Moreover, a perusal of the entire application goes to show that the applicant-respondent has nowhere challenged the powers of the Tribunal to convert the sentence of dismissal to discharge. The thrust of the argument is that no specific restriction is imposed under Section 71 of the Army Act 1950 for forfeiture of pensionary benefit and while passing the order, the Tribunal have also taken note of the fact that while converting the punishment from dismissal from service to discharge, no order for reduction in rank nor forfeiture of past service for the purpose of pension/gratuity or forfeiture of the pay and allowance in terms of AAs 71 was passed by the Court Martial. Even if, there was no specific requirement for passing this order for forfeiture of past service for the purpose of pension/gratuity or pay and allowance as observed by Hon'ble Supreme Court in **Ex. Sub Jogender Singh** (supra) and **Sub Ram Narain and others** (supra), even then the Tribunal had also considered the other factors viz exemplary unblemished record of

the applicant coupled with the fact that he had completed 19 years of service, the substantive sentence imposed upon him had already been undergone by him, therefore, the sentence was converted from dismissal to discharge and he was granted the pensionary benefits. In this back drop, we do not find any ground which warrants review of the order.

That being so, the application is dismissed.

Pronounced in open Court on 15th July, 2020.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

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