

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

6.

OA 3597/2023 WITH MA 4879/2023

Ex Sep/Safai Munshi Ram
(Through Smt Meenu Kirval) (Wife)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. J.P. Singh, Advocate

For Respondents

:

Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER
20.11.2023

MA 4879/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others v. Tarsem Singh (2008) 8 SCC 648, the MA is allowed condoning the delay in filing the OA.

OA 3597/2023

2. This application has been filed by the applicant, namely, Ex Sep/Safai Munshi Ram through his wife Smt. Meenu Kirval and the prayer made in the application vide Para 8 reads as under:

"(a) Quash and set-aside the impugned letter no.13962541/NE/LN/2017 dated 25.7.2017 being the respondents deny the pension and other retirement benefits of the applicant's husband, when her husband Munshi Ram serve Indian Army for more than 15 years and or

(b) Direct respondents to convert the punishment from dismissal to discharge and grant service pension to the applicant's husband keeping in view his more than 15 years of Army Service. And or

(c) Direct respondents to pay the due arrears of service pension with all the consequential benefits w.e.f. date of his dismissal from service with interest @ 12% p.a.

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

3. Records indicate that the employee Ex Sep/Safai Munshi Ram was enrolled in the Indian Army on 25.04.1985 and was granted 22 days casual leave from 04.05.2003 to 25.05.2003. However, he sought for extension of leave on 26.05.2003 which was not granted. On account of alimant of his brother and various other issues, the applicant remained absent for a long period of time and according to the applicant on 12.03.2009 his wife approached the respondents with a representation dated 12.03.2009 to which the respondents' Record Office on 20.11.2009 informed the applicant that on account of his unauthorized absence from a field station, a Court of Inquiry (CoI) was held against him and subsequently he had been dismissed from service w.e.f 20.10.2006. After this communication was made, the applicant on 19.05.2010 made a representation explaining the reasons for his inability to join the service. The Record Office vide their letter dated 12.06.2010 informed the applicant that he has already been dismissed from service in 2006 and he could not be re-instated in service as being a deserter. The applicant thereafter sent a legal notice on 13.06.2017 which was again replied by the respondents on 25.07.2017 and it was informed to the applicant that as he is a dismissed employee

w.e.f 20.10.2006 under Section 20 (3) of the Army Act, 1950 read along with the Army Order 439/63, in view of the provisions of Para 113 (a) of the Pension Regulations for Army, 1961 Part-1, an individual who is dismissed from service under the Army Act, is ineligible for pension and gratuity and, therefore, his representation was rejected.

4. Being aggrieved by this action, the applicant, namely, Ex Sep/Safai Munshi Ram filed an application invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, on 31.01.2018 (Annexure A-2). This application was registered as OA 343/2018 and in the said application the same prayers as are made today now in this application the prayers were made and the same read as under:

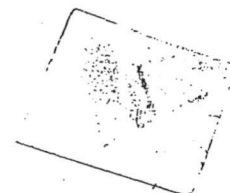
"(a) Quash and set aside the impugned letter no.13962541/NE/LN/2017 dated 25.7.2017 and quash the dismissal order of the applicant, and / or

(b) Direct respondents to convert the punishment from dismissal to discharge and grant service pension to the applicant keeping in view his more than 15 years of Army Service. And/or

(c) Direct respondents to pay the due arrears of service pension with all the consequential benefits w.e.f. date of his dismissal from service with interest @ 12% p.a.

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

5. The matter was considered by a Co-ordinate Bench of this Tribunal and OA 343/2018 was dismissed as not pressed on 05.07.2018 and the order passed in the said OA reads thus:



“ Learned counsel for the applicant, after brief submissions, does not press his petition and prays for grant of liberty to approach the respondents under Regulation 113 of the Pension Regulations for Army, 1961. As and when the said representation is made by the applicant to the respondents, we hope and trust that the respondents will dispose of the same, as expeditiously as possible, and record the order.

Accordingly, OA 343/2018 stands dismissed as not pressed.”

6. After the aforesaid order was passed vide Annexure A-4 dated 08.09.2018, a Mercy Petition was sent to the Hon'ble President of India for consideration along with certain documents. However, it is said that the same was forwarded to the competent authority by post bearing postal receipt at Page 103 of the OA. Thereafter, a reminder was sent on 10.12.2018 and now when nothing has been done after five years, this application has been filed by the wife of the applicant on the ground that the original applicant, Ex Sep/Safai Munshi Ram, is not mentally well and is under treatment and on behalf of her husband the applicant prays for the relief as set out hereinabove. Reliance is placed on certain judgments of the Hon'ble Supreme Court in the case of Major G.S. Sodhi Vs. Union of India [(1991) 2 SCC 371] and another judgment of a Co-ordinate Bench of this Tribunal in the case of Maya Thapa Vs. Chief of Army Staff and Others (OA No.307 of 2017 decided on 29.01.2021) reported in 2021 SCC OnLine AFT 1562 to claim the benefit.

7. We have heard learned counsel for the applicant and perused the records. From the records, it is clear that claiming

the same relief, the applicant had approached this Tribunal by filing OA 343/2018 and by an order passed on 05.07.2018 granting liberty to the applicant to seek benefit of pension under Regulation 113 of the Pension Regulations for the Army, 1961, the OA was disposed of. Pension Regulation 113 of the Army, as amended, reads as under:

"113 (a) An individual who is dismissed under the provisions of Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the 'President' (Competent Authority) be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is removed from service under of Army Act, 1950 Section 20, may be considered for the grant of pension/ gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The Competent Authority may, however, make, if considered necessary, any reduction in the amount of pension/ gratuity on the merit of each case.

(c) An individual who is dismissed under the provisions of Army Act and the rules made there under remains eligible for pension or gratuity under these Regulations.

Note-Those discharged from service due to misconduct, corruption, lack of integrity or moral turpitude are not normally eligible for gratuity, but they may be sanctioned gratuity, but they may be sanctioned gratuity in exceptional cases at the discretion of the President at a rate not exceeding that for which they are normally qualified."

8. From the aforesaid statutory provision it is clear that a dismissed employee is not entitled to pension or gratuity in respect of previous service. However, discretionary power is available with the Hon'ble President of India (The Competent Authority), in exceptional cases, to grant the said benefit. That being so, as far as this Tribunal is concerned in view of the statutory bar

created, the relief of pension cannot be granted in these proceedings and that was the reason why on the earlier occasion also no relief was granted for the similar prayer but liberty was granted to the applicant to seek the benefit by approaching the competent authority under Regulations 113 (a). The applicant having approached the regular competent authority under the regulation, it is incumbent now upon respondents No.1, 2 and 3 to place a Mercy Petition before the competent authority as prescribed under the rules and the policies laid down and get an appropriate order passed in accordance to the discretionary powers available to the competent authority. At least to that extent the applicant is entitled to the indulgence of this Tribunal.

9. As far as the judgments relied upon by the applicant are concerned, in our considered view the law laid down in the case of Major G.S. Sodhi (supra) will not apply as it pertains to grant of pension to a commissioned officer and the rules and regulations governing grant of pension to commissioned officer is covered by a different set of regulation, namely, Army Regulation 2 (a), 3 and 4 and, therefore, based on a different regulation applicable to a commissioned officer relief cannot be granted to the applicant. Similarly, as far as the reliance upon the judgment in the case of Maya Thapa (supra) is concerned that was a case where the official husband of the applicant Maya Thapa was missing from service, his

whereabouts were not known and based on the policies and circulars applicable in the matter of grant of pensionary benefit and other issues to persons who were missing, the case was decided. This case does not pertain to grant of benefit to a missing person but it pertains to grant of benefit to an employee who has been dismissed from service in accordance of the Army Act.

10. That being so, we are of the considered view that the said judgments may not help the applicant in the present case. However, as the applicant has a right to seek the discretionary relief under Regulation 113 (a) by approaching the competent authority and as the applicant had already approached the competent authority, we direct respondents No.1 to 4 to place the Mercy Petition of the applicant, annexed as Annexure A-4 to this application, along with the reminder before the Hon'ble Competent Authority and we leave it to the discretion of the Hon'ble Competent Authority to take a decision in the matter within a period of three months from the date of receipt of a copy of this order.

11. In view of the aforesaid, the OA stands disposed of.

[RAJENDRA MENON]
CHAIRPERSON

[P. M. HARIZ]
MEMBER (A)