

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

OA 854/2016 WITH MA 651/2016

Hav/Vehicle Mechanic Chandra Pal Singh ... Applicant
Versus ... Respondents
Union of India & Ors.

For Applicant : Mr. D. S. Kauntae, Advocate
For Respondents : Mr. Rudra, Advocate for
Mr. Neeraj, Sr CGSC

Date:- 17 October, 2023

CORAM :

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

ORDER

MA 651/2016

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 same is allowed condoning the delay in filing the O.A.

OA 854/2016

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 applicant has filed this application. The applicant was enrolled in the Army on 28th July, 1983 and was dismissed on 6th June, 2004 after being found guilty and convicted by the District Court Martial (DCM). It was found that the applicant was found "taking illegal gratification

for procuring enrolment of a person". And finding his "Act prejudicial to good order and military discipline", he was dismissed from service awarded, 10 months of rigorous imprisonment and reduced in rank. The applicant filed a Writ Petition before the Hon'ble Delhi High Court challenging the dismissal in WP(C) No.44237/2004 which was disposed of on 15th May, 2008. Before the Delhi High Court, it was submitted by the applicant that he has completed 22 years of service before his dismissal. He would like to move an application under Regulation 113 (b), Pension Regulations for the Army, 1961 as applicable to the Army for grant of pensionary and gratuity benefits and therefore seeking liberty to do so he gave up his challenge to the order of punishment; he was allowed to do so. However, now when his claim for grant of pension as per Pension Regulation 113 (b) has been rejected by the impugned order the applicant has invoked the jurisdiction of this Tribunal. Learned counsel for the applicant invited our attention to the provision of Section 71 of the Army Pension Regulation 16 (A) and Regulation 113 (a) and (b) of the Pension Regulation, 1961 to canvass the contention that the applicant is entitled to benefit of pension. Inviting our attention to the judgments of the Hon'ble Supreme Court in the case of *Lt Col (T.S.) Harbans Singh Sindhu Vs. Union of India and Ors.* (2002)1 SCC 427, *Union of India Vs. Hans Raj Singh*, Civil Appeal No. 4666-4667/2012, *Deokinandan Prasad*

Vs. State of Bihar and Ors. (1971) Supp. SCR 634, Union of India and Ors. Vs. Brig. P. K. Dutta (Retd) Civil Appeal No. 8948 of 1994 decided on 07.12.1994 and a judgment of this Tribunal in the case of Hav/PA Bijay Pal Singh Vs. Union of India and Ors. TA No. 381 of 2010 (WP (C)No. 94 of 2007), it was argued that the applicant is entitled to the pensionary benefit and that pension is to be treated as a property under Article 31 (1) and it cannot be denied to the applicant on ground canvassed. It was also argued that while rejecting the claim for pension, the power has not been exercised by the Competent Authority and no reasons have been given as to why pension cannot be payable to the applicant.

3. Respondents have refuted the aforesaid contention and pointed out that in the case of the applicant who is a Non Commissioned Officer (NCO), Pension Regulation, 16 is not applicable to NCOs, it is Pension Regulation 113 (a) and 113 (b) which is applicable and referring to the aforesaid Regulation, it is argued by the applicant that the applicant having been convicted by the DCM and dismissed from service after he was sentenced to 10 months rigorous imprisonment is not entitled to the benefits of pension and gratuity. As far as power of the authority to take a decision is concerned, respondents referred to amendment to Regulation 16 and 113 of the Pension Regulations for the Army as contained in the Memorandum issued by the Government of India,

Ministry of Defence on 9th June, 1999 and 10th August, 2000 to point out that for a commissioned officer, the President of India is the authority who can take action for grant of pension under Regulation 16. As far as JCO/ORs are concerned, competent authority is the GOC-in-C and in the present case as the applicant is under Regulation 113 (a), his case has been considered by the GOC-in-C. This being in accordance with the delegation in power made, the applicant is not entitled to any benefit. Respondents also referred to the following judgments to say that the applicant is not entitled to the said benefit.

- (i) **Ex L/Nk/AA Konda Anja Gaud** Vs. **Union of India and Ors.** (OA 206 of 2021) decided by AFT, Regional Bench, Lucknow on 14th November, 2022.
- (ii) **Shish Ram** Vs. **Union of India and Ors.** C. A. No. 4523 of 2006 (2012) 1 SCC 290 decided by Hon^{ble} Supreme Court on 23rd November, 2011.
- (iii) **Shamsher Singh** Vs. **Union of India and Anr.** C.A. No. 216 of 2016 decided by Hon^{ble} Supreme Court on 3rd March, 2020.

4. We have heard learned counsel for the parties at length and we have gone through the records. It is the admitted position that applicant being JCO, the provision for grant of pension to the applicant on account of his dismissal or removal of service is

governed by Regulation 113 and not Regulation 16. Regulation 16 applies to commissioned officers.

5. The applicant before the Delhi High Court itself sought permission to seek pension under Regulation 113 (b) and therefore it is the admitted position according to the petitioner's own showing that his claim for pension is based on the provisions of Pension Regulation 113 (b). Regulation 113 (a) and (b) reads as under:-

"113. (a) An individual who is dismissed under the provisions of the 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 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 Army Act, Section 20, may be considered for the grant of the 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 merits of each case."

6. A bear perusal of Regulation 113 (a) clearly would show that an individual who is removed from service under Army Act is ineligible for grant of pension or gratuity in respect of the previous service. In exceptional consideration, however, in the discretion available to the President which has been subsequently, amended to be read as Competent Authority, he can be granted pension and gratuity as detailed there and above. From the aforesaid discretion that applicant cannot claim pension and gratuity as a matter of right as he is not entitled to the same on account of the dismissal from

service. However, discretion is available with the competent authority to grant the benefit to him if the competent authority so feels. In the case of the applicant, the competent authority looking into the factum of dismissal of the applicant, the nature of offence committed and proved in the DCM, has held him ineligible for pension. The question now before us is as to whether delegation of power exercised by the competent authority needs interference.

7. The judgment relied upon by the applicant and submitted before us are all distinguishable and not applicable in the facts and circumstances of the case. The judgment of Brig P.K. Dutta (Retd) (Supra) relied upon by the applicant is based upon the principles laid down in the Regulation 16 (a) which is applicable to officers and which is totally different from the statutory provision applicable to the applicant. On the contrary, the judgment relied upon by the respondents' counsel are all with regard to the right of a man in uniform to claim pension after he has been inflicted with a punishment under Section 71 of the Army Act and his right to claim pension under Regulation 113 (a). In the judgment rendered by the Hon'ble Supreme Court in the case of Union of India Vs. Subedar Ram Narayan (1998) 8 SCC 52, in Para 13, Hon'ble Supreme has laid down the following principle:-

"13. We find no merit in this contention. Section 71 of the Army Act provides for different types of punishments which could be inflicted in respect of an offence committed by a

person subject to the Army Act and convicted by courts martial. The punishments are of Varying degrees, from death as provided by Section 71(a) to stoppage of pay and allowance as provided by Section 71 (h). The punishment of forfeiture of pay and allowances as provided by Section 71(j) is of a lesser nature than that of dismissal from service as provided by Section 71(e). When punishment under Section 71(j) is imposed, no recourse can be had to Regulation 113(a), because the said regulation applies only if an order of dismissal is passed against the person concerned. In other words, Section 71(j) and Regulation 113(a) cannot apply at the same time. On the other hand, when the punishment of dismissal is inflicted under Section 71(e), the provisions of Regulation 113(a) become attracted. The result of punishment is that the benefit of pension or gratuity which is given under the regulation is taken away. The order of dismissal under the provisions of the Army Act in the case of an employee like the respondent would make him ineligible for pension or gratuity. For a person to be eligible to the grant of pension or gratuity, it is imperative that he should not have been dismissed from service. The dismissal under the provisions of the Army Act is, therefore, a disqualification for getting pension or gratuity."

8. Following the aforesaid, learned Bench of the Hon'ble Supreme Court on 3rd March, 2020 in Civil Appeal No. 216/2016 Shamsher Singh Vs. Union of India and Anr. upheld the order passed by the Chandigarh Bench of this Tribunal and held that *"taking note of the nature of allegations levelled against the applicant relating to his unauthorized absence for one year which resulted in his dismissal. It was held that he is not entitled to pension in the backdrop of provision of Regulation 113 (a) of the Pension Regulation and identical claim was dismissed."* Earlier also in 2012, Hon'ble Supreme Court in the case of Shish Ram Vs. Union of India (2012) SCC 290, considered the implications of Army Pension Regulations, 1961, namely, Regulation 113 (a) and in Para 9 and 10

rejected the claim identical in nature of a dismissed employee. Finally, we find that Coordinate Bench of this Tribunal at Lucknow on 14th November, 2022 in the case of Ex L/Nk/ AA Konda Anja Gaud Vs. Union of India (OA 206/2021) considered the issue, identical in nature in detail and after evaluating the law laid down in various cases indicating the judgment of the Hon'ble Supreme Court with regard to interpretation of Regulation 113, dismissed identical claim on the ground that under Regulation 113 (a) a dismissed employee is not entitled to pension or gratuity.

9. In our considered view, law laid down by the Hon'ble Supreme Court and this Tribunal did not provide for any pensionary benefit to employee who has been dismissed from service and taking note of the allegations levelled against the applicant which stood proved in the District Court Martial and which attained finality after he withdrew the challenge made in the Delhi High Court, no indulgence into the matter is called for. As far as the ground for action being taken by the Competent Authority in deciding his application under Pension Regulation 113 (a) is concerned, we find that as per delegation of power referred to by the respondent in Para 12 of the counter affidavit with reference to circulars of MoD dated 09.06.1999 and 10.08.2000, the power is vested with the GOC-in-C of the Command with regard to the Junior Commissioned Officer/OR and as in the case of the applicant, the impugned action

is taken on the basis of the power delegated to the GOC-in-C by the Government of India, we see no reason to interfere on this ground also.

10. Accordingly, in the facts and circumstances of the case, we are of the considered view that no interference in the matter is called for as the statutory pensionary regulations de-barred the applicant for claiming the pension and gratuity on account of the dis-qualification stipulated in this regard in Regulation 113 (a) and the competent authority having refused to exercise discretion in the matter looking to the case of commission and omission found established against the applicant. No interference is called for.

11. The application is therefore dismissed.

Pronounced in open Court on this 17th day of October, 2023.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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