

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

111.

OA 394/2017

Ex LME Sushil Kumar Harryson Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Amit Kumar (Amicus Curiae),
Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
29.07.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant had filed this application and the prayer made in Para 8 reads as under:-

- (i) *That the Hon'ble Court may graciously be pleased to pass an order of quashing the impugned orders dated 06.11.2016 (Annexure P.1, declaring to the effect that the same are illegal, unjust, arbitrary and against the principle of natural justices and consequently the petitioner is entitled Service Element/disability pension/ reservist pension/Compensate allowance.*
- (ii) *To direct the respondent release the gratuity, leave encashment & all others dues, on discharge of service.*
- (iii) *Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the petitioner.*

2. By the impugned order, after discharge from service, applicant has been denied pension on the ground that applicant has not completed 15 years of qualifying service in terms of Regulation 82 of the Navy Pension Regulation 1964. It is stated that deficiency in the shortfall up to one year can be condoned by the competent authority in the service and the counter affidavit indicates that the application for condonation of shortfall was pending before the Integrated Headquarter of the Ministry of Defence (Navy) on 29.05.2017 vide Annexure R-2. However, in the meanwhile it is seen that on account of involvement of the applicant in a criminal case based on FIR No. 129/1990 for offence under Section 302 IPC, registered by the Police Station, Vasant Vihar, Delhi, the applicant was put to trial and the Trial Court has convicted the applicant to RI for life and fine of Rs. 1000/- failing which he had to undergo one year more RI. Based on the aforesaid conviction, the applicant has been taken into custody by the authorities of Central Jail No. 2, Tihar and is undergoing the sentence.

That apart, in the communication made by the Competent Authority vide Annexure R-2 on 29.05.2017, in Para 3, it is indicated as under:-

"3. After his discharge from Navy, te ex-sailor was convicted and was sentenced to Rigorous Imprisonment for life & fine under Section 302 IPC by Patiala House Courts, New Delhi w.e.f. 04 Aug.98. Further, on 05 Mar 2016, he was prematurely released from the Central Jain No. 2,

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Tihar, New Delhi by remitting the unexpired portion of the sentence. In this regard, copy of Govt. of NCT of Delhi custody Certificate No. F2/SCJ-2/CJ-2/AS(CT)/2016/2182 dated 05 Mar 16 is enclosed."

From the aforesaid, it is seen that the RI of life sentence imposed upon the applicant has been remitted as he has been prematurely released from Central Jail, Tihar.

However, the issue before us is as to whether less than one year of shortfall in the qualifying service can be condoned and pension granted to the applicant. Under normal course, the same would have been permissible but because of the conviction of the applicant for an offence under Section 302 which seems to have been confirmed, the applicant is disqualified from receiving pension on account of his conduct ~~of conviction~~ in the criminal case and now it is only the Chief of the Naval Staff or the Hon'ble President of India who are entitled to condone the conviction and grant him pension on mercy basis, either in full /or in part as is permissible under the rules.

Keeping in view the aforesaid, for the present, it is not appropriate for us to enter into the controversy on merit, instead liberty is granted to the applicant to seek condonation of the conduct of the conviction and grant him pension in accordance with the statutory rule either by approaching the Chief of Naval Staff or the Hon'ble President of India. In case the applicant submits the Mercy Petition in this regard before the Competent

Authority or the Hon'ble President of India within a period of three months from the date of receipt of copy of this order, the Competent Authority shall consider his claim and pass an appropriate order on the same within a period of three months.

With the aforesaid, the OA stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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