

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

OA 739/2017 with MA 609/2017

Ex Cdr Vinod Kumar Jha (No. 02761Z) Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

The applicant "Ex Cdr Vinod Kumar Jha" No. 02761Z
vide the present OA makes the following prayers:-

***"(a) Respondents impugned communication
Annexure-A-1 be set aside and quashed to the
extent of denial of pensionary benefits to them;***

***(b) The applicant be granted his full pensionary
benefits with 12% interest with all
consequential and other related benefits."***

2. The applicant joined the Indian Navy on 01/07/1984 and
was dismissed from service without pension with effect from
28/10/2005 vide order No. DL/3599/1237/147/US(P)/D/(N-
II)(ii) dated 26.10.2005

3. A writ petition WP (C) 4749/2006 was filed by the applicant before the Hon'ble High Court of Delhi which was transferred to this Tribunal and bore no TA 395/2009 whereby the applicant sought the setting aside of the order of his dismissal by invoking the pleasure doctrine of the President. The order of dismissal which the applicant had challenged in the writ petition that had been transferred and bore no TA 395 of 2009 dated 26.10.2005 took effect on 28/10/2005 read to the effect:-

"The Board of Inquiry has established that there has been a leakage of Information of commercial value to unauthorised persons. The Boards has identified the three culpable officers and their specific acts of omission and commission in the leakage of the information, which makes them liable for action under the provisions of the Navy / Official Secrets / Prevention of Corruption Acts. Three Officers are Captain Kashyap Kumar, Cdr Vinod Kumar Jha, Cdr. Vijendra Rana".

4. Vide the order dated 30.06.2010 in TA 395 of 2009, the said writ petition since transferred to this Tribunal was dismissed vide observations in paragraphs 28 & 29 thereof which read to the effect:-

"28. But, in the present case we have gone through the original papers of Board of Inquiry and the reasons which have been recorded for dispensing with the show cause notice, that it is not reasonable and practicable to hold inquiry

as this will involve security of the State, therefore, we are satisfied on perusal of all the material that the authorities has rightly applied their mind on the basis of the material collected during the Board of Inquiry that it will cause a great damage to the security of the State as those material leaked from war room was of sensitive nature and disclosure of that would seriously compromise the security of the country. As such, we are satisfied that there was a subjective satisfaction arrived in an objective manner by the competent authority.

29. Lastly, it was also urged that there is a question of discrimination that in the case of Air Force officer a regular Court of Inquiry was held, whereas, in the case of the Naval Officer i.e. the petitioners, no Board of Inquiry was held against them. The scope of both the inquiries i.e. holding inquiries under chapter VII of Navy Regulations and under the Air Force was different. In the case of Air Force the officer was charged for a serious omission and commission reflecting about his military reputation and the character, whereas, in the present case no such charge was leveled against these officers involving the reputation and character, but, the disclosure, which has come in the Board of Inquiry was so serious that authorities thought it proper not to order any further inquiry against the reputation and character of the petitioner and it was also realized that holding of inquiry and disclosing of the war room secrets will be more injurious to the security of the country, therefore, instead of resorting to a regular inquiry the authorities thought it proper on the basis of the material made available that it will not be reasonable and practicable to hold such inquiry and they resort to provisions under Section 15 of the Navy Act, 1957 read with Regulation 216 of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965. As such, there is no question of discrimination involved in the present case. Consequently we do not find any merit in both the cases and same are dismissed. No order as to costs.”

The applicant challenged the said order before the Hon'ble Supreme Court and vide order dated 23.02.2017 in SLP (C) No. 26833/2010. the said SLP was dismissed.

5. The applicant submits now through the present petition that in as much as vide the impugned order no DL/3599/1237/1470/US(P)/D(N-II)(ii) dated 26.10.2005 whereby it has been stated to the effect:-

“WHEREAS certain undesirable activities on the part of Commander Vinod Kumar Jha (02761-2) which are prejudicial to the interests of the State have been brought to the notice of the Government;

And whereas, taking into consideration the nature of these activities, the Government is satisfied that it is neither expedient nor reasonably practicable to give Commander Vinod Kumar Jha (02761-Z) an opportunity of showing cause;

And whereas, after taking into consideration the nature and gravity of the misconduct of Commander Vinod Kumar Jha (02761-2), the Central Government has come to the conclusion that the continuation in Service of Commander Vinod Kumar Jha (02761-Z) is not desirable in the Interests of the State;

Now, therefore, in exercise of the powers conferred upon it under Section 15 of the Navy Act 1957 read in conjunction with Regulation 216 of the Regulations for the Navy Part II (Statutory), the Central Government hereby orders that Commander Vinod Kumar Jha (02761-Z) be dismissed from Service without pension.”_

the applicant had not been dismissed with disgrace from service vide the impugned order in terms of Regulation 15 of the Navy (Pension) Regulations 1964, and is thus entitled to pensionary benefits.

6. Reliance has been placed on behalf of the applicant on the judgment dated 22/11/1978 of the Hon'ble Supreme Court in **LT. COL. (T.S.) HARBANS SINGH SANDHU vs UNION OF INDIA AND OTHERS** (2002) 1 SCC 427, whereby it was observed to the effect:-

“The petitioner, an army officer, had put in about 27 years of service, but on the eve of his retirement was posted as Camp Commandant of the NCC Camp. During this last leg of his career, he was charged with misappropriation and making of false complaints against his superior officers. A General Court Martial, acting under the Army Act, tried him and imposed a punishment under Section 71(d) of the Army Act, 1950. He was cashiered. No further penalty was imposed under Section 71 clause (h). These are agreed facts. The petitioner applied for his pension and gratuity, which come to a substantial sum, as early as 1971. No reply was forthcoming and no payment either. So he filed the present writ petition to compel the Government to pay him what is due by way of gratuity and pension. This was his property and could not be taken away except by due process of law. The only provision of law pointed out to us by counsel on either side is Section 16(a) of the Pension Regulations, 1961, for the Army. It is found from the records that there is no order passed under the said Regulation nor is it the case of the Union of India in their return that any such order depriving the petitioner wholly or partly of his pension or gratuity has been made by the President. The inevitable consequence is that he is entitled to be paid the entire pension and gratuity under the Rules. We direct the respondent to pay the said sum within three months from today. Accordingly, we allow the writ petition with costs.”

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to contend to similar effect.

7. Reliance was also placed on behalf of the applicant on the order dated 23.01.2014 of this Tribunal in **Ex. Commodore Sukhjinder Singh vs Union of India & Ors.** 2014 SCC OnLine AFT 830, with observations in paragraphs 15 & 16 thereof which read to the effect:-

“15. In addition to above we are of considered opinion that in the show cause notice the relevant portion of which we has quoted above itself it is clearly mentioned that the show cause notice has been served upon the petitioner to show cause why his service may not be terminated. A person's service is terminated by way of dismissal in this case and he has denied the future service and that itself is a punishment and none of the law provides that it will necessarily be a dismissal without pension. Therefore, petitioner replied to the show cause notice contesting in this case (or not contesting) the only issue of his "dismissal from service and petitioner could not have comprehended that he will be deprived from his property i.e pension at the time of filing reply to the show cause notice and which is a separate punishment. If the petitioner would have been given opportunity, definitely he would have been in a position to place before such competent authority, who can pass appropriate order denying the pension in isolation to the Sec. 81 and Sec. 82 by invoking only Regulation 216, that he has reasons for not denying the pension on the basis of the reasons which may be available with the petitioner. This view is more applies to the sub-clause 6 of Regulation 216 which gives discretion to the Government to dismiss an officer with or without pension. When a discretion is given by a statutory provision to an authority or the Government, such discretion is required to be exercised judiciously and when it effects or likely to effect the property of other rights of aggrieved persons, it can be done only

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by following principles of natural justice. The mere provision of giving a discretion to the Government in the matter of allowing the dismissal with pension or without pension itself contain the observance of principles of natural justice and therefore, we are of considered opinion that the order of denial of pension has been passed by the Government in grave violation of principles of natural justice hence liable to be set aside on this ground also. Our view finds support substantially from the judgments relied upon by the learned counsel for the petitioner.

16. In view of the above reasons we are of considered opinion that OA deserves to be allowed and the order dated 08.04.2011 denying the pension to the petitioner is liable to be quashed/set aside, hence quashed and set aside. Respondents are directed to calculate the petitioner's pensionary benefits and pay him the said pensionary benefits within a period of 08 weeks from the date of receipt of the copy of the order.”,

to submit to the effect that the principles of natural justice had been violated and that the applicant herein had been dismissed without pension without giving him an opportunity to show cause in relation to the non grant of pensionary benefits.

8. Reliance was also placed on behalf of the applicant on the judgment dated 11.04.2014 of the Hon'ble Supreme Court in **MAHINDER DUTT SHARMA vs UNION OF INDIA AND OTHERS** (2014) 11 SCC 684 whereby vide paragraph 18 it was observed to the effect:-

“18. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for

compassionate allowance. We are of the view that the consideration of the appellant's claim was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17-5-1996, was legitimate. The basis, as well as the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25-4-2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28-2-2006, and the order passed by the High Court dated 13-11-2006, are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.”

9. Reliance was also placed on behalf of the applicant on the order dated 29/11/2013 of this Tribunal in ***Ex Cdr Satyavir Singh Payal vs UOI & Ors*** in OA 27/2013, to contend to similar effect that a person who has been dismissed with disgrace is not entitled to receive pension but persons who have been dismissed otherwise than with disgrace from the service are entitled to receive pension if in the opinion of the Central Government, the circumstances warrant awarding of such pension. Reliance in relation thereto was placed by the

applicant on observations in Paras 10, 11 & 12 of the said order which read to the effect:-

*“10. A plain reading of this section clearly provides that a person who has been dismissed with disgrace is not entitled to receive pension. However, in case of those persons who have been dismissed otherwise than with disgrace from the service, they are entitled to receive pension if in the opinion of the Central Government the circumstances warrant awarding of such pension. The quantum of pension payable shall be determined by the Central Government which should not exceed the rate which would have been admissible to him if he had retired on the same date. Therefore, it is wrong to aver that a person who has been dismissed otherwise than with disgrace from the service is not entitled to receive the pension. The petitioner has placed reliance of a judgment of the Apex Court reported in **(2002) 1 Supreme Court Cases 427 titled as Lt. Col.(TS) Harbans Singh Sandhu Vs. Union of India and others.***

The apex court held as under:

"The petitioner, an army officer, had put in about 27 years of service, but on the eve of his retirement was posted as Camp Commandant of the NCC Camp. During this last leg of his career, he was charged with misappropriation and making of false complaints against his superior officers. A general Court Martial, acting under the Army Act, tried him and imposed a punishment under Section 71(d) of the Army Act, 1950. He was cashiered. No further penalty was imposed under Section 71 clause (h). These are agreed facts. The petitioner applied for his pension and gratuity, which come to a substantial sum, as early as 1971. No reply was forthcoming and no payment either. So he filed the present writ petition to compel the Government to pay him what is due by way of gratuity and pension. This was his property and could not be taken away except by due process of law. The only provision of law

pointed out to us by counsel on either side is Section 16(a) of the Pension Regulations, 1961, for the Army. It is found from the records that there is no order passed under the said Regulation nor is it the case of the Union of India in their return that any such order depriving the petitioner wholly or partly of his pension or gratuity has been made by the President. The inevitable consequence is that he is entitled to be paid the entire pension and gratuity under the Rules. We direct the respondent to pay the said sum within three months from today. Accordingly, we allow the writ petition with costs".

*Similar view has been held by the apex court in **(1991) 2 Supreme Court Cases 371, Major G.S.Sodhi. Vs. Union of India.***

"Service Law- Retiral benefits- Army Officer dismissed from service by court martial- No punishment of forfeiture of pension or other service benefits inflicted by court martial- Held, dismissed officer entitled to entire pension, gratuity and provident fund under the rules- Dismissal)".

*11. Hon'ble High Court of Orissa in **O.J.C. No.4318 of 2002, Ex. Lt. Swapan Kumar Mishra Vs. Union of India and others, decided on 29.10.2008** held as under:*

"A cumulative reading of the aforesaid Act and Regulations thus leads to an irresistible conclusion that not only two types of dismissal are provided under the Act- one dismissal simpliciter, and the other dismissal with disgrace, the Regulations also provide how to deal with the question of punishment. Thus there remains no doubt in mind that only those persons dismissed from service with disgrace are not entitled to any pension. On the other hand, an

officer dismissed simpliciter would be entitled to pensionary benefits. The Regulations, however, stipulate that what would be quantum of pension payable to such person has to be decided by the Central Government in the facts and circumstances of the case".

The court also issued following directions:

"In the result this Court allows the Writ petition, quashes the order Annexure-5A and directs the opposite parties to take expeditious steps for calculation of pension of the petitioner from the date of his entitlement and disburse the same to him within a period of six months from service of Writ of this Court".

12. In view of the above, the petition is partly allowed and the respondents are directed to take expeditious steps for calculation of pension of the petitioner alongwith gratuity and leave encashment and disburse the same to him within a period of four months from the date of receipt of copy of this judgment."

10. The respondents, on the other hand, placed reliance on the order dated 04/08/2022 of this Tribunal in **Arjun Singh vs Union of India, through its Secretary and Others**, 2022 SCC OnLine AFT 6295, where the prayers made by that applicant seeking reinstatement, setting aside of the dismissal order and directions to the respondent authorities to give post retiral dues and other consequential benefits was dismissed. Qua the said reliance that the respondents have placed on the order of this Tribunal in **Arjun Singh** (supra), the same is *sub silentio* in

relation to the aspect of consideration of grant of pensionary benefits to that applicant and relates to the circumstances of that case wherein that applicant was dismissed without any show cause notice.

11. Be that as it may, as the dismissal of the applicant has been upheld by this Tribunal vide order dated 30.06.2010 in TA 395 of 2009 which order has been upheld by the Hon'ble Supreme Court vide order dated 23.02.2017 in SLP (C) no 26833 of 2010, all that remains for consideration in the present OA is the claim of the applicant for grant of pensionary benefits submitting to the effect that the rigours of Section 15 (1) of the Navy (Pension) Regulations 1964 do not apply to the instant case, in as much as the applicant was not dismissed with disgrace from Service.

12. Regulation 15 of the said Regulations read to the effect:-

“15. Officers dismissed, discharged, etc. - (1) No pension shall be granted to an officer who is dismissed with disgrace from service.

(2) In the case of an officer who is dismissed otherwise than with disgrace from the service, the question whether any pension shall be granted and if so, the rate of such pension shall be decided by the Central Government, provided that the pension, if granted shall not exceed the rate which would have been admissible to him if he had retired on the same date.

(3) An officer who is discharged from service or is called upon to retire or to resign or, in the event of his

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refusing to do so, is retired from the service, may, at the discretion of the Central Government, be granted a pension at a rate not exceeding that which would have been admissible to him if he had retired on the same date.”

13. Undoubtedly, the impugned order dated 26.10.2005 does not state that the applicant was dismissed with disgrace from service. However, the said order dated 26/10/2005 makes it clear that it is issued by order and in the name of the President whereby **the applicant has been dismissed from service without Pension** and that the applicant has been so dismissed, taking into account the nature and gravity of his misconduct whilst in service which was found and it having been concluded that the continuation of the applicant in service was not desirable in the interest of the State and that the applicant had been committing undesirable activities prejudicial to the interest of the State which had been brought to the notice of the Government.

14. In the circumstances that the applicant was dismissed without pension and it having been categorically so observed vide the impugned order dated 26.10.2005, the facts of the instant case are not in *pari materia* with the case before the Hon'ble Supreme Court in **LT. COL. (T.S.) HARBANS SINGH**

SANDHU (supra), wherein it has been observed to the effect in relation to the Pension Regulations, 1961 for the Army that the pension and gratuity could have been deprived of, **only vide an order made by the President in the instant case.** The impugned order dated 26.10.2005 is in the name of the President of the country dismissing the applicant from service without pension.

15. Taking into account that the words '**dismissal from disgrace**' are not mentioned in the impugned order dated 26.10.2005, in view of the factum of the dismissal of the applicant from the Indian Navy having been upheld by the Hon'ble Supreme Court, in view of the reasons of his dismissal for acts for activities not desirable and activity not desirable in the interest of the State and activities which were prejudicial to the interest of the State, taking into account the factum that the applicant has completed 20 years of service in the Indian Navy before his dismissal, the applicant is granted liberty to seek redressal from the Central Government by moving a representation in relation to his prayer seeking grant of pension in terms of the discretionary powers vested with the Central Government in terms of Regulation 15(2) of the Navy Pension Regulations 1964, which representation if so filed by the

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applicant, be disposed of by the Central Government within a period of three months of the date of receipt of the said application.

16. The OA 739/2017 is disposed of accordingly and MA 609/2017, in view of disposal of the OA 739/2017 calls for no further action and stands disposed of.

Pronounced in the open Court on 15th day of May, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP