

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 780/2018

Ex Hav Gopal Nandan Mishra
VERSUS

.... Applicant

Union of India and Ors.

....Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under :

- “(a) Quash and set aside the impugned letters No. 4260073Y/1/SP/NE dated 23.03.2011 & dated 31.10.2011 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.”

BRIEF FACTS

2. The applicant was enrolled as a Sepoy in the Bihar Regiment of the Indian Army on 12.06.1980. On completion of his basic military training, he was posted to 6 BIHAR with effect from 27.06.1981. The Applicant earned

successive promotion to the ranks of Naik (09.06.1992) and Havildar (29.08.1995).

3. In July 1996, the Applicant's unit was deployed in the Namsai area (Eastern Sector) for Counter Insurgency operations against ULFA militants. On the night of 10/11 July 1996, while on active service, the Applicant was accused of committing House Trespass and Gang Rape under Sections 450 and 376(2)(g) of the Indian Penal Code, read with Section 34. He was tried by a Summary General Court Martial (SGCM) under Section 69 of the Army Act. On 13.01.1998, the Court found him guilty and awarded punishment as under :-

- a) Reduction to the ranks (to the rank of Sepoy),
- b) Rigorous Imprisonment for two years and
- c) Dismissal from service.

4. A mercy appeal dated 22.08.1998, addressed to the President of India, was filed by the applicant through his counsel. The reply thereto was forwarded *vide* Records, The Bihar Regiment letter No. 4260073/1/SP/NE dated 09.10.1998. Thereafter, the applicant filed CWP No. 6128/2002 before the Hon'ble Delhi High Court. *Vide* order dated 30.10.2002, the Court directed the authorities to consider his petition. The same was examined by the Central Government and was formally rejected *vide* Government of India, Ministry of Defence order No. C/06876/DV-3/Vol-II/3320/D/AG dated 27.11.2001, which was intimated to the applicant *vide* letter dated 28.11.2001.

5. On 12.05.2008, a mercy petition for the grant of service pension on humanitarian grounds was submitted by the Applicant's wife. The same was

forwarded to HQ Madhya Bharat Area for recommendations of General Officer Commanding vide letter No. 4260073/1/SP/NE dated 03.06.2008. This was not recommended by the General Officer Commanding (GOC) on 28.06.2008 due to the gravity of the offences (Gang Rape and House Trespass).

6. Moreover, the Applicant also submitted an application to the President, National Human Right Commission through Human Right Organisation, Bhagalpur (Bihar) vide letter No. HRO/1002 dated 26.11.2010. Reply of the same was forwarded to the Applicant by the Records Bihar Regiment vide letter no. 4260073Y/1/SP/NE dated 23.03.2011 informing the applicant that that since he was dismissed from service under Army Act Section 64 (e), he was not eligible for grant of service pension under Regulation 113(a) of Pension Regulations for the Army, 1961 (Part-1) ('the Pension Regulations').

7. He also filed another writ petition bearing No. 6613 of 2014 before the Hon'ble High Court of Patna for grant of pension on humanitarian ground. The Hon'ble High Court vide order dated 11.05.2016 dismissed the writ with liberty to move the appropriate forum and tribunal in this regard. Being aggrieved, the applicant has filed the present OA.

CONTENTIONS OF THE PARTIES

8. Learned Counsel for the applicant submits that the applicant has rendered more than 17 years of service and hence his long service must be considered on sympathetic and humanitarian grounds for the grant of service pension. Learned Counsel further argues that the punishment of dismissal is shockingly disproportionate to his 17 years and 7 months of satisfactory

military service. He asserts that pension is not a bounty but a vested right earned through long service, as established in *Deokinandan Prasad v. State of Bihar* [AIR 1971 SC 1409], given his current state of extreme indigence, where he has sold all ancestral property to fund his legal defense and his family is on the verge of starvation, he pleads for the grant of pension on humanitarian and sympathetic grounds under the discretionary powers provided in Paragraph 113(a) of the Pension Regulations for the Army.

9. Learned Counsel further submits that the charges of house trespass and gang rape were false and fabricated, stemming from a “tirade” by local civilians and police in the volatile insurgency affected Namsai area. He claims that unit personnel often faced the wrath of vested interests while performing counter-insurgency duties. Furthermore, he alleges that the Commanding Officer failed to apply his mind and mechanically remanded him for trial by SGCM without properly scrutinizing the evidence or the circumstances of the deployment.

10. Learned counsel in support of his contentions relies on various judicial precedents, including Hon’ble Supreme Court judgment in *S. Muthu Kumaran v. Union of India* [(2017) 4 SCC 609] and AFT (RB) Chennai judgment in *Naib Subedar Sethurathinam v. UOI* [OA 32/2012], where Courts and Tribunals converted sentences of dismissal into discharge to enable the receipt of pensionary benefits. He argues that such a modification is necessary to remove the social stigma and allow him to live with dignity. He further submits that since he had already completed the qualifying service period for pension, the total forfeiture of his financial security is an irrational and perverse punishment

that ignores his past unblemished record. It has been further argued that in spite of the specific finding of this Tribunal that the applicant has been removed from service and is entitled for pension under Regulation 113 (b) of the Pension Regulations, the Record officer has wrongly denied pension to him.

11. *Per contra*, learned counsel for the respondent submitted that as per para 41(a) of the Pension Regulations for the Army, 2008 (Part-1) '*an individual who is dismissed from service under the provision of Army Act 1950 is not eligible for pension or gratuity in respect of all previous service rendered upto the date of dismissal*,' therefore the applicant is not entitled for service pension or gratuity. He further argued that the discretionary relaxation under Para 113 of the Pension Regulations is reserved for "exceptional cases" and cannot be extended to individuals convicted of such heinous acts, which undermine the institutional integrity of the Armed Forces.

12. Learned Counsel further submitted that the case of the applicant was properly investigated by Army authorities during SGCM. Due to the gravity of offences committed by the applicant i.e. 'House Trespass and Gang Rape', the applicants repeated representations/petitions were rejected by the concerned authorities. It is stated that the prayer of the applicant for conversion of his punishment of dismissal to discharge is misconceived and therefore lacks merit.

ANALYSIS

13. We have heard the learned counsels for both the parties and have perused the record produced before us.

14. Regarding the prayer for setting aside the letters dated 23.03.2011 and 31.10.2011, it is evident from the letter dated 23.03.2011 that it is merely an intimation issued by the Lt Col, Chief Record Officer. The letter states that the applicant's petition dated 26.11.2010, addressed to the Human Rights Organisation, was forwarded by HRD to HQ MoD (Army) and that the decision on his petition had already been communicated to him earlier. The same is reproduced herein below:-

tele mail: 000/ *Impugned Order* REGISTERED POST ANNEXURE A-1 (copy)
Records line Bihar Regiment
PIN - 908765
C/O 56 APO
23 Mar 2011

4260073Y/1/SP/NE

4260073Y Ex Sep
Gopal Nandan Mishra
VIII & PO - Gauripur
Via - Bihpur
Distt - Bhagalpur (BIHAR)
PIN - 852301

FORWARDING OF PETITIONS/COMPLAINT

1. Please refer to your petition dated 26 Nov 2010 addressed to Human Right Organisation received by this office on 28 Feb 2011 from Integrated Headquarters of Ministry of Defence (Army) vide their letter No 89554/MP/Bihar/Inf-6(Pers) dt 17 Feb 2011 through Human Right's Organisation, Bhagalpur (Bihar) letter No HEO/1002 dated 26 Nov 2010.

2. It is intimated that you have been dismissed from service by Summary General Court Martial on 13 Jan 1998 for the offences "House trespass by entering into a house of civilian and Gang Rape". The following punishments were awarded to you by the Summary General Court Martial under Army Act Sec 69 :-

- (a) To be reduced to ranks.
- (b) To suffer rigorous imprisonment for two years.
- (c) To be dismissed from service.

3. Due to dismissal from service you are not entitle for service pension. However, Integrated HQ of MoD (Army) can sanction some part/full service pension if they find your case fit. Accordingly, you had been asked to submit the petition for grant of pension which was processed with HQ MB Area. Maj Gen Gautam Banerjee, the then GOC on 28 Jun 2008 who did not recommend the case to Integrated HQ of MoD(Army), keeping in view of the gravity of offences committed i.e "House Trespass and Gang Rape" as petitioner does not deserve any clemency.

4. The decision on your petition has already been communicated to you vide the following letters :-

- (a) 4260073/1/SP/NE dated 08 Jul 2008.
- (b) 4260073/1/SP/NE dated 08 Mar 2010.
- (c) 4260073/1/SP/NE dated 13 Mar 2010.
- (d) 4260073/RTI/CC/58/NE dated 28 May 2010.
- (e) 4260073/RTI/CC/58/NE dated 19 Jun 2010.

5. In view of foregoing it is again intimated that you are not entitled for service pension as per orders on the subject.

[Signature]
Lt Col
Chief Record Officer
for OIC Records

*5 April 23 April
to man set out - 2
[Signature]*

CTC

15. As regards the prayer for setting aside the letter dated 31.10.2011, it is simply an intimation to the applicant concerning his petition dated 25.07.2011, reiterating that the decision has already been communicated to him seven times. The said letter is reproduced hereinbelow for reference:-

Tele Mil : 6567

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Records The Bihar Regiment
PIN- 908765
c/o 56 APO

4260073/1/SP/NE

21 Oct 2011

Smt Rani Devi wife of
No 4260073Y
Ex Sepoy Gopal Nandan Mishra
Vill : Gauripur
Post : Gauripur
Dist : Bhagaipur (BIHAR)
PIN-852301



FWD OF PETITIONS /COMPLAINT

1. Please refer to your petition dated 25 Jul 2011 addressed to President Secretariat received by this office on 20 Oct 2011 from Integrated Headquarters of Ministry of Defence (Army) vide their letter No 89554/MP/BIHAR/Inf-6 (Pers) dated 04 Oct 2011.

2. It is intimated that your husband ~~has~~ been dismissed from service by Summary General Court Martial on 13 Jan 1998 for the offences "House trespass by entering into a house of civilian and Gang Rape". The following punishment were awarded to your husband by the Summary General Court Martial under Army Act Sec 69 :-

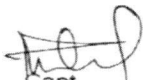
- (a) To be reduced to ranks.
- (b) To suffer rigorous imprisonment for two years
- (c) To be dismissed from Service

3. Due to dismissal from service, he is not entitled for pensionary benefits. However, integrated HQ of MoD (Army) can sanction some part/full service pension if they find your case fit. Accordingly, you had been asked to submit the petition for grant of pension which was processed with Headquarters MB Area. Maj Gen Gautam Banerjee, the then GOC on 28 Jun 2008 who did not recommend the case to Integrated HQ of MoD(Army), keeping in view of the gravity of offences committed i.e "House Trespass and Gang Rape" as petitioner does not deserve any clemency.

4. The decision on your petition has already been communicated to you vide the following letters :-

- (a) 42600073/1/SP/NE dated 08 Jul 2008.
- (b) 42600073/1/SP/NE dated 08 Mar 2010.
- (c) 42600073/1/SP/NE dated 13 Mar 2010.
- (d) 4260073/RTI/CC/58/NE dated 28 May 2010.
- (e) 4260073/RTI/CC/58/NE dated 19 Jun 2010
- (f) 4260073/1/SP/NE dated 23 Mar 2011.
- (g) 4260073/1/SP/NE dated 05 Aug 2011.

5. In view of above, it is again intimated that you are not entitled for service pension as per orders on the subject.


Capt
Record Officer
for OIC Records

CTC
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16. We are constrained to observe that the Applicant, despite being well aware that his repeated representations/petitions seeking the grant of service pension had been rejected and that his post-confirmation petition against the SGCM award had also been rejected still filed the present OA. It is pertinent to observe that repeated applications to the President or other authorities will not revive the cause of action. Once the matter has attained finality, the same cannot be reopened by filing a belated OA. Moreover, Para 113 of the Pension Regulations 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 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.

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

17. Further, with regard to the applicant's prayer for quashing the dismissal order dated 13.01.1998 and for a direction to the respondents to convert the punishment of dismissal into discharge, it is observed that the applicant had

earlier filed CWP No. 6128/2001 before the Hon'ble High Court of Delhi seeking disposal of his post-confirmation Petition. The said writ petition was disposed of *vide* order dated 30.10.2002, with a direction to the concerned authority of the respondents to consider his petition and pass an appropriate order within two months. Pursuant thereto, the petition was rejected *vide* Government of India order dated 27.11.2001. This rejection order is not under challenge in the present OA, as is evident from Para 1 thereof, wherein the applicant has only challenged the letters dated 23.03.2011 and 31.10.2011, by which the respondents denied the grant of pension on the ground that he had been dismissed from service.

18. Therefore, we find that the prayer is misconceived, as no legal right of the applicant has been infringed by merely informing him regarding rejection of his earlier applications.

19. This application is devoid of merit and is, accordingly, dismissed.

20. There shall be no order as to costs.

21. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on 6th day of January, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/SJ/