

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
MUMBAI**

ORIGINAL APPLICATION No. 109 of 2015

Tuesday, this the 23rd day of August, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

No 7070253 Cfn (FTR ARMT FD) Appa Rao Bhosale, R/o Village-Phondashiras, Post Office-Pute, Taluka-Malshiras, District-Solapur, N.R.S.-Baramati, State-Maharashtra.

..... Applicant

Ld. Counsel for the : **Mrs Jaimala Ostwal**, Advocate
Applicant

Versus

1. Union of India, represented by its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Army Headquarters, Integrated HQ of MoD (Army), New Delhi.
3. Chief Record Officer, Vidyut Aur Yantrik Engineer, Abhilekh Karyalay, OIC, EME Records, Secunderabad-500021.
4. Commanding Officer, 11 Mountain Artillery Regiment, C/o 56 APO.
5. The Principal Controller Defence Accounts (P), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri AJ Mishra**, Advocate
Respondents. Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 in that the applicant has prayed for the following reliefs:-

(a) To set aside the order of dismissal of the applicant u/s 39 (b) of the Army Act, 1950.

(b) To grant him service pension and other consequential benefits.

(c) To compensate applicant by paying all his dues till retirement age including pension, gratuity and other benefits.

(d) To grant him status of ex-serviceman.

(e) Cost.

2. Brief facts of the case are that the applicant was enrolled in the Army (Corps of EME) on 02.08.1963. During the course of his service he was punished on five occasions mainly due to overstayal of leave. While posted with 11 Mountain Regiment, he overstayed leave for 95 days (29.07.1982 to 31.10.1982). On rejoining he was tried by Summary Court Martial (SCM) and awarded Rigorous Imprisonment (RI) for 06 months in civil jail and dismissal from service. Accordingly, he was dismissed from service w.e.f. 01.12.1982 (AN). After dismissal from service, he was paid his due AFPP fund and maturity benefits of Army Group Insurance Fund (AGIF). The applicant was kept in military custody from 31.10.1982 to 01.12.1982 and thereafter, he was

transferred to civil jail, Solapur (Maharashtra). Later, his unexpired portion of RI was remitted by General Officer Commanding-in-Chief (GOC-in-C), Southern Command vide order dated 05.02.1983. During the course of his imprisonment he submitted petition dated 13.02.1983 for grant of financial assistance and pensionary benefits. Consequently applicant made several petitions for grant of pensionary benefits and all petitions were replied to, explaining to him reasons for non-grant of pension/gratuity. In the year 2011, applicant preferred a mercy petition addressed to Chief of the Army Staff (COAS) for grant of pensionary benefits which was responded suitably. On 19.08.2015 he submitted a legal notice and thereafter filed this O.A. for grant of service pension and consequential benefits.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 02.08.1963. He further submitted that during the course of his service applicant served at various units/stations like Agra, Mizoram, Ambala, Secunderabad, Nagpur, Bhopal, Deolali and was awarded medals for the service rendered in different parts of the country. It was further submitted that while he was on leave for the period 04.05.1982 to 08.07.1982 since he was falsely implicated in Sections 323 and 34 of IPC, therefore he could not rejoin duty in time after expiry of leave. He further submitted that due to false criminal case, the applicant was completely disturbed as his wife

was also suffering from liver complications and underwent treatment at Naval Hospital, Mumbai.

4. Learned counsel for the applicant further submitted that the applicant rejoined his unit on 31.10.1982 accompanied by his younger brother, as he was mentally stressed. He was sent to Military Hospital, Deolali Camp where doctors declared him fit under influence of the Commanding Officer. It was further submitted that the applicant had requested the Commanding Officer to take a lenient action against him as he was the sole bread earner of his family and had already completed qualifying service for service pension, however this plea was ignored by the Commanding Officer and he was dismissed from service. Learned counsel for the applicant further submitted that the applicant was dismissed from Army under Section 39 (b) of the Army Act, 1950 which provides that to hold a person guilty under this section such person must overstay leave granted to him 'without sufficient cause'. Thus, the said provision implies that 'sufficient cause' is the essential ingredient to hold a person guilty under this Section of the Act. However, for the reasons stated aforesaid the applicant could not resume duty in time due to his involvement in false criminal case and ill health of his wife and the circumstances leading to overstay of leave were deliberately disregarded by the Commanding Officer and he was dismissed from service when he had put in 19 years and 122 days service. It was further submitted that the Commanding Officer followed all

procedures mechanically and dismissed him from service illegally in violation of Section 120 (4) of the Army Act, 1950 which provides that lesser punishment could have been awarded.

5. Learned counsel for the applicant further submitted that neither any charge sheet nor any papers related to SCM were provided to the applicant to enable him to defend his case. It was further submitted that procedure prescribed in policy letter dated 28.12.1988 was not followed in letter and spirit. Further, it was pleaded that the applicant was not served with Show Cause Notice prior to holding SCM and dismissal from service as an undesirable soldier. He submitted that length of service i.e. more than 19 years ought to have been considered by the respondents while awarding punishment 'dismissal from service' in terms of policy letter dated 28.12.1988 which prescribes that Commanding Officer should not be too harsh with the individuals and due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service and that discharge should be ordered only when it is absolutely necessary in the interest of the service. He pleaded for grant of service pension and consequential benefits to the applicant.

6. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 02.08.1963. While serving with various units, the applicant committed various offences under the Army Act for which he was

awarded punishments. He further submitted that while serving with 11 Mountain Regiment, the applicant during the year 1982 overstayed leave for 95 days and on rejoining he was tried by SCM and awarded RI for 06 months in civil jail and dismissal from service w.e.f. 01.12.1982 (AN). He further submitted that since he was dismissed from service he is not eligible for service pension in terms of para 113 (a) of Pension Regulations for the Army, 1961 (Part-I). It was further submitted that he was paid his AFPP fund and AGI maturity benefits. It was further submitted that after release from civil prison applicant submitted numerous representations for grant of pension and gratuity and all the representations were replied, intimating him about non entitlement of service pension and gratuity.

7. Learned counsel for the respondents further submitted that the applicant was lawfully dismissed from service on disciplinary grounds as he was consistently showing/displaying poor sense of discipline and was a stigma for a disciplined organization like Army. He pleaded for dismissal of O.A.

8. Heard Mrs Jaimala Ostwal, learned counsel for the applicant and Shri AJ Mishra, learned counsel for the respondents and perused the material placed on record.

9. Applicant was enrolled in the Army on 02.08.1963. During the course of his service he was awarded following punishments on the grounds of indiscipline/overstayal of leave:-

S. No	Army Act Section	Offence	Period of offence	Unit	Punishment awarded
1.	39 (b)	OSL (08 days)	15.06.1971 22.06.1971	71 Med Regt	14 days confinement to Lines
2.	39 (b)	OSL (11 days)	26.04.1972 06.05.1972	71 Med Regt	14 days detention in military custody
3.	39 (b)	OSL (94 days)	26.12.1973 29.03.1974	619 EME Bn	25 days imprisonment in military custody
4.	63	An act of prejudicial to good order and mil discipline	30.11.1975	3 TB, 4 Trg Centre	07 days imprisonment in military custody
5.	39 (b)	OSL (06 days)	13.06.1977 18.06.1977	Arty Static Wksp Deolali	Forfeiture of 07 days pay fine

10. While serving with 11 Mtn Regt, he overstayed leave for 95 days and on rejoining from leave, he was tried by SCM and awarded RI for 06 months in civil jail and was dismissed from service w.e.f. 01.12.1982 (AN). Contention of learned counsel for the respondents that applicant is not entitled to pensionary benefits as per para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) is sustainable as it provides that an individual who is dismissed from service under the provisions of Army Act, is ineligible for pension and gratuity in respect of all previous service. For convenience sake the aforesaid para is quoted below:-

"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."

11. In support of their aforesaid contention the respondents vide para 3 of counter affidavit have relied upon the Hon'ble Apex Court judgment passed in Civil Appeal No 3609 of 1996, **Union**

of India & Ors vs Sub Ram Narain. For convenience sake, para 9 of aforesaid judgment is reproduced as under:-

"9. The first sentence of Regulation 113(a) clearly provides that 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 other words a person like the respondent to whom Section 113(a) applies will not be entitled to receive any pension on an order of his dismissal being passed. Clause (b) of Section 113 makes a distinction in the case of a person who is discharged, and not dismissed, under the provisions of the Army Act. In the case of discharge a person remains eligible for pension or gratuity under the said regulation. The latter part of Section 113(a) provides that in exceptional cases the President may, at his discretion, grant service pension or gratuity at a rate not exceeding that for which an individual would have otherwise qualified had he been discharged, and not dismissed, on the same day. Reading Regulation 113 it is clear that in the case of a junior commissioned officer or a person belonging to other rank or a non-combatant (enrolled), he would become ineligible for grant of pension or gratuity on the passing of an order of dismissal. The disentitlement to pensionary benefits is the normal result of a dismissal order. But the President may, in exceptional cases, at his discretion, order the grant of pension. Therefore, if no order is passed by the President then the result is that the dismissed junior commissioned officer remains disentitled to pension or gratuity".

12. Record show that the applicant, while in service, was a habitual offender and kept committing offences repeatedly despite adequate opportunities given to him to improve. He had never shown any respect towards the laid down military norms. It may be appreciated that prolonged unauthorized absence from duty does not only affect the operational and administrative efficiency of a unit but also deprives other soldiers of the unit from timely grant of leave as an unit has to manage its administration by re-shuffling manpower.

13. The Armed forces are known for high standards of discipline and conduct and also responsible for national security and all

members of the organization are expected to maintain a high standard of discipline. An act of indiscipline by any member of the Armed Forces is viewed seriously and is dealt with as per prescribed sections/provisions of the Army Act. In the instant case applicant himself is responsible for his dismissal and not the organization in view of his repeated absence without leave/overstayal of leave.

14. Contention of learned counsel for the applicant that the applicant was awarded various medals of Army Service. In this regard respondents contention is that medals in the Army are awarded to all ranks of the Army on completion of certain length of service or due to service in certain qualifying areas. We are in agreement with the submission of learned counsel for the respondents and we find that such medals are awarded in the Army to all personnel in various ranks on completion of certain length of service. However, mere award of these medals does not mean that the applicant was a disciplined soldier. In the instant case the applicant was consistently showing/displaying poor sense of discipline and was a stigma for a disciplined organization like Army. Hence, keeping in view of his past record it became necessary and expedient to take disciplinary action against the applicant for the efficient functioning of the Army where discipline is of paramount importance.

15. Thus, keeping in view of his record with regard to frequent overstaying leave, we are of the view that the applicant is a

habitual offender. Had he proved to be a disciplined soldier, he would never have been awarded several punishments. Records indicate that on previous occasions he was dealt with leniently by awarding lesser punishments. He was given ample opportunities to show improvement in his discipline and conduct which he did not do. He was finally tried by SCM and dismissed from service strictly as per laid down procedure, as he did not have any regard for the military law and discipline.

16. Learned counsel for the applicant has pointed out that as per policy letter dated 28.12.1988, no preliminary enquiry was conducted. In this regard submission of the respondents is that since the applicant committed offences which had documentary evidence, hence action taken by the competent authority is within the rules framed. In this context we have perused para 5 of policy letter dated 28.12.1988 and we find that it is applicable for removal of undesirable and inefficient JCOs, WOs and OR. In the instant case the applicant was dismissed by SCM and provisions of said letter are not applicable in such circumstances. The applicant was not dismissed on account of earning red ink entries but for an offence committed by him under Section 39 (b) of Army Act, 1950 due to overstay of leave.

17. So far as the claim for service pension and gratuity is concerned, a dismissed Armed Forces person is not considered as an ex-serviceman and therefore, he is not entitled to any pensionary benefits as per provisions contained in Regulation 113

(a) of Pension Regulations for the Army, 1961 (Part-I) because his entire service stood confiscated.

18. In view of the above, the Original Application has no merit, deserves to be dismissed and is accordingly **dismissed**.

19. No order as to costs.

20. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 23.08.2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)