

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 89 of 2014

Thursday, the 27th day of August, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

1361173-H, SPR P.Paramasivam
Nethapakkam Village
S.V.Nagaram Post Office, Arni Taluk
Tiruvannamalai District, Pin : 632 317

...Applicant

By Legal Practitioner:
Mr.M.Selvaraj

vs

1. Additional Dte Gen Personnel Services
Adjutant General's Branch, Army Headquarters
DHQ PO, New Delhi – 110 011
2. Chief of Army Staff
Army Headquarters (AHQ)
Defence Headquarters (DHQ)
Integrated Headquarters (IHQ), New Delhi – 110 011
3. Principal Controller Defence Accounts (Pension)
Droupathi Ghat, Allahabad, U.P., PIN: 211014
4. The Officer in-Charge, Records
Madras Engineering Group
PIN: 900493, C/o 56 APO
5. The Commanding Officer
570(1) TPT PI (GREF), C/o 99 APO
6. The Commandant
MEG Centre, Bangalore
7. Union of India, rep by Secretary
Ministry of Defence, New Delhi – 110 011

...Respondents

Mr.M.Dhamodharan, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Spr P.Paramasivam has filed this O.A. seeking to call for the records pertaining to the order dated 28.06.2013 passed by the 4th respondent in confirming the order of dismissal from service dated 20.10.1993 and quash the same and consequentially reinstate him into service till he completes pensionable service with all other attendant benefits.

2. Briefly, the applicant states that he was enrolled in the Army on 12.11.1974. He would state that while driving a military vehicle, an accident occurred to a soldier of the Signals Regiment on a two-wheeler and the said soldier sustained injury on his left leg and it was amputated. The applicant states that he was punished for the said accident and, thereafter, he was transferred to 570 (1) Transport Platoon (GREF), Nagaland. The applicant would claim that this posting was a punishment posting and that while he was serving in the said new Unit, he was humiliated and harassed. The applicant, therefore, requested the Commanding Officer of 570 (1) Transport Platoon (GREF) to permit him to address his grievances before the MEG Centre. However, he was not granted permission. Therefore, the applicant says that he went on his own accord to put forth his grievances requesting for posting to some other Unit or for a home posting. However, his request was not granted and, therefore, he had no other alternative except to leave the Unit in July 1983. The applicant states that for declaring the applicant a deserter, Army Rule 17 was not complied with and the respondents made no effort to apprehend him and produce him before the Court Martial. Hence, declaring the applicant a deserter is void and a violation of Army Act and Army Rules and, therefore, the consequential discharge

order is also void. The applicant states that even though he was not intimated about his dismissal, a discharge certificate was received by the applicant in the year 2003. The applicant claims that he has completed 18 years of service at the time of his dismissal which is sufficient for getting service pension. In view of the foregoing, the applicant would request the Tribunal to call for the records pertaining to his dismissal and discharge from service and consequentially direct the respondents to reinstate him in the service till he completes pensionable service and grant him service pension.

3. The respondents in their reply statement have stated that the records pertaining to the applicant have been destroyed during the year 2010 after its preservation period of 25 years, being a non-pensioner. Therefore, the averments cannot be confirmed in the absence of documentary evidence. In accordance with the Long Roll available, the applicant was enrolled in the Army on 12.11.1974 and was dismissed from service under Section 20(3) of Army Act. As per provisions contained in Rule 113 (a) of Pension Regulations for the Army 1961 (Part I), an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service. Further, the applicant had put in only 8 years, 11 months and 8 days of service at the time of dismissal whereas the minimum period of service required for earning service pension is 15 years. Since the applicant had not completed the minimum qualifying service of 15 years, he was not eligible to get service pension within the framework of rules on the subject. The applicant was absent without leave with effect from 04.07.1983 and as per the existing policy, a person who has deserted from the Army from a field area has to be dismissed after 10 years and, accordingly, the applicant was dismissed on 20.10.1993 in accordance with the provisions of Army Act Section 20 (3) read in

conjunction with Army Rule 17. The contention of the applicant that he had completed 18 years of service is totally false as at the time of his desertion, the applicant had only 8 years, 11 months and 8 days of service. In view of the foregoing, the respondents would submit that the application be dismissed being devoid of merit.

4. We have heard the arguments of Mr.M.Selvaraj, learned counsel for the applicant and Mr.M.Dhamodharan, learned Senior Central Government Standing Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents and perused all the documents that were placed before us.

5. The fact that the applicant joined the Army on 12.11.1974 and that while he was posted at 570 (1) Transport Platoon (GREF), Nagaland he absented himself without leave and subsequently declared a deserter and that he was dismissed from service after the mandatory waiting period of 10 years, on 20.10.1993 in accordance with Section 20(3) of Army Act 1950, are not disputed. The applicants contention that while he was posted at 570 (1) Transport Platoon (GREF) Nagaland, he was harassed and, therefore, came to MEG Centre, Bangalore and sought a posting which was not given and, therefore, he had to absent himself without leave and thereafter he did not report to the Army are also not disputed. The respondents have stated that the documents of the applicant have been destroyed in 2010 after a lapse of 25 years of his desertion. On the other hand, the learned counsel for the applicant would state that since the applicant was dismissed only on 20.10.1993, the documents ought to have been preserved and should not have been destroyed in 2010, as according to him the 25 years period would be completed only in 2018. The fact of the matter is that all documents pertaining to the applicant has been

destroyed and, therefore, it would not be an impediment to adjudicate rival claims. However, sufficient correspondence and documents are available to show that the applicant had deserted on 04.07.1983 and was declared a deserter. At the time of desertion, as the applicant had been serving in a field area, his dismissal could only be ordered after 10 years, the mandatory waiting period. We observe from the correspondence produced before us that the applicant had been in communication with the Adjutant General's Branch (Respondent No. 1) for the settlement of his accounts since 14.07.1987 and that correspondence would show that he continued to be in touch with MEG Records (Respondent No.4) upto 1989 and we also note that respondent No.4, *vide* letter dated 22.05.1989 and 15.06.1989 advised the applicant that his AFPP fund and balance in AGI can only be claimed after July 1993, i.e., after completion of the dismissal action. In the same letter, the respondents state that on 06 July 1989 he was also required to report to Depot Bn MEG Centre Bangalore to enable them to take further necessary action. However, the applicant did not take any action to report for duty. We deduce from the correspondence that the applicant was only interested in claiming the payment of balance in respect of AFPP, AGIF accounts that were due to him. Therefore, the claim of the learned counsel for the applicant that no efforts were made to apprehend the applicant and produce him before the Court Martial proceedings cannot be a reason to declare the consequential dismissal as void. Further, the applicant would claim that prior to his dismissal under Section 20(3) of the Army Act coupled with Army Rule 17, the applicant was not given a Show Cause notice and, therefore, the dismissal could be declared as void. For a better understanding, Army Rule 17 is reproduced below:

*“[17. **Dismissal or removal by Chief of the Army Staff and by other officers.** – Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section(1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:*

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.]

6. It is clear from the above that normally in a case where a person is to be dismissed from service he ought to be given a Show Cause notice and reasonable time to state as to why he cannot be removed from Service. However, a *proviso* also exists that the officer competent to order dismissal, may order dismissal or removal without complying with the procedure set out in the rule if in his opinion it is not expedient or reasonably practicable to comply with the provisions of the rule. Further, in such cases where the rule has not been followed, such cases should be reported to the Central Government.

7. We observe from the documents that a Show Cause notice was not issued to the applicant prior to his dismissal. Normally, in the case of deserters, it is not possible to issue Show Cause notice as the whereabouts of the deserters are not known. However, in this case, since the applicant was in correspondence with the Record Office and Army Headquarters for his dues, his whereabouts were known till the year 1989 and, therefore, a Show Cause notice could have been issued before issuing an order of dismissal. Hence, there is some merit in the claim of the learned

counsel for the applicant. Per contra, the respondents would argue that the applicant had no intention of returning back to the service even after 10 years. His only plea was for the payment of balance of Provident Fund and Group Insurance fund and he was aware that if he had reported to the Army after his long absence he was liable to be punished for the offence of desertion. Even though he was dismissed from service in 1993, he did not make any claim thereafter stating that he was not issued with a Show Cause notice before dismissal. It is only in the year 2008, full 15 years after dismissal in the year 1993 that he had started requesting for pension. The applicant in his letter dated 28.05.2008, had admitted his desertion from service and owing to difficult financial situation, has sought service pension on grounds of mercy . Relevant extracts of the applicant's letter dated 28.05.2008 is reproduced below:

“xx

xx

xx

But due to shortage of men, my request was not considered. Instead I was told to report to 570(1) Tpt pl (GREF) which was not agreeable to me due to the prevailed physical and moral condition at that time. Hence I deserted, the hard earned service due to moral sick and reached home.

Now since then my desertion almost 25 years have been completed and I am aged 53 years. Since then my desertion in 1983, I have pulled my life so far, as a Driver on daily wages, whenever work is found.

Now my health is not permitting me in Driving. Now my family besides self having a wife, a daughter and two sons all are below the ages of 26 years.

Now I am finding it extremely difficult to pull on the life.

In view of the above, I pray pension on mercy and sympathetic grounds by forgiving the wrong I did while in service.

xx

xx

xx”

8. Normally, in such case, the principles laid down by the Apex Court and the Principal Bench regarding long delays and laches in filing applications of this nature would apply. However, considering the financial condition of the applicant and the fact that it would have been appropriate for the respondents to have issued a Show Cause notice to the applicant under Army Rule 17, since his last known address was available, we consider it a fit case to be considered on principles of natural justice and mercy. Therefore, we are inclined to convert his dismissal from service into a discharge from service. In either case, he cannot rejoin service. However, in the case of discharge from service, he would be entitled to service gratuity / pension if otherwise eligible. The applicant, at the time of his desertion and subsequent dismissal from service had a qualifying service of 8 years, 11 months and 8 days. The minimum service required for grant of pension is 15 years of qualifying service. Therefore, service pension cannot be allowed. However, he is eligible for service gratuity and other benefits as entitled.

9. In fine, the order of dismissal from service dated 20.10.1993 is converted into one of 'discharge from service'. The applicant is entitled to service gratuity, DCRG and any other benefits if otherwise eligible. The arrears shall be paid within a period of 3 months from the date of this order. Failing to do so, 9% interest shall be paid on the arrears.

10. The application is allowed to that extent. No costs.

Sd/-
Lt Gen K Surendra Nath
Member (Administrative)

27.08.2015

Sd/-
Justice V.Periya Karuppiah
Member (Judicial)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. Additional Dte Gen Personnel Services
Adjutant General's Branch, Army Headquarters
DHQ PO, New Delhi – 110 011
2. Chief of Army Staff
Army Headquarters (AHQ)
Defence Headquarters (DHQ)
Integrated Headquarters (IHQ), New Delhi – 110 011
3. Principal Controller Defence Accounts (Pension)
Droupathi Ghat, Allahabad, U.P., PIN: 211014
4. The Officer in-Charge, Records
Madras Engineering Group
PIN: 900493, C/o 56 APO
5. The Commanding Officer
570(1) TPT Pl (GREF), C/o 99 APO
6. The Commandant
MEG Centre, Bangalore
7. The Secretary
Ministry of Defence, New Delhi – 110 011
8. Mr.M.Selvaraj
Counsel for the applicant
9. Mr.M.Dhamodharan, SCGSC
Counsel for the respondents
10. Officer in-Charge
Legal Cell
ATNK & K Area,
Chennai-600009.
11. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.89 of 2014

Dated : 27.08.2015