

(2019) 12 AFT CK 0029

In the Armed Forces Tribunal

Case No : Original Application No. 42 Of 2012, Miscellaneous Application No. 1300, 1344, 1377, 1744 Of 2019

Azam Ansari

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 15(2), 31

Air Force Rules, 1969 — Rule 16

Pension Regulations For The Air Force, 1961 — Regulation 16, 102, 102(a), 216(2)

Citation : (2019) 12 AFT CK 0029

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : S.D. Windlesh

Final Decision : Dismissed

Judgement

1. This O.A has been filed by the applicant invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act and the reliefs sought in the

O.A read as under:

Direct the respondents to grant/release pension, commutation of pension, gratuity and other entitled benefits, including canteen and medical facilities

(self and dependents) to the applicant forthwith on account of his putting in long service of more than 17 years, either with effect from 18.11.2009

(date on which his entry was banned in office and not allowed to join his duties) or from 15.01.2010 (date on which the Hon(ble Supreme Court gave

specific liberty to the applicant to pursue for his pension benefits) or from 03.07.2010 (date on which the applicant was dismissed from service by the

District Court Martial).

2. The facts in a nutshell would go to show that on 15.10.1992, the applicant was enrolled in the Indian Air Force as an Airman. He is said to have

sought premature discharge from service on completing pensionable service on four occasions viz. on 12.03.2008, 03.07.2008, 08.10.2008 and

20.03.2009. It is the grievance of the applicant that all the four representations were rejected arbitrarily by the respondents. In the meanwhile, the

applicant got involved in certain acts of commission and omission and, therefore, six charges were levelled against him and subsequently, in a District

Court Martial (DCM) held against him, he was sentenced (i) to suffer rigorous imprisonment for one year; (ii) to be dismissed from service; and (iii) to

be reduced to the ranks for six charges. While confirming the findings and sentence of the DCM, the AOC-in-C, HQ WAC reduced the sentence to

eight months' rigorous imprisonment. The applicant challenged his dismissal and sentence by filing an application before this Tribunal through O.A No.

74 of 2012, which was dismissed and the dismissal and the sentence awarded were upheld. The applicant challenged the same before the Hon'ble

Supreme Court by filing Criminal Appeal No. 538 of 2016 and on 15.06.2016, the Hon'ble Supreme Court disposed of the said criminal appeal and

passed the following order:

Admitted.

Heard learned senior counsel for the appellant and learned counsel for the respondents.

We do not find any ground to interfere with the impugned judgment except for directing that the custodial sentence awarded to the

appellant shall stand reduced to the period already undergone.

Accordingly, the appeal is disposed of

Application for exemption from surrendering is disposed of as having become infructuous.

From the aforesaid order, it is clear that the Hon'ble Supreme Court did not find any ground to interfere with the judgment of the Tribunal, as a

consequence thereof, the punishment of dismissal and the sentence awarded attained finality. However, the custodial sentence, as directed by the

DCM was reduced to the period already undergone by him. As things stood therein, the applicant submitted applications on various dates i.e.

08.10.2010, 07.05.2011 and 10.05.2011 and contended that since there has

been amendment in the Pension Regulations as applicable to the Air Force, a dismissed employee is also entitled to pension and, therefore, the applicant is stated to have applied to the Hon'ble President/Central Government for granting him service pension and other retiral benefits. Contending, inter alia, that the applicant is entitled to pension as per the amended provisions as detailed in the order dated 25.04.2001, this O.A has been filed.

3. The applicant, who appears in person, took us through various facts and tried to demonstrate that once Regulations 16 and 102 of the Pension

Regulations for the Air Force 1961 (Part I) has been amended, even a dismissed Airman is entitled to pension and denying pension to the applicant on

the ground of his dismissal from service is a grave error committed by the respondents. It is argued that the respondents have not considered the case

of the applicant for grant of pension as per the Statutory Regulation and in a discriminatory manner, pension is being denied to him. In support of his

contentions, various judgments have been referred to in the written submission filed by the applicant and the additional written submission subsequently

filed to contend that mere dismissal from service cannot be a ground for denying pensionary benefit to the applicant and in more than ten identical

cases referred to in the written submission and the additional written submissions, various Benches of this Tribunal, High Courts and the Hon`ble

Supreme Court have granted pension to similarly situated persons and the applicant is also entitled to pensionary benefits. The applicant also took us

through certain issues pertaining to the allegations made against him, the charges levelled against him and tried to contend that he was harassed or

victimized and was dealt with in an arbitrary and unreasonable manner and, therefore, he may be granted the reliefs claimed in the O.A.

4. The respondents have refuted the aforesaid contentions and argued that as per the Statutory Regulations, a dismissed Airman is not entitled to

pension and gratuity. However, a discretion has been conferred on the Honble President and the Government of India to grant pension to a dismissed

Airman in certain exceptional circumstances and in the case of the applicant, no exceptional circumstances are made out and no direction as prayed

for can be issued. It was the case of the respondents that for the purpose of exercise of the discretion, in this case, no exceptional circumstance is

made out and, therefore, the competent authority has acted in accordance with

law, the same need not be interfered with.

5. Learned counsel for the respondents distinguished each and every judgment relied upon by the applicant on the ground that those were cases where primarily, on account of the Statutory Provisions as were applicable or finding the punishment of dismissal to be too harsh in the judicial proceedings, a lesser punishment has been awarded. In the present case, the punishment awarded by the competent authority has been upheld not only by this Tribunal, but also by the Honible Supreme Court. Neither this Tribunal nor the Honible Supreme Court found the punishment to be harsh or disproportionate and, therefore, no direction as prayed for by the applicant can be granted, as the same is beyond the scope of judicial review permissible.

6. We have heard the learned counsel for the parties at length, have perused the documents and material available on record.

7. Before advertng to the various questions involved in the matter, it would be appropriate to take note of the statutory provision viz. the Pension

Regulations for the Air Force, 1961 (Part I) amended and contained in the circular dated 25.04.2001 issued by the Deputy Secretary to the

Government of India. For the sake of convenience, the entire circular, based on the amendment to Regulations 16 and 102 of the Pension Regulations,

is reproduced hereunder:

25-4-2001

To

The Chief of the Air Staff

Sub: Amendment to Regulations 16 and 102 of the Pension Regulations for the Air Force, 1961, Part-I

Sir,

1. I am directed to state that under the provisions of Regulations 102(a) of the Pension Regulations for the Air Force (Part I), 1961 as

amended vide CS No.71/IV/67 an airman who is dismissed or removed under the provisions of the Air Force Act is ineligible for pension and

gratuity in respect of all previous service though in exceptional cases, the President may at his discretion, grant pension gratuity at a rate

not exceeding that for which he would have otherwise qualified had he been

discharged on the same date. Similar provision in respect of Commissioned Officers do not exist vide Regulation 16 of the Pension Regulations for the Air Force (Part-I), 1961. The disparity in the provisions has been engaging attention of the Government for some time past.

2. It has now been decided that all Indian Air Force Personnel including commissioned officers who are cashiered/dismissed under the provisions of Air Force Act, 1950 or removed/compulsorily retired under Rule 16 of AF Rules, 1969 i.e. as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, the Competent Authority on submission of an appeal to that effect may at his discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had the individual so cashiered/dismissed/removed been retired discharged on the same date in the normal manner,

3. An individual who is compulsorily retired or removed on grounds other than misconduct or discharged under the provisions of Air Force Act, 1950 and the rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will also apply to cases of dismissal/removal.

4. All appeals to the Competent Authority in this regard will be preferred within two years of the date of cashiering/dismissal/removal.

5 The Competent Authority both for Commissioned Officers and for PBORs for Regulations 16 and 102 of the Pension Regulations for the Air Force, 1961 will be the President of India.

6. The Pension Regulations for the Air Force will be amended in respect of the above provisions if? due Course.

7 The provisions of this letter shall come into effect from the date of issue of this letter. However, past cases will be decided as hither-to-fore.

Yours faithfully,

Sd/-

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(Amrit Lal) Deputy Secretary to the Government of India (emphasis supplied)

A dose scrutiny of the aforesaid statutory provision would indicate that when an

Airman is dismissed or removed from service under the provisions of the Air Force Act, he is not eligible for pension in respect of all previous service. However, in exceptional circumstances, the President may, in his discretion, grant pension and gratuity to such an Airman at a rate not exceeding a particular limit as indicated in Para 1 of the circular in question. Thereafter, in Para 2, it is clearly stipulated that all Indian Air Force personnel, including commissioned officers who are cashiered/dismissed under the provisions of the Air Force Act, 1950 or removed / compulsorily retired under Rule 16 of the Air Force Rules 1969 i.e. as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. However, in exceptional cases, the competent authority may, on submission of an appeal, in his discretion, grant pensionary benefits.

8. According to the applicant, in view of the aforesaid provision, he had filed representations on 08.10.2010, 07.05.2011 and 10.05.2011, but they have not been considered and pension has not been granted to him.

9. The question is, as to whether the discretion available to the competent authority to grant pension and gratuity in exceptional circumstances, as is provided for in the provisions referred to herein above, can be enforced on directions by this Tribunal. It is a well settled cardinal principle of law that when discretion is available to a competent authority, by virtue of the statutory powers vested in him, he is entitled to exercise the discretion in a manner permissible under law and the exercise of such discretion by the competent authority cannot be subject to judicial review or scrutiny unless and until arbitrariness or discrimination in exercising the discretion or violation of statutory rules or regulations are pointed out. Normally, in the absence of these factors being established, judicial review is not permissible.

10. In this case, the applicant wants a direction to be issued primarily on the ground that in many of the cases referred to, directions have been issued by the Honble Supreme Court, various High Courts and this Tribunal and, therefore, in the case of the applicant also, such a direction can be issued.

However, nothing was canvassed or brought to our notice at the time of hearing, on the basis of which discretion exercised in the case of the applicant

by the competent authority, can be said to be arbitrary, unreasonable or discriminatory in nature. The claim of the applicant is solely based on the judgments relied upon, which we will advert to consider at a subsequent stage in

our order.

11. At this stage, it would be appropriate to take note of the fact that after the applicant was visited with the punishment on 20.07.2010 in the District

Court Martial, whereby he was dismissed from service with imprisonment for eight months' rigorous imprisonment and reduction in rank for six

charges, the consequential effect of this punishment is that the applicant was ineligible for pension in view of the provisions contained in Regulations

16 and 102(a) of the Pension Regulations as applicable to the Air Force, The statute categorically provides that an Airman, who is dismissed from

service under the provisions of the Air Force Act, is ineligible for pension and gratuity. It is, therefore, clear that under the statute, the applicant was

ineligible for pension. However, discretion was available to the competent authority by virtue of the amendment to the statutory provision brought

about vide C.S No. 71/IV/67 to grant pension in exceptional circumstances as a discretionary measure.

12. Be that as it may, the applicant challenged his dismissal before a Coordinate Bench of this Tribunal by filing O.A No. 74 of 2012 and, as already

indicated herein above, the same was dismissed. Further challenge to the action before the Hon'ble Supreme Court in Criminal Appeal No. 538 of

2016 also met with the same fate and accordingly, in the judicial proceedings before this Tribunal and before the Hon'ble Supreme Court, the

punishment imposed against the applicant stood upheld and there is nothing available on record to suggest that in any manner, whatsoever, either this

Tribunal or the Hon'ble Supreme Court made any observation that the punishment was disproportionate or warranted any modification or dilution.

13. Once the punishment imposed upon the applicant had attained finality after the culmination of the judicial proceedings, the applicant claimed

pensionary benefits by approaching this Tribunal and after withdrawing the same, he approached the Delhi High Court and the Hon'ble Supreme

Court. Both the Delhi High Court and the Hon'ble Supreme Court granted liberty to the applicant to claim pensionary benefits availing such remedies

as may be permissible under law.

14. Under these circumstances, the only question warranting consideration now by us in these proceedings, is as to whether a direction can be issued

to the respondents to grant pensionary benefits to the applicant, particularly

when the statute prohibits a dismissed Airman claiming pension or gratuity.

The applicant wants us to command the respondents to exercise the statutory discretion available to them in a particular manner and for doing so, he

vehemently relies upon and takes support from various judgments to contend that there are precedents where this Tribunal, the High Court and the

Honible Supreme Court, in spite of punishment being awarded to personnel of the Armed Forces, have granted pensionary benefits on the ground that

pension is the property of a person and it is not a bounty and, therefore, cannot be withheld. That being the submission made before us, it would be

appropriate now to refer to the judgments relied upon by the applicant in this regard and to examine as to whether based on the same any benefit can

be granted to the applicant.

15. The first judgment relied upon is a decision of the Honble Supreme Court in the case of Union of India and others v. Devjee Mishra (2016) 10 SCC

445. In this case, the petitioner, who was working in the Air Force, was alleged to have overstayed leave without sufficient cause and it was also

alleged that he had absented himself without leave. District Court Martial proceedings were held against him and it is seen that he pleaded guilty of

both the charges. After giving him opportunity to reconsider his contention, when he maintained the admission of guilt, the punishment of three months'

rigorous imprisonment followed by dismissal from service and reduction in rank was recommended and imposed upon him. Aggrieved by the same, a

writ petition was filed. It seems that after the decision of the Single and the Division Benches of the High Court, the matter was taken up before the

Honble Supreme Court and the Hon'ble Supreme Court, after going into various aspects of the matter, came to the conclusion that the competent

authority having taken note of all attending circumstances, chose to impose the punishment of dismissal and, therefore, the Court cannot interfere with

such discretionary power. Thereafter, it is seen that based on the amendment to the Air Force Pension Regulations and the circular dated 25.04.2001

reproduced by us herein above, a claim was made for grant of pension and gratuity with respect to the previous service rendered by the petitioner

therein. In Para 20, the Hon'ble Supreme Court reproduced the entire circular dated 25.04.2001 and finally came to the conclusion in Para 21 that the

Court is not inclined to express any opinion with regard to the contention about

grant of pension and gratuity. The Hon'ble Supreme Court found that the discretion is vested in the competent authority to sanction pension and gratuity in exceptional circumstances and, therefore, liberty was granted to the petitioner therein to pursue the remedy available as per the Statute and claim the benefit of pension and gratuity from the competent authority on the basis of the discretion available in the circular referred to herein above.

16. It may be taken note that the judgments rendered by the single Bench and the Division Bench of the High Court were set aside by the Hon'ble

Supreme Court with regard to interfering with the punishment. The aforesaid judgment only reiterates a proposition that if discretion is available with

an authority, the aggrieved person may approach the authority and seek the benefit of discretionary provision from the competent authority apart from

that, the judgment in no manner helps the applicant nor does it lay down any proposition of law, which is indicative of the fact that no direction can be

issued as prayed for. In our view, this judgment is of no help to the applicant.

17. The second judgment relied upon by the applicant is in Ex Commodore Sukhfinder Singh v. Union of India and others (O.A No. 302 of 2013

decided on 23.01.2014). In this case, the applicant was dismissed from service and he was denied pension. The dismissal from service and the denial

of pension to the applicant therein were challenged before the Tribunal and when the matter came up before the Tribunal, the provisions of Regulation

216(2) of the Regulations for the Navy Part II (Statutory) were brought to the notice of the Tribunal and it was found that the statutory provision vi.

Section 15(2) empowers the Central Government as well as the Chief of Naval Staff to dismiss, discharge or retire a Naval Service person, an officer

or a Sailor, by following the statutory regulation and by issuing show cause notice for the purpose of imposing penalty and the Central Government is

empowered to take action on the basis of the recommendation made by the Chief of Naval Staff. In that case, it was found that the Central

Government had passed the order not only for dismissal from service, but also for forfeiture of pensionary benefits. However, the Chief of Naval

Staff, who has the statutory power for recommendation, did not make any recommendation for forfeiture of pension and the Central Government

proceeded to forfeit the pension not only without recommendation of the Chief of Naval Staff, but even without issuing notice to the applicant therein.

It was in these circumstances, interference was made and pension was directed to be given. In the facts of the said case, the statutory rule applicable

is clearly distinguishable and cannot be applicable in the present set of circumstances.

18. The third case relied upon by the applicant is again by a Coordinate Bench of this Tribunal in the case of Ex Cdr Satyvir Singh Payal v. Union of

India and others (O.A No. 27 of 2013 decided on 20.11.2013). In this case also, an official of the Eastern Naval Command is said to have misused the

travel concession voucher issued to him for travelling by train from Chennai to Hisar. The Railway authorities found that the concession voucher was

misused and certain unauthorized persons travelled. The statutory regulations were taken note of and this Tribunal, after appreciating the facts of the

case, while looking to the statutory regulation i.e. Regulation 15(2) of the Pension Regulations, came to the conclusion that the applicant therein was

entitled to pension because the statute permits grant of pension. Even though the judgment does not categorically spell out as to on what ground

pension was granted, the ratio of the judgment indicates that it was done taking note of the statutory regulation applicable, which is entirely different

from the one applicable to the applicant in the present case. In the statutory regulation referred to in the said case, it only states that an officer, who is

dismissed otherwise than with disgrace from service, should be entitled to pension, which has to be decided by the Central Government. In our

considered view, taking note of the specific statutory provision applicable in the present case, the said case cannot be of any help to the applicant and

is not a precedent to grant benefit to the applicant in the backdrop of the statutory rules and regulations as are applicable in the present case.

19. The next judgment relied upon by the applicant is in the case of Ex Sgt R.K. Sutar v. Union of India and others rendered by a Regional Bench of

this Tribunal in O.A No. 35 of 2013 on 17.09.2013. In the said case, the Tribunal evaluated the proceedings held against a Sergeant of the Indian Air

Force under the Indian Air Force Act, 1950. The Tribunal evaluated the evidence that came on record and came to the conclusion that the dismissal

order was passed without appreciating the evidence and that the guilt had not been proved. It also took note of the unblemished service career of the

employee concerned and held that in the facts and circumstances of the case, the punishment of dismissal was not proportionate to the gravity of the

offence alleged, converted it into discharge and then directed for grant of pension. This case also does not help the applicant and is clearly distinguishable.

20. The next case is again a judgment by this Bench rendered in the case of Ex Cpl Madan Kumar 5i1-7gh v. Union of India and others (O,A No. 318 of 2013 decided on 17.10.2016). In the said case also, the Tribunal found that the punishment imposed was too harsh and disproportionate and converted the dismissal from service into one of discharge from service and ordered that pension be granted to the applicant. This again is a case where the Tribunal has interfered with the quantum of punishment, which also does not support the case of the applicant.

21. The next case, the applicant referred to was a Division Bench judgment dated 23.09.2013 in Ex Sgt R.S. Dwivedi v. Union of India and others, which was filed against the decision of this Tribunal in O.A No. 33 of 2013 rejecting the claim of the petitioner for grant of pension and other benefits.

The High Court did not grant any relief to the petitioner therein, but only granted him liberty to submit a representation for grant of pension and the competent authority was directed to consider and take a decision on his representation taking into account the benefits granted to the two persons referred to in the judgment. This case also, in our considered opinion, is of no help to the applicant.

22. The next is a case decided by the Kochi Regional Bench of this Tribunal in O.A No. 88 of 2012 decided on 21.02.2014 in the case of Nk/SHT

Ashok v. Union of India and others. In this case, the employee concerned was subjected to Summary Court Martial and was sentenced to dismissal

from service. The Tribunal, after considering the material available on record, came to the conclusion that looking to the nature of the allegations

levelled and the material that came on record, the punishment of dismissal was too harsh and, therefore, interfered with the quantum of punishment,

substituted it with discharge from service and granted pension. This case is also different from the case of the applicant, inasmuch as in the applicable

case, the dismissal has been upheld by both the Tribunal and the Hon'ble Supreme Court and, therefore, at this stage, the punishment cannot be

substituted by us.

23. The next case was decided by a Coordinate Bench of this Tribunal on

21.03.2012 in the case of Ex Nk (7-5) Manoj Kumar Mishra v. Union of India and others (O.A No. 146 of 2011). In this case also, the Summary Court Martial proceedings relating to dismissal from service was challenged

and here also, the punishment imposed was found to be too harsh and substituted and modified with the reduction in rank and grant of pension.

24. In 5. Muthu Kumaran v. Union of India and others (C,A No. 352 of 2017), the order passed by the Regional Bench of this Tribunal at Jaipur was

challenged before the Honible Supreme Court. The delinquent was a Havildar Clerk in the Indian Army commissioned under the provisions of the

Army Act and a punishment of dismissal was imposed upon him on the charge of accepting illegal gratification. The Hon/bile Supreme Court, after

examining the facts of the case, came to the conclusion that even though the allegations against the employee were proved, the punishment of

dismissal from service was an extreme punishment in the facts and circumstances of the case and converted the punishment into one of discharge and

substituted it with discharge from service with pension. This case also does not lend any help to the applicant.

25. Finally, in the additional submission filed, two more judgments are referred to, the first one being Maj. G.S. Sod/ii v. Union of India reported in

(1991) 2 SCC 371. In this case, the Army officer was dismissed from service but no punishment of forfeiture of pension was inflicted by the court

martial and, therefore, the Hontle Supreme Court held that the petitioner therein was entitled to pensionary benefits. This case is also clearly

distinguishable. The other decision referred to in the additional submission is Lt Col (TS) Harbans Singh Sandhu v. Union of India and others, reported

in (2002) 1 SCC 427. In this case, an Army officer, who had put in aout 27 years of service, but during the last leg of his career, was subjected to

GCM. He was cashiered and when his pensionary benefits were withheld, the Honible Supreme Court directed for grant of pension to him. This case

is also distinguishable from the facts of the case on hand.

26. From the aforesaid analysis of the cases relied upon by the applicant, who appears in person, we find that in most of the cases, interference has

been made not only by this Tribunal or by the High Court or the Hon'ble Supreme Court when the original order of punishment was challenged, found

the punishments imposed were too harsh and disproportionate to the gravity of the offence. While interfering with the quantum of punishment, it substituted the punishment and granted pension.

27. In the present case, the applicant challenged the punishment imposed on him and the punishment imposed on him has been upheld not only by this Tribunal, but by the Honble Supreme Court also and there is no finding recorded or decision available to show that the punishment was too harsh or disproportionate to the gravity of the offence requiring modification. That stage, in this case, has already elapsed and the punishment imposed having attained finality, none of the judgments relied upon, when the quantum of punishment has been interfered with by the Court, can be made applicable in the case of the applicant. All the cases relied upon are clearly distinguishable on facts and law. The applicant should have made a prayer in the previous proceedings when he had challenged the punishment by making an alternate prayer that even if the misconduct is proved or the allegations are correct, the punishment imposed was too harsh and the same should be interfered with. Therefore, in these proceedings, now we cannot re-open the matter and re-assess the question of proportionality or otherwise of the punishment imposed. As already indicated herein above, the statutory provision clearly contemplates that when an Airman is dismissed or removed from service, he is not entitled to pension or gratuity. In exceptional circumstances, the Statute gives discretionary power to the competent authority viz. the Honible President or the Central Government to grant pension or gratuity. When the power available with the statutory authority is discretionary in nature and there is nothing to indicate that the discretion exercised is arbitrary, unreasonable or contrary to the provisions of law, no direction to exercise the discretion in a particular manner can be issued by this Tribunal. The substantive decision arrived at or the decision taken or the opinion formed by the competent authority for denying the benefit to the applicant cannot be substituted by us in these proceedings nor can we sit in judgment over the said decision unless and until the same is permissible in law.

28. In the facts and circumstances of the case on hand, we find that the relief claimed by the applicant cannot be granted by this Tribunal.

Accordingly, the O.A stands dismissed

29. Faced with this situation, the applicant has made an oral request for grant of leave to appeal before the Hon'ble Supreme Court under Section 31

of the Armed Forces Tribunal Act, 2007. We find no question of law of general public importance involved in this matter to grant leave to appeal.

Hence the oral request for leave to appeal is declined.

30. All pending Miscellaneous Applications filed in this case shall now stand closed.