
(2013) 09 DEL CK 0434

In the Delhi High Court

Case No : Writ Petition (C) No. 1588 of 2013

Ex. Sgt. R.S. Dwivedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Air Force Act, 1950 — Section 161(2), 20(3), 26, 53(b)

Citation : (2013) 09 DEL CK 0434

Hon'ble Judges : V. Kameswar Rao, J;Gita Mittal, J

Bench : Division Bench

Advocate : V.S. Tomar, for the Appellant; Saahila Lamba and Ms. Richa Kapoor, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in the writ petition is to the order dated February 08, 2013 passed by the Armed Forces Tribunal (AFT), Principal Bench in Original Application No. 33/2013, whereby the Tribunal has rejected the claim of the petitioner for grant of pension and other benefits.

Facts:

The petitioner at the relevant point of time was posted at 334, TRU, C/o Airforce Station, Thane, where he was allotted the H. No. E-37, Station Married Quarter on October 17, 2007. From November 04, 2007, he was sharing the said house with the family of Warrant Officer P.K. Panigrahy comprising of wife Smt. Kumudani Panigrahy, daughter Ms. Priyanka Panigrahy and son Mr. Padyumna Panigrahy. One bedroom was occupied by the petitioner and rest portion of the house was used by the family of the Warrant Officer P.K. Panigrahy. On November 09, 2007, Smt. Kumudani Panigrahi went to her home town to attend a death ceremony and was planned to return on November 19, 2007 at 03.30 hrs. Accordingly, her son left home at 01.25 hrs. for picking her up from Railway Station, Thane, leaving his sister and the petitioner behind. Before departure, he

asked his sister to go to bed as she was preparing for her half yearly exams. He was not aware of the bus schedule and could not catch the last bus. At 0200 hrs., when he returned back at the SMQ he found that his sister is crying. On enquiry, she revealed that the petitioner took advantage of his absence, entered into her bedroom and attempted to molest her. At 0300 hrs, WO Panigrahi's son again went out of SMQ to Railway Station to receive his mother. While going for picking up his mother, he informed his father telephonically and while returning back from Railway Station he narrated the incident to his mother. Smt. Kumudani Panigrahi informed the matter to President AFWWA (L) through Secretary AFWWA (L).

On November 21, 2007 WO P.K. Panigrahi arrived from his unit and lodged an official complaint against the petitioner for molesting his daughter.

2. A Court of Inquiry was ordered at 26 Wg., AF to inquire into the allegations made by Smt. Kumudani Panigrahy against the petitioner and the Court of Inquiry found him (Ex-Sgt R.S. Dwivedi Eqpt. Asst of 334 TRU, AF) blameworthy for the following and recommended disciplinary action against him:-

(a) Entering inside the bedroom of a female without her permission with an intention to outrage her modesty.

(b) Made an attempt to outrage modesty of a female otherwise than on a grave provocation.

(c) Committed insubordination by staying "Living-out" without family, without permission.

3. A Summary of Evidence (SOE) was recorded against the petitioner. The line of cross-examination conducted by the accused during recording of SOE indicated that in case of continuation of ongoing disciplinary proceedings, Ms. Priyanka would be further confronted with questions which would have bearing on her modesty causing further mental trauma to her. In addition, taking into regard such aspects as tarnishing of the image of the girl, the mental agony which she had already undergone when the incident took place and while explaining the same before the Court of Inquiry, Charge Trial by the CO, Summary of Evidence and further she would re-live the situations again if disciplinary action by way of Court Martial would be initiated, the respondents decided to initiate Administrative Action in terms of Rule 18 read with Section 20(3) of the Air Force Act, 1950 for dismissal of the petitioners from service.

4. The petitioner was issued with a Show Cause Notice dated August 22, 2008 under the provision of the Rule 18(1) of the Air Force Rules, 1969 read with Section 20(3) of the Air Force Act, 1950. In his reply dated September 04, 2008 to show cause notice he denied his acts of mis-conduct as mentioned in the said show cause notice and had merely stated that the allegations made against him were false. The facts and circumstances of the case revealed that he had used criminal force to Ms. Priyanka Panigrahy by touching her shoulders and shutting

her mouth with his hand, with the intention to outrage her modesty. Such misconduct on the part of the said airman was serious and grave in nature, prejudicial to community living in the Air Force and was unbecoming of an airman of the Indian Air Force.

5. The Competent Authority after due consideration of the entire facts and circumstances of the case and the reply dated September 04, 2008 to show cause notice dated August 22, 2008 submitted by the petitioner found that his further retention in service is not desirable in view of the following:

(a) The acts of misconduct as stated in the show cause notice dated August 22, 2008 are being established by the deposition of the witnesses and the attending facts and circumstances of the case;

(b) in reply to the show cause notice dated September 04, 2008 that the allegations are false is not being substantiated; and

(c) the defence of unblemished and disciplined conduct does not belie the imputations.

6. The petitioner was dismissed from service by AOC-in-C, SWAC, IAF u/s 20(3) of the Air Force Act read with Rule 18 of the Air Force Rules, 1969 vide South Western Air Command/C 3406/736/Discip. dated September 27, 2008 with effect from October 06, 2008.

7. The petitioner submitted a Review Petition dated January 12, 2009 u/s 26 Air Force Act for reconsideration and re-instatement in the Air Force, however, the same was rejected by the Chief of the Air Staff vide order Air HQ/C 23407/1587/PS dated May 17, 2009 being devoid of any merit and lacking in substance. Being aggrieved by the abovementioned orders of the Chief of Air Staff, the petitioner had filed W.P.(C) 9959/2009 before the High Court, which was transferred to Armed Forces Tribunal (Principal Bench), New Delhi for adjudication and numbered as Transfer Application No. 404/2010. The petitioner, in the mean time, had submitted an appeal for grant of pension and other retiral benefits to the AOP in April, 2010, however, the same was rejected by the Competent Authority vide order dated December 06, 2010. The petitioner thereafter again preferred an appeal dated July 08, 2011 under Regulation 102 of the Pension Regulations for reconsideration of his case for grant of pension and other retiral benefits. Air HQ (VB) had directed AFRO to forward an SOC along with audit report and recommendations of HQ SWAC.

8. The Armed Forces Tribunal (PB), New Delhi passed order dated October 19, 2011 in T.A. No. 404/2010 remanding the case back to the Competent Authority "for consideration of the punishment of dismissal given to the applicant keeping in view its observations (the length of service put in by applicant and having served without any blemish in his record and by viewing the circumstances and the facts of the case) and in case of any change, the order of dismissal and rejection of his representation will not come in the way and he will get all his

consequential benefits accordingly".

9. Pursuant to the directions of the Armed Forces Tribunal, the Chief of Air Staff after duly re-examining all the circumstances, material facts, gravity of the offence and in view of the length of the service and unblemished record of the petitioner, held vide order dated February 17, 2012 that the order of administrative dismissal stands along with rejection of grant of pension and other benefits. It was also held that his dismissal from the service in terms of Section 20(3) of the Air Force Act, 1950 is just, legal and commensurate with the misconduct of the petitioner.

10. On February 04, 2013 the petitioner had filed Original Application No. 33/2013 before the Armed Forces Tribunal (PB), New Delhi against the rejection order of the Chief Air Staff. However, the same was summarily dismissed by the Tribunal vide order dated February 08, 2013.

11. The claim in the writ petition is premised on the fact that three other persons who were also working in Air Force and were dismissed from service for very serious charges have been granted compassionate allowance/pension under Regulation 102 of the Pension Regulations. The names of two of these persons are Ex Wg. Cdr. B.D. Jena and Ex Sgt K.C. Saini. The petitioner is also claiming parity qua aforesaid two persons.

12. For a better understanding of the issue of parity, we note the facts regarding the aforesaid two persons which led to the grant of pension in their cases.

Ex. Wg. Cdr. B.D. Jena

The charge as seen from para 4.16 of the writ petition against Ex. Wg. Cdr. B.D. Jena was of extracting money/corruption at Air Force Station, Bhuj. This officer was tried by General Court Martial u/s. 53(b) of the Air Force Act, 1950 and sentenced to suffer RI for six months and to be cashiered from service vide order dated 06 September, 2003, which was remitted by Chief of Air Staff to dismissal from service. The officer approached this Court for stay of confirmation of GCM, by filing WP(C) 5907/2003 on 10.01.2006. Wg. Cdr. Jena filed petition U/S. 161(2) of the Air Force Act which was not disposed of by the Air Force even after 10 months of filing the same, the officer approached this Court by filing WP(C) No. 2206/2008, which was disposed of on 19.03.2008. The petition u/s. 161(2) of the Air Force Act was rejected by the Govt. Vide its order dated 7th May, 2008. The officer also filed WP(C) No. 4878/2008 for quashing the General Court Marshall (GCM), but the same was transferred to Armed Forces Tribunal (PB) in 2009 as TA/522/2009 which was dismissed on 10.02.2010. The officer filed mercy petition for grant of pension on 19.02.2004 which was rejected. The officer again filed mercy petition on 29.03.2005, which was also rejected. The Govt. of India, M/o. Defence forfeited retiral benefits of the officer vide its order dated 28.04.2006. The officer again approached for grant of pension under para 16 of the Pension Regulation of the Air Force by filing mercy petition dated 08.09.2008 by stating that his two sons were pursuing higher studies and he was

supporting his ailing widowed mother and was not employed because of stigma of dismissal from service. The Govt. of India, M/O Defence granted 90% of the pension vide its order dated 09.11.2009.

Ex. Sgt. K.C. Saini

As noticed from para 4.15 of the writ petition, Sgt. K.C. Saini was dismissed from the Air Force on 24.02.2003 by competent authority, after he was arrested by CBI on 26th July, 2001 and was found blamed worthy under Prevention of Corruption Act and Official Secret Act, 1923. Sgt. Saini was again arrested by CBI on 31.05.2002. Sgt. K.C. Saini approached for grant of pension by filing WP(C) No. 11972 of 2006 which was disposed of on 28.07.2006 by directing the competent authority to deal with the claim of Sgt. K.C. Saini by giving speaking order. The Air HQs passed speaking order on 03.11.2006 rejecting his claim for pensionary benefits. Sgt. K.C. Saini questioned the correctness of disposal of his mercy petition by filing WP(C) No. 459 of 2007, which was dismissed on 27.02.2007. Sgt. K.C. Saini again filed mercy petition on 27.08.2008 which was granted by the competent authority by sanctioning 70% of pension vide its order dated 22.12.2008.

It is noteworthy that Sgt. K.C. Saini along with Air Vice Marshal J.S. Kumar are being tried by CBI Court.

13. We have seen the facts in so far as the aforesaid two persons are concerned and that of the petitioner herein. These two persons were dismissed for very serious offences. In the case of B.D. Jena even after this Court had rejected the writ petition and the Ministry of Defence forfeited his retiral benefits, pension was granted under para No. 16 of the Pension Regulations of the Airforce pursuant to a mercy petition filed by B.D. Jena stating that his two sons were pursuing higher studies and he was supporting his ailing widow mother and was not employed because of stigma of dismissal from service. The pension in this case was to the extent of 90%.

14. Similarly, Sgt. K.C. Saini was also dismissed from the service for charges under Prevention of Corruption Act and Official Secret Act, 1923. Pursuant to the dismissal of his writ petition by this Court, wherein his claim was for pension and gratuity, on a mercy petition filed by him the Competent Authority has granted 70% of pension. We note that so far as Sgt. K.C. Saini is concerned, this Court in equivocal terms inter-alia had held that a person who was involved in jeopardising the security of the Country cannot be entitled to the pension under the clause of exceptional cases".

15. It is true that the charges against the petitioner are of very serious nature, amounting to moral turpitude. The charges against the two persons are no less serious. The respondents' case primarily is that each case has to be considered with regard to the gravity of the offence committed by the individual who is dismissed. The order passed in respect of granting of pension to dismiss servicemen are not passed in rem, so as to become binding in other cases of

dismissal as the case in hand. There is no denial to the fact that the charges against the two persons who have been granted pension under Regulations 16 & 102 of the Pension Regulations of Airforce are also of very serious in nature. They had approached this Court for grant of pension and retiral benefits. This Court has rejected the claim primarily looking into the charges framed against them. Still the Competent Authority had allowed their claims on a mercy petition wherein they have highlighted their family condition.

16. In this case also, the petitioner had submitted a representation on July 08, 2011 for grant of pension wherein he has stated that he was not able to get any job; that he has three college going children and an old mother to support. His children are approaching marriageable ages and he is in great financial difficulty. We see that the petitioner in his representation dated July 08, 2011 has averred similar facts as were highlighted by so me of the persons named above.

17. It appears that in the said representation the petitioner did not name the afore-noted two persons, who were given the benefits of pension.

We are of the view that since in the writ petition and other pleadings the petitioner had tried to bring out the similarities, the respondents should consider the case of the petitioner keeping in view the cases of the two persons and our observation above.

18. We accordingly direct as follows:

(i) the order dated 08th of February, 2013 of the Armed Forces Tribunal is hereby set aside;

(ii) the respondents are directed to reconsider the representation of the petitioner dated 08th of July, 2011 in the light of the observations made by us in this order and to pass a reasoned and speaking order, within a period of eight weeks from the date of receipt of copy of this order. The outcome shall be intimated to the petitioner, who if aggrieved, is at liberty to seek appropriate remedy in accordance with law.

19. This writ petition is accordingly disposed of in the above terms. No costs.