

(2022) 12 DEL CK 0089

In the Delhi High Court

Case No : Review Petition No. 330 Of 2020, Civil Miscellaneous Application No. 52769, 52770 Of 2022 In Writ Petition No. 5973 Of 2020

Md Azam Ansari

APPELLANT

Vs

Union Of India Through It's Secretary & Ors

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1

Citation : (2022) 12 DEL CK 0089

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Neeraj, Sahaj Garg, Rudra Paliwal, Vedansh Anand

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. A petition under Order XLVII Rule 1 read with Section 114 and 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC, 1908") has been filed for review of the Order dated 04.09.2020 dismissing the W.P. (C) 5973/2020.

2. The petitioner has stated that he was a member of the elite Armed Forces wherein he had put in 17½ years of service from 15.10.1992 till 17/18.11.2009 before joining the profession of Law. He sought premature retirement from the Service and made various representations dated 12.03.2008, 03.07.2008, 08.10.2008 and also in 2009 to the respondents. He eventually filed the W.P. (C) 8452/2008 seeking voluntary retirement which was listed for final disposal vide Order dated 15.07.2009. In the meanwhile, Armed Forces Tribunal Act was operationalized and the Writ Petition was transferred to Armed Forces Tribunal (hereinafter referred to as "AFT") on its constitution, on 31.08.2009 and it was registered as T.A. No. 53/2009. Before the said Petition could be decided on merits, the petitioner was trapped maliciously in disciplinary proceedings and was court martialled and dismissed from service w.e.f. 20.07.2010. The petitioner

for valid reasons did not pursue the T.A. Petition which was dismissed for non-prosecution on 11.11.2010.

3. An O.A. No. 74/2012 was preferred by the petitioner against his dismissal from service which was dismissed by the Armed Forces Tribunal (AFT) on 24.05.2016. The Appeal against this Order dated 24.05.2016 was preferred in the Supreme Court which was disposed of vide Order dated 15.06.2016.

4. O.A No. 42/2012 preferred by the petitioner seeking relief of pension was also dismissed by learned AFT vide Order dated 04.12.2019 against which the Leave to Appeal was refused by the Hon'ble Supreme Court vide Order dated 14.07.2020. Post dismissal of leave to Appeal by the Supreme Court, he withdrew his leave to Appeal from the AFT on 21.08.2020.

5. The petitioner then filed M.A. No. 1188/2020 in AFT for leave to Appeal to the Supreme Court against the Order dated 11.11.2010 of dismissal of T.A No. 53/2009 for non-prosecution but in view of the Judgment in Balkrishna Ram Vs. Union of India (2020) 2 SCC 442 he withdrew this petition on 21.08.2020.

6. The petitioner thus filed W.P. (C) No. 5973/2020 before this Division Bench impugning the Order dated 11.11.2010 of dismissal of T.A No. 53/2009 for non-prosecution by AFT and sought mandamus to be issued to restore the T.A No. 53/2009 by setting aside the Order dated 11.11.2010 and to treat the petitioner to be 'Deemed Discharged' instead of being dismissed from service with effect from the date of dismissal dated 20.07.2010.

7. The present writ petition was dismissed by the Co-ordinate Bench vide Order dated 04.09.2020 by observing that the prayer (b) as sought by the petitioner, cannot be granted since once the petitioner has been dismissed from service, any order as sought, would amount to interfering with the order of dismissal from service as well as with the order qua pension, which has attained finality.

8. Aggrieved by this Order dated 04.09.2020, the present Review Petition has been filed. It is submitted in the Review Petition that since the SLP (Civil) No.360/2022 has been dismissed on 30.09.2022, the impugned Order dated 04.09.2020 of this court has not merged with the Order of the Supreme Court, and thus, Review petition is maintainable in view of the judgment of the Supreme Court in the case of Kunhayammedcase and Khoday Distilleries Ltd.& Others vs. Mahadeshwara Sahakara(2019) 4 SCC 376.It is further submitted that there is an error apparent on the face of the impugned Order dated 04.09.2020 which records that the pension has attained finality, whereas the pension matter was pending in the learned AFT on the date of the impugned order dated 04.09.2020, and even now the pension matter is pending before this court in Writ Petition bearing W.P.(C)14390/2022 which is listed for 05.01.2023. Both the Writ Petitions have different prayers and challenge different Orders. In the present Writ Petition, the petitioner has sought to set aside the Order dated 11.11.2010 of learned AFT and to treat the petitioner as 'Deemed Discharged' instead of 'Dismissed from Service' while W.P.(C) 14390/2022 does not have any

prayer for converting 'dismissal' into 'discharge' but only pension has been sought on the ground of parity with various dismissed personnel who have been granted pensionary benefits.

9. It is asserted by the petitioner in person that treating a Dismissal Order as "Deemed Discharge" would not amount to interfering with dismissal on merits as has been erroneously held in the impugned Order. The Hon'ble High Courts and Supreme Court in various cases have converted the Dismissal Orders on merits into Discharge, to ensure that the personnel get their hard earned retiral benefits. The petitioner has placed reliance on the following cases:

a. Ex.Cpl Mahesh Kumar vs. UOI &Ors. bearing Crl.A.No.613 of 2013 decided on 24 October, 2019;

b. Ex.Sgt RK Sutar v. UOI bearing OA No.35/2013;

c. Ashok vs. UOI inOA No.88/2012

d. S.Muthu Kumaran vs. UOI in CA No.352/2017

10. A prayer is therefore, made that the Order dated 04.09.2020 may be reviewed and the T.A No. 53/2009 dismissed for non-prosecution by AFT vide Order 11.11.2010 be restored.

11. Submissions Heard.

12. It is apposite to mention that there were three litigations undertaken by the petitioner; the first seeking voluntary retirement/ discharge; second for setting aside his Dismissal from service and third for getting the pensionary benefits. The first round of litigation was initiated vide W.P.(C) 8452/2008 which was transferred to learned AFT vide T.A. No. 53/2009 wherein the petitioner had sought voluntary retirement or else discharge from the service. While the petition was pending, a disciplinary enquiry was initiated against the petitioner and he was dismissed from service vide Order dated 20.07.2010.

13. Thus commenced the second round of litigation to challenge the Dismissal Order by way of Writ Petition which finally culminated in Order dated 24.05.2016 upholding the Dismissal against which SLP was preferred which was also dismissed on 15.06.2016. Thus, the Dismissal Order was confirmed right up to the Supreme Court of India.

14. The third round of litigation is to secure pensionary benefits.

15. While the petitioner undertook a round of litigation for challenging his dismissal, the earlier Writ Petition of 8452 of 2008 filed for voluntary retirement/ discharge from service got dismissed for non-prosecution on 11.11.2010. Having lost out and being unsuccessful to challenge his dismissal, he sought revival of his earlier petition by way of W.P. (C) 5973/2020 with the following prayers:

(a) Issue a writ of certiorari quashing the order dated 11.11.2010 being Annexure P-4 in this writ petition, passed by Ld.AFT(PB), New Delhi in T.A. No.53 of 2009

which is WritPetition Civil No.8452 of 2008 filed in this Hon'ble Court and direct restoration of the said TA/Writ petition to its original number/position for disposal on merits.

(b) Issue a writ of mandamus directing the Ld. AFT(PB), New Delhi that, in case petitioner succeeds in writ petition, if restored by this Hon 'ble Court, to treat the petitioner to be 'Deemed Discharged' from service instead of dismissal from service with effect from the date of dismissal i.e. 20.07.2010.

(c) Pass such order (s) as this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of this case and in the interests of justice.

16. The petitioner thus sought revival of T.A. No 53/09 by setting aside of the Order dated 11.11.2010 vide which his petition was dismissed for non-prosecution.

17. This court vide impugned Order dated 04.09.2020, refused to entertain the Writ Petition by observing thus:

"6. We are afraid, the aforesaid also is not possible once the petitioner has been dismissed from service and ordering so would amount to interfering with the order of dismissal from service as well as with the order qua pension, which have attained finality.

7. The petition is entirely misconceived and in waste and abuse of time of the Court and though deserves to be dismissed with exemplary costs but we are refraining from imposing costs. "

18. Significantly, through the Writ Petition the petitioner was making an endeavour to resurrect life in a litigation which had become infructuous and was dismissed for non-prosecution some twelve years back, i.e. on 11.11.2010, which did not meet any success and was dismissed vide the impugned Order.

19. The present Review has been sought on the ground that there was an observation made in the Order that the Dismissal as well as Pension matter had attained finality, when in fact, the W.P.(C) No.14390/2022 claiming pensionary benefits is still pending and is listed for 05.01.2023.

20. The petitioner himself has claimed that the pensionary benefits sought by him, are independent of his challenge to dismissal. Whether petitioner can be held entitled to pension despite the Dismissal Order, is absolutely independent of the relief sought in the present case. Once a person has been dismissed and that Order has attained finality right upto the Highest Court, any modification of the said Order of Dismissal to Discharge by any authority would amount to interference, as has been rightly observed in the impugned Order dated 04.09.2020.

21. The judgments on which reliance has been placed by the petitioner, are cases where the Dismissal Order had not attained finality and was under challenge, it was modified to an Order of Discharge. The said judgments are not applicable to

the facts in hand as the Dismissal Order in the present case, has attained finality.

22. The impugned Order dated 04.09.2020 does not suffer from any error apparent on face of record and no ground for review has been made out. The present application for Review is without merits and is hereby dismissed.