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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7912/2011**

JUGBIR SINGH

..... Petitioner

Through: Mr. Vinod Kumar, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sachin Datta, CGSC with Mr.
Dinesh Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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08.07.2013

1. The present writ petition seeks an order or direction to respondent to pay arrears of pay and allowances/pension to petitioner. We have heard learned counsel for the parties on the merits of the controversy.
2. The undisputed facts giving rise to the petition are noticed hereafter. The present petitioner was enrolled as a Sepoy in 1981 with the Army in the Regiment of Artillery. Unfortunately he was tried by Summary Court Martial and vide order dated 15.11.1993 found guilty and sentenced to three months imprisonment as well as dismissal of service. On that day he held the rank of Havildar and his total service with the Army was of about 12

years only.

3. The petitioner assailed the finding and sentence of the Summary Court Martial by way of W.P. (C) No. 571/1997 of this court. Consequential upon enactment of the Army Forces Tribunal Act, 2007, W.P.(C) 571/1997 was transferred for adjudication to the Armed Forces Tribunal, New Delhi which came to be registered as TA No. 283/2009. This petition was disposed of by the Hon'ble Tribunal vide judgment dated 17.11.2009. The operative para whereof reads as follows:

“Having regard to the facts and circumstances of the case, both the charges against the appellant could not be established. The impugned order is not sustainable. It is set aside. The appellant shall be deemed to be in service from the date of dismissal order and the period rendered by him in services, including the period till he was due to retire, would be taken into account for his pensionary benefits.”

4. At the time of the passing of the order one important factor was not brought to the notice of the Armed Forces Tribunal. If the petitioner has remained in service, he would have superannuated on 31.12.2005. Ignorant of this fact, while passing the judgment dated 17.11.2009, the Ld. Tribunal passed directions to the respondents that the petitioner would be entitled to the pension and that the petitioner would be deemed as if in service from the date of dismissal order and the period rendered by him in service, including

the period till he was due to retire, would be taken into account for his pensionary benefits.

5. The petitioner filed an application dated 09.11.2010 under Section 29 of the Armed Forces Tribunal Act, 2007 seeking directions to the respondents to ensure time bound compliance of the order dated 17.11.2009.

6. In the meantime, the respondents passed an order dated 14.05.2011, wherein the respondents have stated:

“Competent Authority has accorded sanction to reinstate No. 14361621K Ex Hav (Clk) Jugbir Singh notionally into service wef 16 Nov 1993 (i.e. the date of dismissal) in the rank in which he was dismissed from service with all consequential benefits and notionally discharge him from service wef 31 Dec 2005 (AN) i.e. after completion of terms of engagement of 24 years of service in the rank of Hav in compliance with Hon’ble AFT (PB) New Delhi order dated 17 Nov 2009 passed in TA No. 283/2009 (CWP No. 571/1997). Deemed period of his service will be taken into consideration for the purpose of computing pension only and he will not be entitled to the back wages. The arrears of pension so calculated be paid to the individual.

7. Aggrieved by this order the petitioner had filed a second application dated 26.07.2011 before the Armed Forces Tribunal seeking following prayers:

(a) Full back-wages for the period 16.11.1993 to 31.12.2005 with interest.

Or

Back-wages for the period till when he completes minimum qualifying service for grant of pension and

pension for the remainder period upto 31 Dec 2005, with interest.

(b)Promotion to the next higher rank for which he was qualified.

8. It is noteworthy that if the petitioner had not been convicted by the order of the Summary Court Martial on 15.11.1993 and had completed 15 years of qualifying service on rendering him eligible for pension on 31.12.1996 and 24 years of service for superannuation on 31.12.2005.

9. These two applications were considered by the Army Force Tribunal on 28.07.2011 when learned Tribunal noted that the respondents had issued a Pension Payment Order (PPO) and that the judgment dated 17.11.2009 had therefore being complied with.

10. Interestingly, the order dated 28.07.2011 also noticed that the respondents were yet to take a decision on whether a Special Leave Petition was to be filed with Supreme Court or not. The applications were disposed of by the tribunal which considered the judgment dated 17.11.2009 as having being complied upon issuance of the Pension Payment order by the respondents.

11. Aggrieved by the order dated 28.07.2011, the petitioner has filed the present petition urging that in view of the setting aside of the order and

sentence dated 15.11.1993 of the Summary Court Martial by the Armed Force Tribunal by its judgment dated 17.11.2009, the petitioner was entitled to the prayers made in the application dated 28.07.2011. It is urged that the petitioner was illegally sentenced to rigorous imprisonment, which sentence he has undergone. He was compelled to undergo this imprisonment and prevented from service by the illegal order dated 15.11.1993 and that he cannot be further penalised by the respondents.

12. The application is opposed by Sh. Sachin Datta, learned Standing Counsel for the respondents. It is contended that the prayers made by the petitioner in the application dated 26.07.2011 have been considered and rejected by the Armed Force Tribunal by its order dated 25.07.2011 and that the petitioner was not entitled to wages for the period he has not served.

13. We have heard learned counsel for the parties and given considered thought to the matter. Certain facts which cannot be disputed deserve to be noticed. The petitioner was kept outside the service for reasons which could not be attributed to him. The petitioner was tried and convicted by Summary Court Martial and sentenced to rigorous imprisonment, resulting in his dismissal from service. The conviction was found as unsustainable by the Armed Force Tribunal in his detailed consideration dated 17.11.2009. It

was held by the Tribunal that there was no substantive evidence in support of the charges and that the statements which were made by the witness as per the Summary Court Martial were contradictory. In this background the court directed setting aside of the findings of guilt as well as the sentence imposed by Summary Court Martial.

14. We may note that the petitioner had filed the writ petition in 1997 which remained pending for a considerable period and was disposed of only on 17.11.2009.

15. During this period, the petitioner was compelled to undergo the sentence of rigorous imprisonment which, in view of the findings, returned by the Id. Tribunal, was also unfair and unjust.

16. While the petitioner's petition challenging the Court Martial proceedings was pending, he completed 24 years of service on 31.09.2005 on which date he would have superannuated. In this background the Tribunal was prevented from passing an order directing that the petitioner be taken back into service.

17. Mr. Sachin Datta, learned standing counsel for the respondents has contended before us that Id. Tribunal has rejected the prayer of the petitioner for grant of the back wages. Mr. Vinod Kumar, learned counsel for the

petitioner on the other hand has contended that the Id. Tribunal has in fact failed to consider the petitioner's prayer for back wages while passing order dated 25.07.2011. The fact which remains is that there is nothing in orders dated 17.11.2009 or 25.07.2011 of the Tribunal which would manifest that the aspect of back wages or whether the same were admissible to the petitioner or not was considered.

18. It is important to note that the respondents did appeal against the order dated 17th November, 2009 to the Supreme Court by way of Civil Appeal (D) No. 33147/2011. This Civil Appeal was dismissed by the Supreme Court vide order dated 15.01.2012 as barred by limitation as well as on merits.

19. In an answer to a pointed out query by the Court we are informed by learned Standing Counsel for the respondents that the respondents have computed the petitioners pension based on his last drawn salary as on the date of superannuation i.e. as on 31.12.2005 when the petitioner would have been superannuated after completion of the term and engagement of 24 years of service in the rank of Havildar. It is therefore evident that the respondents are also treating petitioner as having served upto 31.12.2005.

20. The short question therefore is as to what would be financial benefits to which the petitioner would be entitled w.e.f. 16.12.1993 till 31.12.2005. It is on record that the petitioner would have completed 15 years of qualifying service on 31.12.1996. As the petitioner was serving in the rank of Havildar at the time of the Summary Court Martial, he would thus have completed 24 years of full colour service in this rank as on 31.12.1996.

21. The petitioner has thus been provided the benefit of service as well as emoluments for purposes of computation of his pension as noted above. He was deprived of opportunity to serve only on account of order and sentence of the Summary Court Martial which vide order dated 17.11.2009 was found to be illegal by the Armed Forces Tribunal. In this background thus there is no reason as to why the petitioner does not deserve some payment for the period between 15.11.1993 to 31.12.2005. In our view, interests of justice would be met in case the petitioner is paid full back wages for the period till 31.12.1996. On this date, he would have completed 15 years of qualifying service which would have rendered him eligible for pension. The petitioner deserves to be paid an amount on the basis of last drawn wages as on 31.12.1996 till 31.12.2005 when he completes the period of 24 years of full coloured service in the rank of Havildar.

22. In view of the above, we direct as follows:

- (i) The order dated 25.07.2011 passed by the AFT is hereby set aside.
- (ii) It is held that the petitioner would be entitled to back wages for the period between 16.11.1993 to 31.12.2005 on the following term:-
 - (a) For the period between 16.11.1993 till 31.12.1996 the petitioner shall be paid full back wages
- (iii) For the period from 01.01.1997 till 31.12.2005 the petitioner shall be entitled to back wages equivalent to amount of pension calculated as if he had superannuation dated 31.12.1996.
- (iv) The respondents shall pay all the amount to which the petitioner is entitled on the above terms within a period of eight weeks from today and communicate the order to petitioner. The respondents shall pay the payment to which petitioner is found entitled within a further period of four weeks thereafter.
- (v) Needless to say the directions made today of making payment of pension which the petitioner would have been found entitled to w.e.f. 31.12.2005 would be on the basis of the calculation of the last drawn salary as on 31.12.2005 required to be implemented by the respondents.

(vi) The petitioners shall be entitled to interest the amount found due and payable @ 9 % w.e.f. the date the amount given.

23. The writ petition is allowed on the above terms.

GITA MITTAL, J

DEEPA SHARMA, J

JULY 08, 2013/cl