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

+ **W.P.(C) 13832/2021**

RAKESH KUMAR

..... Petitioner

Through **Mr.Omprakash Kumar Srivastava,**
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through **Mr.Neeraj Sahaj with Mr.Vedansh**
Anand and Mr.Rudra Paliwal,
Advocates for UOI.

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Date of Decision: 06th December, 2021.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J: (Oral)

C.M.No.43661/2021

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.13832/2021

1. Present writ petition has been filed challenging the order passed vide letter dated 9th May, 2019 issued by Respondent No.3 and the dismissal order dated 11th August, 2015. Petitioner also seeks directions to the Respondents to convert the 'dismissal' order into 'discharge from service' order and subsequently release service pension due to the Petitioner @100%, from the date of discharge along with associated benefits including an interest of 10% on the arrears as due.

2. Learned Counsel for the Petitioner states that the Petitioner is an ex-serviceman who has served in the Indian Air Force for more than 19 years. He states that there was an allegation of sexual assault against the Petitioner on a minor girl, submitted by the counsellor of the Air Force School, Subroto Park. He states that the said allegation was false and a proper inquiry was not conducted.
3. He states that the child was confused and mistook the Petitioner with someone else and the complaint was reported six months after the incident. He points out that a Court of Inquiry [COI] was ordered on 4th September 2014, to investigate into the alleged incident of sexual assault and the COI recommended advancement of an administrative action against the Petitioner on 16th October, 2014.
4. He states that the Petitioner was dismissed from the service under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules on 11th August 2015.
5. He states that the Petitioner filed a mercy letter dated 14th August 2015 to the Respondents seeking grant of all the pensionary benefits which was duly considered by the Respondents and the Petitioner was granted 50% Pension & Gratuity w.e.f. 14th August 2015 vide order dated 14th December, 2016.
6. However, it is his contention that the Respondents did not convert the punishment of 'Dismissal' into 'Discharge from service' which resulted in the non-grant of full (100%) pensionary benefits to the Petitioner.
7. He submits that in accordance with the Supreme Court judgments, in the case of ambiguity, the benefit of doubts should be given to the employee if it deprives him/her of monetary benefits.

8. In essence the Petitioner today challenges the recommendations of the COI and the dismissal order dated 11th August, 2015. It is pertinent to mention that the said order of dismissal had been challenged by the Petitioner by way of an O.A. before the Administrative Tribunal. However, the said O.A. was withdrawn with liberty to file a mercy petition vide order dated 04th January, 2017. Subsequently, the Petitioner preferred several representations dated 02nd February, 2017 and 17th April, 2019, which were rejected by the Respondents every time. Finally, he preferred a representation dated 08th March, 2021 seeking grant of full pensionary benefits, which was rejected on the ground that the mercy petition for grant of pensionary benefits, in cases of dismissal from service, can be entertained only once.

9. In the opinion of this Court, as the Petitioner has been found guilty of sexual assault on a minor girl and the said order has attained finality, Petitioner is not entitled to any relief from this Court. Further, the present writ petition to the extent it challenges the recommendations of COI and dismissal order dated 11th August, 2015 is barred by delay and laches.

10. Accordingly, the present writ petition being bereft of merit is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

**DECEMBER 06, 2021
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