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W.P.No.17354 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.17354 of 2023

No.14451458-W Ex.Hav Clerk K Sadasivam
aged 66 years,S/o Kuppanna Gounder,
Thattankadu, Kondarasanpalayam Village & post,
Paramathi Velur Taluk, Namakkal District,
Tamil Nadu, Pin 637 203.

... Petitioner

Vs.

1. The Union of India,
rep. by its Secretary to Govt. of India,
Ministry of Defence, South Block,
New Delhi 110011.
2. Chief of Army Staff, Army Head Quarters (AHQ),
Defence Head Quarters (DHQ),
Integrated Head Quarters (IHQ),
New Delhi 110011.
3. Principal Controller Defence Accounts (Pension),
Droupati Ghat, Allahabad, Uttar Pradesh
Pin 211014.
4. Officer-in-charge Air Defence Records,
Pin 908 803, C/o 99 APO.



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5. The Officer in charge, Artillery Records,
Nashik Road Camp, Nashik,
Maharashtra State, Pin 422 102.

6. The Commanding Officer, Air Defence Artillery Regiment,
Nashik Road Camp, Nashik, Maharashtra State,
Pin 422 102.

7. The Registrar, Armed Forces Tribunal Regional Bench,
No.1A, Rudhra Road, St. Thomas Mount,
Chennai 600 016

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, to call for the records pertaining to the passing of the order dated 23.08.2022 in O.A.No.15 of 2018 on the file of the 7th respondent and quash the same and consequently, allow the O.A.No.15 of 2018, as prayed for.

For Petitioner : Mr.M.Selvaraj

For Respondents : Mr.R.Sidharth, Central Government Counsel
for respondents 1 to 6



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ORDER

WEB COPY (Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to quash the order dated 23.08.2022 passed in O.A.No.15 of 2018 by the 7th respondent and to grant relief as prayed in the above O.A.No.15 of 2018.

2. The petitioner had enrolled in Army as Soldier on 01.02.1977 and subsequently he was promoted as Havildar and he had worked at various places with unblemished records. While he was working at Arunachal Pradesh, he had suffered from severe Bronchial Asthamatic disease and he was treated at Military hospital Jansi and recommended for sheltered appointment. According to the petitioner, he was not provided sheltered appointment by the authorities, as recommended by the medical board and he was not at all considered as sick person and he was put in tough military duties, as applicable to the medically fit persons. Due to his poor health and inview of the posting at dust area and also sending him to war field exercise by the authorities concerned, the petitioner was mentally depressed. Therefore, he applied for pre-mature retirement, vide application dated



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8.11.1992 on medical ground, however, it was not forwarded and even he was not allowed to go to hospital for treatment.

2.1. Due to such harassment of the authorities the petitioner was forced to desert, in order to save his life. The father of the petitioner has sent a letter on 27.12.1992 to the respondent informing about the petitioner's arrival on 17.10.1992 at Salem Bus stand with poor health condition. The respondent, vide letter dated 11.02.1993 has directed the petitioner to surrender with police escort to the unit. Since the petitioner came out from the unit due to the harassment of the very same officer and there was no conducive environment for the petitioner, he had not reported the unit. Thereafter, the petitioner was dismissed from service with effect from 25.04.1996, vide order dated 17.02.1997. Challenging the above said order and also seeking terminal benefits and service pension, the petitioner has filed O.A.No.15 of 2018 before the Armed Forces Tribunal, Regional Bench, Chennai and the same was dismissed. Challenging the same, this writ petition has been filed.



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3. The learned counsel for the petitioner submitted that the petitioner had enrolled in the service of Indian Army on 01.02.1997 and had completed 15 years and 9 months service, without any adverse remarks and during his service, the petitioner was suffered from severe bronchial Asthamatic, and even after taking treatment, it was not cured, and hence, he requested the Army officials to grant premature retirement with all benefits, however, it was not considered. He further submitted that, though the medical board has categorized the applicant's standard as “below A category” i.e. “C” category, he was forced by the commanding officer to do the normal function of Havildar and due to the harassment of the officer concerned, the petitioner had deserted the Unit, in order to save his life. However, the Commanding Officer, without following the Regulations of Army, treated the petitioner as deserter and dismissed him from service arbitrarily. Therefore, the above dismissal order passed by the respondent is liable to be quashed the petitioner may be granted terminal and pension benefits.



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4. The learned counsel for the respondents 1 to 6 submitted that, while serving in Air Defence Regiment (SP), the petitioner was treated at MH, Jansi for his Bronchial Asthama and after treatment, he was placed in Low Medical Category CEE (Temp) w.e.f. 01.10.1992 for six months. He strongly opposed that the disability of the petitioner was not assessed above 20% as alleged by the petitioner and he was absented without any leave on 12.11.1992 from the Unit and had not turned up. Therefore, the petitioner was issued apprehension roll vide letter dated 18.11.1992 and even after 30 days, the petitioner was neither apprehended nor surrendered and hence, in accordance with Section 106 of Army Act, a court of inquiry was conducted and he was declared as illegally absent and his name was struck off from the strength w.e.f. 12.11.1992. Subsequently, after obtaining sanction from the competent authority, the applicant was dismissed from service w.e.f. 25.04.1996, under the provisions of para 22(b) of AO 43/2001/DV therefore, there is no illegality in the dismissal order passed by the respondent.



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5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also we have perused the materials on record.

6. It is an admitted fact that the petitioner was deserted from the Army Unit on 12.11.1992 and thereafter, he had not turned thereto. It is the contention of the respondent that, the Air Defence Regiment issued apprehension roll vide letter dated 18.11.1992, however, even after prescribed period of 30 days, the petitioner had neither apprehended nor surrendered. The above contention raised by the respondent is not denied by the petitioner. Therefore, according to the respondents, the desertion of the petitioner is covered under para 22 (b) of AO 43/2001/DV. However, the petitioner has made a request before the Air Defence Artillery Records from the Artillery Records on 28.07.2014 seeking pensionary benefits. Again, he has also sent a petition on 09.08.2008 and thereafter his wife has sent a petition on 28.02.2014 seeking pensionary benefits and the same were replied by the concerned respondent stating that the petitioner was enrolled in the Army on 01.02.1977 and he was declared deserter with effect from 19.11.1992 and subsequently dismissed from service with effect from



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25.04.1996 under Army Act Section 20(3) being deserter and hence, as per the provision, the petitioner was not eligible for pensionary benefits.

7. The Tribunal has elaborately discussed the matter and accepted the contentions of the respondent by relying upon Section 19 of Army Act read with Army Rule 14 or Section 20 of Army Act read with Army Rule 17, has observed as follows.

As per para 22 of AO 43/2001/DV, a person subject to the Army Act or a Reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Section 19 of Army Act Section read with Rule 14 of Army Rule and Section 20 of Army Act read with Rule 17 of Army Rule, as the case may be in accordance with instructions given below.

22. A person subject to the Army Act, or a reservist subject to Indian Reserve Forces Act, who does not surrender or it snot apprehended will be dismissed from service under Army Act Section 20(3) as under:

(a) After 10 years of absence/desertion in the following cases:-

(i) Those who desert while on active service in the forward areas specified in Extra-ordinary Gazette notification Ors 17-E dated 5 September 77, reproduced in AO 175/77, or while service with a force engaged in operations, or in order to avoid such service.



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- (ii) *Those who desert with arms or lethal weapons.*
- (iii) *Those who desert due to subversive activities.*
- (iv) *Those who commit any other serious offense in addition to desertion.*

(b) After 3 years of absence/desertion in other cases”.

Section 20(3) of the Army Act, 1950 lays down that-

20. Dismissal, removal or reduction by the Chief of the Army Staff and by the officers.-

- (i) ...
- (2) ...
- (3) *An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.”*

Rule 17 of the Army Rule 1954 lays down that -

17. Dismissal or removal by Chief of the Army Staff and by other officers.

save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court martial, no person shall be dismissed or removed under sub-section (1) or sub-section(3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

Provided that if in the opinion of the officer competent to



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order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in his rule....”

It is also seen from Regulation -113 of the Pension Regulations for Army, 1961 (Part-I) that

“ Individual dismissed/removed or discharged under the Army Act:

113(a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may at the discretion of the President, be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is removed from service under Army Act, Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had been discharged on the same date.

The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.

(c)....



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From the aforesaid, we find that the applicant who was an Havildar with more than 15 years of service, on termination of leave granted to him, remained incommunicado without intimating anything to his Unit and even the local police was unable to apprehend him, clearly indicating that he chose to remain untraceable and had no intention to rejoin service. The applicant's claim that he was forced to be absent due to family problems cannot be accepted as a valid reason for continued absence from duty. The applicant made no efforts whatsoever to inform his Unit or Army authorities about his inability to rejoin duty and the reasons now being brought to the fore are clearly an afterthought.

Therefore, by relying upon the above said provisions, the Tribunal has negatived the reasons stated by the petitioner as it is not a valid reason for continued absence from duty.

8. Further, it is to be noted that, the petitioner having deserted from the Army Unit on 12.11.1992 and having been dismissed from service, with effect from 25.04.1996, has sought redressal before the President of India seeking pension and the same was forwarded to the concerned Army Unit, from which, the petitioner was informed by letter dated 24.05.2005 that since he was dismissed from service under Section 20(3) of Army Act, he is not eligible for pension, as per the proviso to Rule 113 of Pension



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Regulation. Thereafter, vide letter dated 10.01.2009 also, the petitioner was informed that he has forfeited all his previous service and he is ineligible for pension and gratuity. In that letter, several previous letters in this regard, sent to the petitioner were referred to. Subsequently, the petitioner has filed O.A.No.15/2018, challenging the dismissal order dated 25.04.1996, i.e. nearly after 22 years, which is hit by delay and laches. Though the learned counsel for the petitioner submitted that due to bonafide reasons the petitioner was not able to continue his service in the Army, he was dismissed from service in view of his desertion and for the same, his earlier service was forfeited as per the Army Act and Rule. Therefore, the contentions of the learned counsel for the petitioner cannot be accepted.

9. At this juncture, the learned counsel for the petitioner drew the attention of this Court to Regulation-113 of the Pension Regulations for Army, 1961 (Part-I), which is extracted as under

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(b) An individual who is removed from service under Army Act, Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had been discharged on the same date.

The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.

and submitted that the petitioner was not granted any relief by the Tribunal in the impugned order, as per the above regulation and hence, the petitioner may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.



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10. In view of the above discussions and also after analysing the submission made by the learned counsel for both the parties, we are of the view that there is no merit in the writ petition. Hence, this writ petition is dismissed. No costs. However, liberty is granted to the petitioner to approach the authorities concerned seeking his remedy.

(D.K.K.J.)

(P.D.B.J.)

13.06.2023

Internet: Yes/No

Index : Yes/No

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To

1. The Secretary to Govt. of India, Union of India,
Ministry of Defence, South Block,
New Delhi 110011.
2. Chief of Army Staff, Army Head Quarters (AHQ),
Defence Head Quarters (DHQ),
Integrated Head Quarters (IHQ),
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D.KRISHNAKUMAR, J.

and

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