

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on : 03.04.2024

Date of Decision :19.04.2024

CWP No. 17312 of 2014 (O&M)

Ex. Sgt. Gopi Ram

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Petitioner-Gopi Ram in person .

Mr. Bharat Bhushan Sharma, Senior Panel Counsel,
for the respondents.

SANJEEV PRAKASH SHARMA, J.

The petitioner is an Ex-Air Force Personnel. The petitioner by way of this writ petition has challenged his discharge from Air Force prematurely. It is submitted that had he not been illegally discharged, he would have continued in service and would have served upto 58 years and would have been entitled to receive regular pension. He prayed that he should be granted regular pension deeming him continue in service after setting aside the order of his discharge.

2. The petitioner has also prayed for quashing of the order dated 07.04.2014 passed by the Armed Forces Tribunal, Chandigarh Bench (for short, 'AFT'), whereby his OA was rejected. He further prayed for quashing of orders dated 25.02.1972 and 22.09.2010, which were challenged by him before the AFT.

3. Initially the issue before this Court was with regard to the maintainability of the writ petition against the order passed by the AFT. However, keeping in view the judgment passed in Civil Appeal No. 447 of 2023 – **Union of India and others vs Parashotam Dass** ; 2023(3) SLR 1, decided on 21.03.2023, wherein the writ petitions were held to be maintainable against the order passed by the AFT and the cases were remanded to the respective High Courts for adjudication on merits, the question of maintainability is no more required to be examined and, therefore, all the writ petitions were directed to be heard independently which had different issues. Thereafter, the present case was taken up and the petitioner in person and counsel for the respondents were heard.

4. The petitioner was enrolled in the Indian Air Force as a regular Combatant Airmen in the trade of Radar Operator, Group-II. He was thereafter attested to the Air Force after successful completion of training on 10.12.1964 in Operational 43 Signal Unit A.F. He was promoted to the substantive rank of Corporal (CPL) on 27.12.1976 and was further promoted to the rank of Sergeant with effect from 25.09.1969. After having appeared and qualifying the examination, he was further promoted to the rank of Flight Sergeant. He actively participated in the two Indo-Pakistan wars of 1965 and 1971. During this service tenure, it is stated that he had successfully passed the Orientation Course as Radar Operator Specialist and had been awarded First Rate of Good Conduct Badge and Second Rate Good Conduct Badge on 27.12.1966 and 27.12.1970, respectively. It is stated that the petitioner had been awarded with several other medals and decorations including *Raksha Medal*,

Samar Sewa Star Medal and 9 years Long Service Medal and two distinct medals of 1971 war. The petitioner, thus, submitted that he had completed 9 years service on 26.12.1971 whereafter he was retained in service, however, was discharged without any reason on 28.03.1972. The petitioner submitted that he had requested his AOC to allow him to continue serving regularly till completion of 15 years engagement but his request was not examined and remained unheard.

5. The petitioner has submitted that he was governed by the Air Force Instructions 12/S/48 (hereinafter to be referred as “AFI”) as per the amended terms and conditions of service of Regular Airmen of the I.A.F. The said A.F.Is. have been amended from time to time. As per the list, the last amendments were made in July, 1969. The terms and conditions of service of Regular Airmen of the I.A.F. provided that in future they would be governed by the conditions as laid down therein. The relevant extract of AFI reads as under:-

“12. Period of engagement: Candidates will be engaged with effect from the date of enrolment for the under-mentioned periods of service with the Regular Air Force and in the Regular Air Force Reserve:-

(a) Regular Service

(i) Candidates will be enrolled initially for 15 years Regular service but those who fail to attain the rank of Corporal within 9 years will be discharged.

Note: Airman already serving their 9 years initial appointment may be allowed to contract for 15 years engagement counting from the date of their enrolment subject

to the fulfillment condition mentioned in this sub-clause. of the

(ii) On completion of 15 years regular service an airman may be allowed, at the discretion of the C.A.S. to extend the period of regular service by 6 years to complete 21 years service, further extension of regular service may be granted for a period of 3 years at a time or such shorter period as deemed necessary up to the age of 55 years.

(b) Reserve Liability

(i) Subject to the provisions of succeeding sub-Clause, and Para 13(c), on completion of the period of the regular service, including extension. if any, mentioned in (a) above, the airmen will be liable to serve in the Regular Air Force Reserve for a period of 6 years with effect from the date on which their regular engagement expires.

(ii) In the case of airmen transferred to Regular Air Force Reserve before the expiry of his regular service for which they were engaged, un- expired portion of their regular service will be added to their reserve liability.

(iii) Airman who are not transferred to the regular Air Force Reserve on the expiry of their regular service will have the liability to be transferred to the Regular Air Force Reserve any time during the period of the reserve liability.

(iv) On completion of the initial period of service in the Regular Air Force Reserve, an airmen may be required by the competent authority to serve in the Regular Air Force Reserve for such further period of periods not exceeding in the aggregate five years as it may think fit vide Section 7 of the Reserve and Auxiliary Air Forces Act, 1952.

(v) Notwithstanding anything contained in the preceding sub-clauses no airman shall be liable to serve in the Regular Air

Force Reserve after attaining the age of 55 years, vide rule 4 of the Reserve and Auxiliary Air Forces Act, rules, 1953.

13. Retention after completion of regular service:- (a) If at the time he becomes entitled to be discharged, a state of war exists between India and a foreign power, or in the opinion of the Central Government a war is imminent or a state of emergency has been declared or if the strength of the trade in which he is mustered is 10% below the authorized establishment, an airman may notwithstanding any thing contained in Para 12(b) above, be retained in the Air Force service for such further period of periods as the Chief of the Air Staff may order.

(b) During the period of this retention under sub-Para (a) an airman will continue to be governed by the normal terms and condition of service in the same manner as if an extension had been granted to him.

(c) The reserve liability of an airman who has been retained in Air Force service under this paragraph shall be reduced by the period of such retention.

Thus, those Airmen who had already served 9 years initial engagement could be allowed to contract for 15 years engagement counting from the date of their enrolment provided they fulfilled the other conditions. The petitioner further submits that he had, after being enrolled, further promoted twice upto to the rank of Sergeant. He had also been continuing after 9 years of service, however, he was discharged without giving any reason vide order dated 09.02.1972.

6. The petitioner has taken this Court to the order, which reflects as under:-

“Discharged from the Air Force under IAF Act Rules 1932 Chapter III Rule 13 clause (ii) “ON FULFILLING THE CONDITION OF ENROLMENT ON COMPLETION OF NINE YEARS ENGAGEMENT AND NOT BEING REQUIRED TO SERVE IN THE RESERVE w.e.f. 28.3.72, Struck off the strength of the IAF w.e.f. 29.3.72. Authy:- RO/2505/4ERW (Dis) dt.9.2.72.”

The petitioner submits that on the same day i.e. 09.02.1972, the period of service rendered by the petitioner after 9 years i.e. from 27.12.1971 to 28.03.1972 was regularized as extension of service by another order dated 09.02.1972, which reads as under:-

“The period of stay from 27.12.71 to 28.3.72 (total 93 days) in service beyond completion of his regular engagement) regularized as extension of service Authy:- AFI 12/S/48 as amended by Corr.7/39, Air Ho letter No. AIR Ho/49851/PA II d/d 21.12.70 M/455 d/d 13.12.71 and Ho/2505/4/EIW (I)d/d 9.2.72.”

The petitioner further submits that once his services were extended beyond 9 years, he could not have been discharged on 28.03.1972 as he has been retained in regular service beyond 9 years and in terms of AFI, he was entitled to continue upto 15 years of service.

7. The petitioner has further submitted that as per Rule 13 Clause (ii) of the Air Force Act and Rules 1932, the discharge order was bad in law which states that the discharge under Rule 13 (ii) is at his own request on fulfilling the conditions of enrolment and that the Commanding Officer is the competent authority to discharge him, however, as the petitioner never submitted his request to be discharged, the order passed

by the Commanding Officer was without jurisdiction and he was incompetent to discharge him. It is submitted that the petitioner has sent several representations and also sent notice through his lawyer after he could not receive any positive reply from the Air Force Authorities. He also sent a petition under Section 26 of the Air Force Act, 1950 to the Chief of the Air Staff on 27.06.2003 claiming service pension. However, the Air Force Officers have shown indifferent attitude. The petitioner submitted that once his service was extended, he can be deemed to be continued in service for 15 years as he fulfills the other conditions required for extension. The Air Force Command Officer had issued a trade proficiency certificate to the petitioner dated 26.03.1972 at the time of discharge. It is submitted that upto 6 years after discharge, the petitioner remained in reserve service and he, therefore, after having completed his reserve service also submitted an application for setting aside the discharge and, thus, he was always continuing with his claim and it cannot be said that the petitioner had put up a stale old claim.

8. The petitioner submitted that as a defence personnel, he had maintained discipline and was always expecting that his superiors to take decision with regard to his case and it is only after many years when nothing happened, he approached the counsel, an Ex-Army Officer, who took up his claim and made a representation. The Air Force Record Officer vide letter dated 29.07.2003 rejected the case of the petitioner for pension relying on Regulation 121 of the Pension Regulations under the Air Force Act 1961, which require 15 years of qualifying service to earn service pension. Other representations were sent by him through his

counsel on 26.06.2004 and 22.07.2010, which were rejected by the Air Force Headquarter vide letter dated 22.09.2010 reiterating their stand that the pension can only be earned on minimum service of 15 years. It was also pointed out that the personal file of the petitioner had been destroyed by the Board of Officers after retention of stipulated period of 25 years. The petitioner submitted that the Armed Forces Tribunal, Kolkata, in one case allowed a person, who had completed 9 years regular service and was called during emergency situation and rendered 1 year 135 days while he was in the reserve list, to be treated to have completed 15 years of service by counting 9 year regular service plus 6 years reserve service. The Armed Forces Tribunal Kolkata had relied on a judgment passed by Kerala High Court in the order passed in **Asim Majumdar vs Union of India** in TA No. 13/2010 arising out of Writ Petition No. 8971 of 2009 filed before the Calcutta High Court.

9. The petitioner submitted that AFT, Chandigarh has wrongfully dismissed his OA and denied the benefit to him without examining the issue relating to the wrongful discharge.

10. Per contra, counsel appearing for the respondents-Union of India submitted that as the record of the petitioner was not available, it is not possible for the respondents to make submissions relating to the order of discharge. It is further submitted that the petitioner has preferred the petition and put up his claim after a delay of almost 28 years, whereas the record of the petitioner was destroyed as per rules. Further it is submitted that as the petitioner was discharged with no requirement of reserve

service, he cannot claim the benefit of 6 years' reserve service and pension accordingly. It is submitted that AFT has rightly rejected the case of the petitioner.

11. The respondents have also filed their written statement and submitted that as per Regulation 121 of Pension Regulations for the Air Force, 1961 (Part 1), the petitioner had not completed 15 years to earn service pension and he was, therefore, only paid ₹ 2,402 on account of service gratuity at the time of discharge. As per Rule 136 (a), reservist pension could have been paid to a person who had completed 9 years regular service and 6 years reserve qualifying service but, in fact, the petitioner was not transferred to the reserve service and was, therefore, not bound to be recalled for active service and his claim for grant of reserve pension was, therefore, not in conformity with the Pension Regulations of the Air Force and his reserve service of 6 years cannot be counted to make his pensionable service.

12. It is further submitted that the petitioner filed OA after a period of 30 years when his record has already been destroyed. It is stated that as per discharge order, he was discharged "*On fulfilling the conditions of engagement on completion of 09 years of engagement and not being required in regular service*". Thus, 6 years service cannot be counted and the AFT has rightly rejected his claim.

13. We have considered the submissions and the judgments cited at bar by the petitioner.

14. In **Sohan Singh vs Union of India and another** AIR 1984

SC 498, Hon'ble the Supreme Court held as under:-

“4. On a careful consideration of the materials we are satisfied that the order of discharge of the appellant was passed mainly on the ground that the criminal case against the appellant was pending and the authority concerned was of the opinion that the appellant was likely to be convicted in that particular case. The materials on record clearly indicate that the pendency of the criminal case against the appellant and the possibility of the appellant being convicted of the said charges had greatly weighed with the authority and had influenced its decision in directing the discharge of the appellant. The note of the Commanding Officer recommending discharge on the ground that the appellant was not suitable, records that 'the appellant was likely to be convicted'. We have no hesitation in coming to the conclusion that if the order of acquittal had been pronounced before the date of the order of discharge of the appellant, the authority concerned would have allowed the application for extension of the term of service of the appellant. If extension had been allowed, as in the normal course it would have been granted if the order of acquittal were there at the relevant time, the appellant would have been entitled to continue in service for a further period of six years in the usual course. Out of the said period of six years the appellant in view of the provisions of D.I. Rules had in fact served for a little over a year before he was actually discharged.”

15. In Writ Petition No. 166 of 1990 - **Nirvair Singh vs Union of India and others** (2001 (3) CLR 442), Bombay High Court has examined the case relating to the naval staff of Indian Navy and the issue was with regard to discharge orders passed on expiry of engagement. The Court

noticed that the concerned petitioners were ready and willing to complete their 15 years of service but were discharged before they completes 15 years and held as under:-

“16. After the Apex Court's judgment, it is clear that the period during which the petitioners were employed as artificer apprentice is required to be computed for pension and gratuity. Further, as per circular dated 9th August 1976 the Petitioners were required to be given chance of getting re-engagement for a limited period so that they can complete the qualifying service for pension. However, Petitioners were not permitted to complete 15 years of service and they were illegally discharged. The Petitioners also sought interim relief, but that was also opposed at that time on the ground that the main question was pending before the Apex Court. Hence, for no fault of the Petitioners and for the fault of the Respondents, the Petitioners were not permitted to complete 15 years of qualifying service. In such a situation, the only way which is open is to direct the Respondents to consider that the petitioners have completed the qualifying service of 15 years for the purpose of getting pensionary benefits, as the petitioners were not permitted to get reengagement for a limited period because of the wrongful insistence by the Respondents that they must accept re-engagement for a period of five years. Further, the Regulation itself empowers the Competent Authority to condone the deficiency in service for eligibility to service pension upto a period of six months. We would further note that in Writ Petition Nos. 166, 171, 221, 223 and 365, all of 1990, 268 and 312 of 1991, the seven Petitioners would have completed 15 years of service if their service prior to attaining the age of 17 years is taken into consideration. With regard to the remaining ten Petitioners in Writ Petition Nos. 164,165, 168, 169, 170, 172,

222, 224, 225 and 369, all of 1990, if their service prior to the age of 17 years is taken into consideration, they would have completed more than 14 years of service. If the said period is not taken into consideration, they have completed more than 13 years and 6 months of service or 14' years and few days in some cases. For the aforesaid reasons, it is directed that the Petitioners be considered to be in service for a period of 15 years for the purpose of getting pensionary benefits as at this stage, after lapse of 8 years, it would not be proper to direct the Petitioners to serve the Navy for the remaining period by opting re-engagement for one year or few months more.”

16. The Larger Bench of Hon'ble the Supreme Court in **Deokinandan Prasad vs The State of Bihar and others** AIR 1971 SC 1409, held that right to pension is property in terms of Article 19 (1)(f) and 31 (1) of the Constitution of India and right to pension flows from the Rules and not the order granting pension. Hon'ble the Supreme Court in the aforesaid case held as under:-

“28. The respondents have not taken up the position that the officers like the petitioner are not entitled to pension. A reference to Rule 5 of the Pension Rules shows that the officers mentioned therein are entitled to pension. There is no controversy that the petitioner is an officer in the Education Department of the Bihar 'Education Service. It is item No. 3 of the Schedule to Rule 5. Rule 42 declares that every pension shall be held to have been granted Subject to the conditions contained in Chapter VIII. It is not the case of the respondents that Chapter VIII which applies to re-employment of pensioners, has any relevancy to the case on hand. We have already referred to Rule 46. Under that rule a Government servant dismissed or removed for misconduct,

insolvency or 'inefficiency is not eligible for pension. But that rule clearly contemplates that action by way of dismissal or removal in respect of the three matters mentioned therein has already taken place according to law. The bar under Rule 46 will operate only when the conditions mentioned therein are satisfied. In fact the consequences envisaged under the rule flow from the action already taken. Rule 129 provides for the payment of superannuation pension to a Government servant entitled or compelled by the rules to retire at a particular age. Rule 134 clarifies the payment of retirement pension to a Government servant permitted to retire after completing qualifying service for 30 years or any such less time as may for any special class of Government servants be prescribed. Rule 135 provides for Government servants mentioned in Rule 5 to be entitled on their resignation being accepted to a retiring pension after completing qualifying service of not less than 25 years. Rule 146 provides the scale of pension for Government servants mentioned in Rule 5. We have only referred to some of the important rules to show that the payment of pension does not depend upon the discretion of the State; but, on the other hand, payment of pension is governed by the Rules and a Government servant coming Within the Rules is entitled to claim pension. The order dated June 12, 1968 has to be quashed in view of the fact that the foundation for the said order is the one based on the order dated August 5, 1966, which has been quashed by us. When the order dated August 5, 1966 can no longer survive, the order dated June 12, 1968 quite naturally falls to the ground.

The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect,

we have already adverted to earlier and we now proceed to consider the same.”

17. In **K. R. Erry vs State of Punjab** ILR 1967(1) Punjab & Haryana 278, Full Bench of this Court held as under:-

“I am inclined to take the view that the right to superannuation pension—including its amount—is a valuable right vesting in a Government servant, and before that right is prejudicially affected, he is entitled to a notice to show cause against the proposed cut: such appears to me to be the scheme of the Rules read as a whole. The fact that a right of appeal has been conferred on an aggrieved Government servant in this respect would seem to lend additional support to this View. I do not find it easy on any rational ground to deny generally speaking to an aggrieved party a right of hearing before the original authority in a cause in which he is given the right of appeal.”

18. In **Chet Singh vs State of Punjab** AIR 1977 (SC) 1494, it was held as under:-

“4. The proviso to Section 42 lays down that notice to interested parties to appear and opportunity to be heard are conditions precedent to passing of an order under Section 42. The fact that the Additional Director was satisfied that the respondent did not have an opportunity of being heard due to his illness, seems to us to amount to a finding that the proviso could not be complied with so that the previous order could not be held to be an order duly passed under Section 42 of the Act. It could be ignored as “non est”. The view taken in Harbhajan Singh's case (supra) would not apply to the instant case although Section 42 of the Act, does not contain

a power of review. Orders which are "non est" can be ignored at any stage."

19. In **Ajit Singh vs Union of India and others** Law Finder Doc Id# 4605 Delhi High Court observed that discharge could not be sustained under Rule 13 passed by the Commanding Officer as there was no consent given by him. The relevant extract reads as under:-

"5. On a perusal of the Petitioner's Certificate of Service, it is evident that he was Discharged by order of the Commandant AMC Centre, Lucknow, in consequence of his erroneous assumption of the Petitioner's "completion of the terms of engagement under Army Rule 13(iii)(i) after serving 12 years, 226 days with the Colours and 2 years and 315 days in the Reserve (non-qualifying service included)". His character is stated to be good. The Petitioner's services were neither terminated nor was he released on medical grounds. This responsibility and all ensuing repercussions of the mistake in the Discharge must be borne by the Respondents, since the Petitioner did not play any role in it. As far as he was concerned, he would have continued in service till he was forty years of age. It would be inequitable to hold otherwise since the Petitioner had admittedly given the best years of his life to the service of the Army Medical Corps. Having done so his legitimate expectation i.e. for receiving pension and other retrial benefits must be protected. This right which he has earned cannot be extinguished or diluted by stating that even if the time served by him as a "Boy Recruit" is taken into consideration, he would still not fulfill the minimum period of service requisite for grant of pension etc. It would also not make the slightest difference that during the period in which he was permitted to save in the Army Medical Corps, 380 days could not be taken into

consideration for the non-qualifying service period. The simple answer is that the Petitioner would have willingly served if not till he had attained the age of forty years, but at least till he had served for the qualifying years, i.e., 15 years of service together with the 380 days which in his case are stated by the Respondent to be 'non-qualifying'. Had the Respondents not Discharged the Petitioner in the mistaken understanding of his having completed the terms of engagement, he could have challenged the Respondents' unilateral decision of Discharge as being contrary to any provision of the Army Act or Army Rules. As has already been mentioned above, his services were neither terminated nor was he discharged on medical ground. The Respondents' decision is clearly detrimental to his interests and punitive in character since he would stand to lose his right for receipt of pension. A punishment can be inflicted only in strict compliance of the statutory provisions.”

20. A look at the order of discharge as quoted above reflects that the petitioner had been discharged by applying Rule 13 (ii) of the General Statutory Rules and Orders of Air Force and it would be apposite to quote relevant extract of Rule 13, which is as under:-

“13. Authorities empowered to authorize discharge. – The authorities specified in column 3 of the table below shall be the authorities competent, in respect of the persons specified in column 1 and for the causes and in the manner specified in columns 2 and 4 respectively, to discharge from the service persons subject to the Act. Any power conferred by this rule on any authority may be exercised by any higher authority.

Class	Cause of discharge	Competent authority to authorise discharge	Special Instructions
Officers of the Indian Air	All causes of discharge	The Governor General in Council	A notification in the Official Gazette of the retirement of an

Force			officer, the relinquishment of his commission etc. shall be deemed to be a discharge within the meaning of sub-section (2) of section 2 of the Act.
Persons enrolled under the Act who have been attested.	(i) At his own request on transfer to the pension establishment. (ii) At his own request on fulfilling the conditions of his enrolment.	Commanding Officer Commanding Officer	To be carried out in accordance with the conditions of enrolment and with section 17 of the Act and Rule 10. Ditto

Thus, the Commanding Officer in terms of Rule 13(ii) discharged the person enrolled under the Act, who have been attested at his own request on transfer to the pension establishment or on fulfilling the conditions of his enrolment or having been found medically unfit for further service. Merely because a person who fulfills the conditions of enrolment, he cannot be discharged by the Commanding Officer without there being a request. Keeping in view the specific admitted stand that the petitioner had not made any request for being discharged on fulfilling the conditions of enrollment, the order passed on 09.02.1972 is found to be illegal.

21. We also find that as per AFI (supra) the Officer was required to take a decision on completion of 9 years service whether to continue as an individual. It is an admitted position that the services of the petitioner have been extended after 9 years for a further period from 27.12.1971 to 28.03.1972 i.e. 93 days. The sanction for extension has been given on the day when the decision was taken to discharge him. As per AFI (supra), once an extension has been given, the same would be for a period of 6 years, that is till he completes 15 years of service. There is no provision for extension of service for 93 days alone.

22. This Court also noticed that the petitioner completed 9 years of service on 26.12.1971 when the 1971 war was in force and it appears that only after the emergency was lifted that the petitioner has been discharged in 1972. In the opinion of this Court, orders could not have been passed to the detriment and disadvantage of a defence personnel in a manner that he is deprived of his pension.

23. From the perusal of the judgments, which have been quoted hereinabove, it is apparent that pension has to be treated as a personal right of an individual for the service which he rendered with the State. Once the rules provide for granting benefit of 6 years as reserve service and 9 years as regular service (before the AFI came into operation) i.e. July, 1969, a defence personnel was entitled to continue in service upto 15 years after the AFI came into operation with existing service of defence personnel to be allowed to continue after 9 years upto 15 years provided they have been atleast promoted to the post of Corporal. It does not sound to reason to deprive the petitioner, who had been promoted to the rank of Sergeant, to be given the benefit of 15 years of pensionable service for the purpose of qualifying service.

24. We would not, therefore, look into or examine the reasons for denying continuity to the petitioner upto 15 years in the absence of record which is stated to have already been burnt/ destroyed. But at the same time considering that the petitioner had already been promoted to the post of Sergeant and no reasons are coming forward in the order discharging him after he had put in more than 9 years of service, we hold him to be

entitled to the benefit of complete 15 years of service for the purpose of pension alone. Denying him the right of reservist pension is also found to be without any reason as held by Hon'ble the Supreme Court in **Sohan Singh's** case (supra). The petitioner was required to be treated for the purpose of reserve service and we find that after he completed 9 years, he was allowed to be continued till emergency was lifted. In view thereof, the benefit was required to be given to him.

25. The question now arises whether he has to be given reservist pension or his period of service deemed to be of 15 years ?

26. In the opinion of this Court and in view of the fact that the record is not available and the petitioner has approached this Court belatedly and we have decided not to examine the question relating to the extension of service of the petitioner after he completed 9 years and 93 days but at the same time we have also held the order of discharge to be illegal and contrary to the provisions of Rule 13 (ii) of the Rules and hold that the Commanding Officer could not have discharged him, he would be entitled to all consequential benefits as he was in continuous service. His discharge order having been quashed, he would be entitled to full pension on completion of his full service on attaining the age of 58 years. The order passed by the AFT is found to be laconic. It has failed to examine the main issue and has only dealt on the issue relating to reservist pension. Since the order of discharge dated 09.02.1972 itself is found to be *void ab initio and non est*, having been passed by an officer who was incompetent to pass the same there being no consent on the part of the petitioner for

discharge, the orders passed by the AFT is found to be not sustainable in law and the same is set aside.

27. In view of the above and taking into consideration that denial of pension also takes away the Fundamental Right of the petitioner, we do not deem it appropriate to remand the matter to the AFT at this stage and direct the Union of India to release the pension of the petitioner considering him to have served the Air Force on the post of Sergeant upto the age of 58 years. Accordingly, his pension shall be calculated by notional calculation of his salary and he would be entitled to pension from the date he attained the age of 58 years. No arrears of salary shall be paid to him for the period he deemed to be in service as he had actually not performed his duties for the said purpose. The pension, however, shall be actually calculated and paid with all arrears from the date the petitioner completes 58 years. The other retiral benefits shall also be paid to him after deducting the gratuity amount which had already paid to him. No interest would be payable on the aforesaid amount as the petitioner has approached this Court belatedly and scales of justice would, therefore, be weighed equally by not awarding interest on the arrears of pension.

28. The exercise shall be conducted within a period of four weeks by the Defence Accounts Section on the basis of documents which have been placed before this Court. The petitioner shall make available the documents which he has in his possession relating to his service to the Defence Accounts Section and the pension shall not be denied merely because records of the petitioner have been destroyed.

29. The writ petition stands disposed of accordingly.
30. All pending applications shall stand disposed of.
31. No costs.

(SANJEEV PRAKASH SHARMA)

JUDGE

19.04.2024

VS

(SUDEEPTI SHARMA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No