

2024:PHHC:130086-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-24398-2021
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

Jaspal SinghPetitioner
Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Rajesh Sehgal, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondent – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 05.04.2019 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the benefit of service pension to the petitioner was restricted to him, from the date of passing of the impugned order by the Tribunal concerned.

Factual Background

2. The applicant was enrolled in the Corps of Signals on 04.11.1986. He was granted 8 days casual leave from 12.04.2003 to 19.04.2003 with permission to respectively prefix 11.04.2003 and suffix 20.04.2003 being holidays but he over-stayed his casual leave

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was accordingly declared a deserter w.e.f. 11.04.2003 and was ultimately dismissed from service w.e.f. 24.10.2006 under Section 20 (3) of the Army Act.

3. The petitioner filed O.A. 2290 of 2013 before the learned Armed Forces Tribunal concerned, whereby he cast a challenge to the passing of the dismissal order. The said O.A. became disposed of vide order dated 05.04.2019. The operative part of the order dated 05.04.2019 is extracted hereinafter.

“9. From the perusal of the order, it appears that the applicant had joined in December 2005 at Depot Regiment 1, Training Signal Centre, Jabalpur (M.P.) and he had taken ration only for one day. Prior to that, he had also moved an application for grant of service pension on .01.09.2005. Both the things were done by him prior to completion of three years from the date of his first day of absence without leave (21.04.2003). According to that, three years would have been completed on 20.04.2006 but prior to that, he took ration for one day and made an application for grant of service pension. In these circumstances, regard being had to the facts and circumstances of the matter and the conduct of the applicant, the order of dismissal appears to be harsh.

10. In the result, this OA is allowed and we convert the order of dismissal into that of discharge and accordingly, the applicant is held entitled to service pension from the date of this order because he has come to this Court after about seven years from the date of his so called dismissal.

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4. Feeling aggrieved from the relevant part of the order passed by the learned Armed Forces Tribunal concerned, whereby he became declared to become entitled to service pension from the date of passing of the said order, thus the petitioner has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

5. Initially, at the very inception the first paragraph as carried in the impugned order requires the same becoming extracted hereinafter.

1. At the very outset, it would be pertinent to mention here that learned counsel for the applicant has made an endorsement on the margin of this OA that he does not want to press this application on merits if the order of dismissal is converted into that of discharge.”

6. A reading of the above extracted paragraph discloses that on the anvil, of an apposite endorsement becoming made on the margin of the O.A., qua the petitioner thus not pressing the petition on merits, rather pressing for the order hence converting the dismissal order into an order of discharge, that the supra relief became granted. Reiteratedly after considering the entire facts and circumstances, the Tribunal concerned, proceeded to conclude that the said plea was required to be accepted. In sequel, when in the operative part of the verdict, operative part whereof becomes extracted hereinabove, though the Tribunal converted the order dismissing the petitioner from service into an order of his being discharged from service, besides also declared him to become entitled to service pension from the date of passing of the impugned order.

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7. Nonetheless, the bestowment of relief (supra) to the petitioner, inasmuch as, the awarding to him of service pension from the date of the passing of the impugned order, thus yet brings grievance to the petitioner. The said grievance is a well raised grievance, as upon, the verdict of dismissal from service being converted into a verdict of discharge from service, thereupon, the said substitution is also to be readable from the date of the passing of the order of dismissal/discharge qua the present petitioner. In sequel, the said date becomes the relevant date for the consequent thereto benefits of pension becoming accorded to him. Therefore, the instant petition is required to be allowed.

Final Order of this Court.

8. For all the reasons aforesaid, this Court finds merit in the writ petition and the same is allowed. The relevant part of the impugned order rather restricting the benefit of service pension to the petitioner from the date of passing of the impugned order, is quashed and set aside. The petitioner is declared to become entitled to service pension from the date whereons the same accrued to him, alongwith with interest @ 7% per annum.

9. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No