



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

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Date of decision: February 09, 2024

+ W.P.(C) 11909/2023 & CM APPL. 8023/2024

(27) SMT RAJESH DEVI

..... Petitioner

Through: Mr. K.K. Mishra and
Mr. Roshan Kumar, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. S.A. Haseeb, Adv. with
Major Partho Katyayan.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 8023/2024

1. This application has been filed by the petitioner with the following prayers:

“In view of the above circumstances, it is most respectfully submitted that this Hon’ble Court may be pleased to:

(a) Allow the present application and permit the Applicant / Petitioner to bring on record Annexure P-14 to Annexure P-15 as documents in the present writ petition.

(b) Pass any other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. Noting the contents of the application, the same is allowed. The documents are taken on record.

3. Application stands disposed of.

**W.P.(C) 11909/2023**

4. With the consent of the counsel for the parties, this petition is taken up for final disposal.

5. The challenge in this petition is to an order dated July 14, 2021 passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 53/2012, whereby the Tribunal has dismissed the OA filed by the husband of the petitioner challenging his dismissal order from the Army, by stating in paragraphs 9 and 10 as under:

"9. Looking to the facts and circumstances of the case, we are of the considered view that the applicant was declared as a deserter and after conducting a Court of Inquiry he had been dismissed / declared as a deserter in August 1999 and thereafter the applicant has not taken any steps to ventilate his grievance either with the Competent Authority of the department or by approaching the contempt Court of law within the period prescribed under law. There is an unexplained inordinate delay and laches and the delay and laches in invoking the jurisdiction of this Tribunal has not been properly explained in the application condonation of delay. That apart, even on merit the applicant except for contending that he had intimated the authorities about his wife's accident, has not brought on record any cogent evidence or material to justify his action. That apart, now as per the learned counsel for the respondents after a period of more than twenty two years, even the records pertaining to the matter are not available and they are unable to defend the matter.

10. Accordingly; finding no case to interfere in the matter on account of inordinate delay and laches on the part of the applicant, the OA is dismissed."

6. The facts as noted from the record and so contended by Mr. K. K., Mishra, learned Counsel appearing on behalf of the petitioner is that the



husband of the petitioner joined the Army as Sepoy on February 28, 1988. After undergoing requisite training, he was posted at Firozpur, Punjab. On August 10, 1999, he applied for 20 days leave up to August 29, 1999 and proceeded to his home town. On returning the Unit, he was not allowed to enter the same. Subsequently, he reported to the ASC record, Gaya, but nothing was informed to him.

7. It is the case of Mr. K. K., Mishra that on December 18, 2002, the petitioner received a letter indicating that her husband had deserted the service and his whereabouts are not known and a request was made to her to complete the formalities with regard to release of funds payable to her husband.

8. Immediately thereafter, the husband of the petitioner had approached the High Court of Allahabad and made a complaint to the effect that the order of dismissal or declaring him as deserter was not served on him. The Allahabad High Court without going into the controversy on merit, directed that the impugned order be served on the husband of the petitioner.

9. The contention of Mr. Mishra is, despite the directions of the Allahabad High Court to serve the copy of the dismissal order on the husband of the petitioner, the same was not done. It is a fact that between 2003 to 2012 (when the husband of the petitioner had approached AFT and filed the OA), he did not approach any court of law.

10. It is contended by Mr. Mishra that the husband of the petitioner had been representing to the authorities for compliance of the order passed by the Allahabad High Court.

11. It is stated that the OA filed by the petitioner in the year 2012 has been dismissed by the Tribunal for the reasons which we have already



reproduced in paragraph 5 above. The submission of Mr. Mishra is that the respondents could not have discharged / dismissed the husband of the petitioner without complying with the principles of natural justice, inasmuch as, at least it was required for the respondents / authority to issue a show-cause notice before taking a final action on dismissal / discharge.

12. He states, pursuant thereto, the husband of the petitioner had been pursuing with the authorities. Unfortunately, no reasons qua his dismissal / discharge were intimated to him despite the decision of the Allahabad High Court. It is only when the husband of the petitioner had not received any documents, despite the directions of the Allahabad High Court, he approached the AFT for the reliefs as sought in the petition, including setting aside of the order of the dismissal.

13. It is an admitted case that the husband of the petitioner had expired in 2022. He submits, if the dismissal order is set aside, the petitioner who is the wife of Late Manbir Singh, would certainly get the pensionary benefits.

14. On the other hand, Mr. S.A. Haseeb, learned counsel appearing for the respondents and the Officer viz. Major Partho Katyayan, who has appeared for the respondents, would justify the orders passed against the husband of the petitioner by relying upon Rule 17 of the Army Rules, 1954, to state that it is a conceded position and upheld by the AFT that the records of the year 1999 have already been weeded out.

15. Be that as it may, the issue which arises for consideration is whether the Tribunal was justified in dismissing the OA on the ground that the same was barred by limitation / delay and latches.

16. In the facts of this case, as noted above, we agree with the conclusion arrived at by the Tribunal, in the following manner:



1. Dismissal order was of the year 1999;
2. The husband of the petitioner had approached the Allahabad High Court in the year 2003;
3. It was in the year 2003, the Allahabad High Court had disposed of the writ petition directing the respondents herein to give the husband of the petitioner a copy of the order of his dismissal.

17. Assuming for a moment that the order of the dismissal was not furnished to the husband of the petitioner, nothing precluded him to approach the Allahabad High Court by way of contempt petition or a fresh proceeding seeking compliance of its order. Moreover, he only approached the AFT in the year 2012, i.e., almost after 9 years of the passing of the final order by the Allahabad High Court.

18. In fact, we find that the OA was dismissed for non-prosecution and the restoration thereof, was sought only after a period of 8 years, which was restored on April 9, 2021. The aforesaid facts surely justify the rejection of the OA by the Tribunal. We have already reproduced paragraph 9 of the impugned order, with which we agree.

19. In view of our discussion above, we do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 09, 2024/jg