

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : T.A. 55 of 2012**

APPLICANT (S)

Ajay Kumar

RESPONDENT (S)

Union of India & 5 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Amit Sharma

Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : 5 Dated : 06.12.2013
	<p>Mr. Amit Sharma, Id. Adv. appears for the applicant and Mr. D.K.Mukherjee, Id. Adv. appears on behalf of the respondents. The applicant is also present in person. TA 55 of 2012 is taken up for hearing.</p> <p>Writ petition No. CWJC 13148 of 2003 was originally filed before the Hon'ble Patna High Court by the applicant, Ajay Kumar, who was dismissed from Naval Service, claiming service pension. The said writ petition was subsequently transferred to this Tribunal under operation of Sec. 34 of the AFT Act and has been re-numbered as TA 55 of 2012. We have heard the Id. Advocates for both sides.</p> <p>The facts of the case, stated very briefly, are that the applicant joined the Naval Service on 5<sup>th</sup> July 1985 as Matric Entry Recruit/Direct Entry Sailor. By dint of his satisfactory and unblemished service and good conduct he got successive promotions as Radio Operator II and then as Radio Operator, I and finally as Petty Officer Radio (Telegraphic) w.e.f. 23<sup>rd</sup> April 1998. On completion of his terms of service, he was due to retire</p>

on 31<sup>st</sup> July 2000. However, a few months before his retirement, he was issued with charge sheet as he was allegedly involved in some kind of espionage activities and was tried summarily. The summary trial was started against him under sections 74 and 77(2) of Navy Act, 1957. On conclusion of the trial, he was inflicted with the following punishments vide order dt. 23.8.01:-

- a) Dismissal from Naval Service.
- b) Reduction in rank to ROI
- c) Deprivation of 3<sup>rd</sup>, 2<sup>nd</sup> and 1<sup>st</sup> good conduct badges.

The appeal filed by the applicant against the punishment order was rejected by order dated 21<sup>st</sup> April 2004. The applicant preferred a claim for grant of pension which was not accepted and being aggrieved he filed this writ petition before the Hon'ble High Court at Patna praying for a direction to grant him service pension, as already stated above.

The respondents in their counter affidavit has mainly relied on Reg. 69 of the Pension Regulation for Navy and stated that since the applicant was dismissed from service, as per the ibid regulation, he was not entitled to any service pension. It is further stated that the applicant never made a mercy appeal before the Central Govt. for grant of pension as per said regulation. It is also pointed out that the applicant was involved in serious misconduct and during the trial he admitted his guilt.

During the course of hearing, Mr. Amit Sharma, Id. Adv. for the applicant has drawn our attention to Sec. 81 of the Navy Act, 1957 which specifies different kind of punishments that can be imposed. It will be relevant to quote the said Sec. 81 hereunder :-

	<p>"81 Punishments. – (1) The following punishments may be inflicted under this Act, namely, :-</p> <ul style="list-style-type: none"> <li>a) Death</li> <li>b) Imprisonment which may be for the term of life or any other lesser term;</li> <li>c) Dismissal with disgrace from the naval service;</li> <li>d) Detention;</li> <li>e) Dismissal from the naval service;</li> <li>f) Forfeiture of seniority in rank in the case of officers and master chief petty officers;</li> <li>g) Forfeiture of time for promotion in the case of officers below the rank of commander and master chief petty officers;</li> <li>h) Dismissal from the ship to which the offender belongs;</li> <li>i) Reduction in rank in the case of petty officers and person holding leading rates;</li> <li>j) Fine in respect of civil offences;</li> <li>k) Mulcts of pay and allowances;</li> <li>l) Severe reprimand or reprimand;</li> <li>m) Forfeiture of pay, head money, bounty, salvage, prize money and allowances earned by and all annuities, pensions gratuities, medals and decorations granted to the offender or of any of ne or more of the above particulars; also in the case of desertion, of all clothes and effects left by the deserter in the ship to which he belongs;</li> <li>n) Such minor punishments as are inflicted according to the custom of the navy or may from time to time be prescribed.</li> </ul> <p>(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.</p> <p>Ld. Adv. for the applicant has contended that "dismissal</p>
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from service" (clause 'e') is a separate punishment than "forfeiture of pensions, gratuities, medals etc." (clause 'm') and in this case only dismissal from service was inflicted which does not include "forfeiture of pension, gratuity etc.

Ld. Counsel further submits that as per regulation 13 of Navy Regulations, in the case of summary trial, sailors can be awarded punishment of 'dismissal from naval service' and not "dismissal with disgrace".

According to the Ld. Counsel when punishment of "forfeiture of pension" was not imposed on the applicant, he cannot be deprived of pension because even in case of dismissal, a person remains eligible for pension. Since the applicant has completed 15 years of service, he is eligible for pension which has been wrongly denied to him. He has also contended that no show cause notice was issued on the applicant before withholding of his pension. He has placed reliance on a decision of this Bench in TA 92 of 2010 (**Gangeshwar Baitha –vs- UOI & Ors**) decided on 10.1.2011 (unreported). In that case the applicant was also dismissed from service and his pension was also not granted. This Bench of the Tribunal relying on the decision of the Hon'ble Apex Court in the case of **Major G.S.Sodhi –vs- UOI & Ors**, 1992(5) SLR 108 and also the Full Bench decision of the Hon'ble Delhi High Court reported in 1997(4) SLR 151 ( **Brig. A.K.Malhotra –vs-UOI**), held that when punishment of "forfeiture of pension" was not passed against the petitioner therein, which the court martial authority could do within the rules, denial of pension was not proper and direction was issued for considering eligibility of the petitioner to get pension and to pass appropriate orders.

Mr. D.K.Mukherjee, Id. Adv. for the respondents, on the

other hand, has referred to reg. 69 of Pension Regulations (Navy), 1964 and contended that since the applicant was dismissed from service he was not eligible for pension as per this regulations. Further, he has never prayed for such pension and, therefore, question of grant of pension does not arise. Mr. Mukherjee has further submitted that the applicant was involved in a serious crime and he admitted his guilt before the court martial authority and in such circumstances, he cannot be granted any pension. Reg. 69 as quoted in para 3 of the counter affidavit, is reproduced below :-

“ A sailor who is dismissed under the Act is ineligible for pension or gratuity in respect of service rendered by him before his dismissal provided that the central Government may, where it is satisfied that the exceptional circumstances of the case justify it grant service pension or gratuity at a rate not exceeding that for which the sailor would have been eligible had he been discharged on the date of dismissal.”

Having heard the submissions of both sides and having considered the matter carefully, we are required to consider two main issues.

- A) Whether any show cause notice was issued to the applicant before his pension was refused ?
- B) Whether the intention of the authorities was to inflict both the punishments of dismissal from naval service and forfeiture of pension gratuity etc. ?

Admittedly, the applicant was not issued with any show cause notice before withholding his pension. As is held by the Hon'ble Supreme Court in a catena of decisions pension is not a bounty but a valuable property. Denial of pension also means denial of fundamental right of right of an individual to livelihood.

That apart it is also infraction of principles of natural justice. Therefore, when pension is withheld by way of administrative decision, a show cause notice must have been issued and the applicant should have been given adequate opportunity to state his case. Admittedly, no such opportunity was given to the applicant. In our view, by such administrative decisions, the authorities could not have withheld pension of the applicant when no such punishment was issued in the summary trial.

As per rule position explained above, it is seen that in a summary trial, a sailor cannot be imposed the punishment of "dismissal with disgrace". Only in that case, pension may be withheld as per law. If that was the intention of the authorities, then instead of holding summary trial, appropriate court martial proceedings should have been held in which case both the punishment of dismissal from service as well as forfeiture of pension and gratuity etc. could have been ordered. Without holding such court martial proceeding, the authorities cannot withhold pension by administrative decision when in summary trial he was not punished with "forfeiture of pension and gratuity" apart from "dismissal from naval service".

By following our own decision in **Gangeshwar Baitha's** case (supra) we are of the view that the authorities were not justified in passing administrative order of forfeiture of pension and gratuity of the applicant without issuing him a prior show cause notice and giving him an opportunity to make his submission in that regard. In that view of the matter, the decision to withhold pension and gratuity stands set aside.

In the result, the application is disposed of by directing the respondent authorities to treat the dismissal of the applicant as 'discharge' and grant him pension and other retirement

benefits that are admissible as per rules, in the rank and post to which he was reduced by the punishment order passed against him in summary trial, within 90 days from the date of communication of this order.

The original records be returned to the respondents on proper receipt.

Let plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

(LT. GEN K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)