

ARMED FORCES TRIBUNAL, KOLKATA BENCH

O.A.No. 112/2019

THE 21<sup>st</sup> DAY OF MAY, 2024  
No. 108105-W Ex Cook (Sailor) 1 Digambar Dash  
..... Applicant

-Vs-  
Union of India & Ors. .... Respondents

Advocates present:

For the applicant,  
Mr. S.K. Choudhury, Advocate

For the respondents,  
Mr. Ajay Chaubey, Sr. PC

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (JUDICIAL)  
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE)

ORDER (Oral)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (JUDICIAL)

Heard.

(2) In this application following reliefs have been sought to be granted:

- i. Quash and set aside the Naval Pension Office letter No. PEN/600/108105 dated 06/09/2019 rejected thereby the mercy petition submitted by the applicant with a prayer to grant him service pension and also disability element illegally and without application of mind;
- ii. To condone the shortfall of 6 months service as per Para 82 of the Pension Regulations for the Navy, 1964;
- iii. Issue directions to Respondent No.1 to grant service pension to the applicant along with arrears as admissible in accordance with Para 69 of the Pension Regulations for the Navy, 1964;

- iv. Issue directions to Respondent NO.1 to grant disability pension as admissible to the applicant, along with arrears;
- v. Issue directions to Respondent No.3 to produce the entire record of this matter;
- vi. Pass such other and further orders/directions as may be deemed just and proper in the attendant circumstances of the case.

(3) On going through the contents of this application and that of the reply filed on behalf of the respondents as well as documents annexed therewith under the rules, discretion is vested with the competent authority, to consider the matter of a soldier, who by way of sentence awarded against him, has been dismissed from service. The applicant though has filed the mercy petition with a request to grant service pension to him on condonation of shortfall of six months in qualifying service. It has been brought to our notice that shortfall in qualifying service can be condoned in view of the law laid down by the Hon'ble Supreme Court in *Union of India & Another vs. Surender Singh Parmar*, Civil Appeal No. 9389/2014, decided on 20/01/2015 (Annexure A-6) and also the instructions dated 14/08/2001 issued by the Ministry of Defence, Government of India (Annexure A-3). However, for that, first the entitlement of a personnel, dismissed by way of penalty/conviction, has to be determined.

(4) We find in the instructions dated 14/08/2001 that the competent authority may consider the entitlement of a personnel dismissed from his service by way of penalty. Reference in this behalf is made to clause (a)(x) of the order dated 14/08/2001 (Annexure A-3). Therefore, we feel that deciding this application by this Bench itself, may not be in the ends of

justice and rather leave it to the competent authority to consider the same in the light of rules and regulations and instructions as applicable as well as law laid down by treating this application as representation. In that event, no prejudice is likely to be caused to either of the party also in this application.

(5) Being so and in view of what has said herein above, this application is disposed of with a direction to respondent No. 2 to treat this application as a representation and take a conscious decision supported by reasons on taking into consideration the Rules, Regulations and Law as applicable within four months from the date of receipt of certified copy of this order along with copy of the original application and documents annexed thereto from OIC Legal Cell/Learned Senior Panel Counsel. The opportunity of being heard be also granted to the applicant, if so requires. Copy of the order be also supplied to him. In case, aggrieved thereby in any manner whatsoever, he shall be at liberty to approach this Tribunal again for rederessal of his grievances.

(6) This application is accordingly disposed of. Miscellaneous Application(s), if any, pending will also stand disposed of accordingly.

LT GEN SHASHANK SHEKHAR MISHRA  
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY  
HON'BLE MEMBER(J)

vr/-