

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : OA 3 OF 2013

THIS 30TH DAY OF APRIL, 2014

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Sankar Kumar Das,
Son of Late Phoni Bhusan Das,
Ex-Naik No.13905588-M
Residing in Village Bunichara Para,
P.O. & P.S. Nabadwip, District Nadia,
West Bengal

.....Applicant

-Vs-

1. Union of India, Service through the Secretary, Ministry of Defence,
South Block, New Delhi
2. The Adjutant General Army Group, Insurance Directorate Adjutant
General's Branch, Army Headquarters, West Block III, R.K. Puram,
New Delhi – 110 066
3. The Zila Sainik Board – Krishnanagar Collectorate Building,
A body Corporate having its office at Government of West Bengal,
P.O. Krishnanagar, Dist. Nadia
4. The Secretary, Zila Sainik Board, Krishnanagar, Collectorate Buildings,
P.O. Krishnanagar, Dist. Nadia
5. The Officer-in-Charge, Army Medical Corps, (Records), C/o 56 APO
Pin – 900 450
6. The Chief of Army Staff, Army Headquarters, South Block, New Delhi-11
7. The Adjutant General, Army Headquarters, South Block, New Delhi – 11
8. The Principal Controller of Defence Accounts (Pension) Allahabad
Draupadi Ghat, Allahabad, Pin – 211014
9. Jt. CDA I/C PAO (OR) AMC, Lucknow – 2, UP

.....Respondents

For the petitioner : Miss Ashima Roy Chowdhury, Advocate

For the respondents : Mr. Dipak Kumar Mukherjee, Advocate

ORDER

Per Hon'ble Lt. Gen. K.P.D.Samanta, Member (A)

This OA has been filed by the applicant, who was discharged from the Army in the rank of Naik in the Army Medical Corps (AMC) without being provided with his service pension and for not receiving his provident fund as well. He has sought redress through this OA.

2. The case of the applicant, in short, is that he was enrolled in the AMC as a Sepoy (Ambulance Assistant) on 30-9-1965. He served efficiently and without any complaint. However, he was discharged from service for contracting plural marriage by an order of the competent authority with effect from 30-1-1985. After his discharge he was paid a cheque for Rs. 3956/- towards Army Group Insurance. But he did not get any payment of his Provident Fund dues or pension. He made representations to various authorities but to no effect. He also made representations through Zila Sainik Board, who also referred his case to the competent authority in August 2010. When no result was forthcoming, the applicant filed the instant application praying for the following reliefs:

- a) Release of the Provident Fund Amount to the applicant who was discharged from service for plural marriage within a stipulated period.
- b) Grant of Pension from the date of his discharge from service on 30-1-1985 with all arrears and continuation of the same.
- c) Interest at the rate of 18% on the said Provident Fund and Pension amount from 30-1-1985 when it accrued having been discharged from the service till the date of actual payment.

3. The respondents have filed a counter-affidavit explaining all factual aspects and justifications for their actions to terminate the service of the applicant and deny him pension. The respondents have also submitted the original records containing the personal records of the applicant and all correspondence related to this matter as available in this original file. These were inspected by the ld. counsel for the applicant and also perused by us in detail. In fact there are many original official communications, which have not been annexed in the affidavit in opposition, but available in this file that explain efforts taken by the authorities to grant pension to the applicant. Such letters/official communications have been referred in full since many of them have not been annexed with the affidavits submitted by both parties. The respondents have inter-alia stated as follows:

- a) The applicant was enrolled in Army Medical Corps on 30th September, 1965. While the applicant was posted in 431 Field Ambulance at Jhansi, the CO of the unit received a letter from Ms Gita Rani Dass of Vill – Fansitala Chara, Post Office – Nbadwip, Dist. Nadia (West Bengal) supposedly wife of the said applicant on 4th February, 1984. Through this letter, which was dated 1st February 1984, she alleged that her husband Naik/Ambulance Assistant Sankar Kumar Das (applicant) was not sending her money for maintenance. The applicant was immediately interviewed by the Commanding Officer, 431 Field Ambulance, but he stated that the complainant Smt. Gita Rani Dass was not his wife. On the other hand he produced a marriage certificate issued by the Office of the Silchar Municipal Board dated 21st December, 1983 which showed that he had married Smt Baby Rani Dass, daughter of Shri Dinesh Chandra Dass of Malugram, Ghaniwala, Silchar Town on 22nd November, 1983. Necessary

information and verification relating to his marriage were called for from the District Soldier Sailor & Airmen Boards (DSSAB) of District Nadia and District Cachar, Silchar on 1st March, 1984 and 29th February, 1984 respectively. As per DSSAB Burdwan letter No.NDA/22/Misc/1750 of 14th May, 1984, the applicant was married to Smt. Gita Rani Das, daughter of Shri Kali Mohan Paramanik of Village & Post Office – Gobrapota, Nadia on 20 Baisakha 1381 (Bengali Year), i.e. April 1974 and the applicant had three children aged 10 years, 7 years and 4 years at that time. Further, the Secretary DSSAB/Zila Sainik Board, Cachar, Silchar also confirmed vide letter No.ZSB/22/iv/67 of 24/28 May, 1984 that the applicant was married to Smt Baby Rani Dass as per certificate issued by Silchar Municipal Board. The applicant was asked to forward reasons for undergoing plural marriage vide 431 Field Ambulance letter No.204/1/ (Part Case) dated 3rd June, 1984 (Annexure R-1). In reply he stated that he had married second time because of maladjustment with his first wife. The applicant further stated that his first wife permitted him to marry again.

- b) As the applicant had contracted plural marriage, 431 Field Ambulance initiated administrative action under the provision of para 333 (C) (b) of Regulation for the Army 1962 (Revised) with the higher authorities in Headquarters Central Command. The GOC-in-C Central Command accordingly issued an order for termination of his service on 27th September, 1984 (Annexure R-2). The discharge order was however, executed with effect from 30th Jan 1985 after granting him 28 days balance of annual leave from 3rd November, 1984 to 30th November 1984 and 60 days of extra ordinary leave (EOL) without pay and allowance from 1st

December, 1984 to 29th January, 1985. Accordingly his service was terminated with effect from 30th January, 1985 (FN).

- c) AMC Records, Lucknow (Respondent No-5) initiated case for issue of Last Pay Certificate (LPC) with Pay Account Office for other Ranks (PAO (OR)) co-located at Lucknow; but the PAO (OR), Lucknow, vide their letter dated 15th March, 1985 (Annexure R-3), did not issue any LPC intimating that, since the services of the applicant were terminated for contracting Plural Marriage, no pensionary benefits were admissible to him. The AMC Records again took up a case with the Joint Controller of Defence Account, PAO (OR), AMC, Lucknow (Respondent No-9) for issue of Last Pay Certificate (LPC) on 25th March, 1985 (Annexure R-4) to enable them to progress his case for pension. The PAO (OR), AMC, Lucknow (Respondent No-9), vide their letter (Annexure R-5) intimated that their decision of 15th March, 1985 still held good and asked AMC Records to approach the superior account office Controller of Defence Account (Other Ranks), North, Meerut for further clarification. Army Medical Corps Records approached Controller of Defence Account (Other Ranks) North, Meerut vide letter 13905538/PC/DS-IV/NE-1 dated 7th August, 1985. Meanwhile, PAO (OR), AMC, Lucknow asked AMC Records, vide their letter No.L/VM/13905538/VI dated 3rd July, 1987 (Annexure R-7), to forward a statement of case for irregular retention, i.e. retention beyond the date of approval of termination of service granted by General Officer Commanding-in-Chief on 27th September 1984; he was retained till 29th January, 1985. After protracted correspondence the sanction was ultimately obtained from Government of India, Ministry of

Defence vide their letter No.B/74305/DGMS-3D (Med) dated 10th September, 1991 (Annexure R-7). Hence his final date of termination from service was 30th January, 1985 (F/N).

- d) The AMC Records, Lucknow forwarded all required documents to the applicant for completion on 8th October, 1987 (Annexure R-8), to his home address, but no response was received from the applicant. Thereafter, the same documents were forwarded to the Zila Sainik Board, Nadia, West Bengal, by AMC Record Office on 13th November, 1987 (Annexure R-9), for necessary action; but, Zila Sainik Board, Nadia also did not respond. Meanwhile, the applicant also did not approach the AMC Record Office for his pensionary benefits. AMC Record Office once again forwarded all necessary documents to the applicant and Zila Sainik Board, Nadia for completion by the applicant by a letter dated 27th January, 1992 (Annexure R-10). Zila Sainik Board, District Nadia informed AMC Records by a letter dated 22nd April 1992 (Annexure R-11), that the applicant's whereabouts were not known and hence, the relevant documents could not be processed. It is pertinent to mention here that these documents are mandatory for processing service pension claim with competent authority. The AMC Record again by a letter dated 23rd July, 1993 (Annexure R-12), approached Zila Sainik Board, Krishnanagar and Zila Sainik Board, Burdwan with copy endorsed for the applicant, to forward the requisite documents; but no reply was received from them.

4. It is further submitted by the respondents that the service of the applicant was terminated under Army Act, 1950 by the General Officer Commanding in Chief, Central Command on 27th September, 1984 for contracting plural marriage in

contravention to Regulation 333(C)(b) of Regulations for the Army 1962 which is quoted below:-

“Regulation 333 © (b) of Regulations for the Army 1962 (Revised).

When it is found, on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army rule 14 or AA section 20 read with Army Rule 17”.

5. The respondents have relied on the provisions of Para 113 (a) of the Pension Regulations for the Army 1961 Part I (Revised) to justify that the applicant was not entitled any pension since he was dismissed under the Army Act. The ibid Para of the Pension Regulations for the Army is quoted below:-

“Para 113 (a). An individual, who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service”.

6. In view of the above facts elaborated in preceding paragraphs, the respondents submit that the service of the applicant was terminated by GOC-in-C, Central Command on 27th September, 1984 for contracting plural marriage in contravention to Paragraph 333 (C) (b), Regulations for the Army 1962 (Revised). Therefore, his dismissal was carried out under the Army Act, 1950. The applicant is not entitled to any kind of pensionary awards in terms of rule 113(a) of Pension Regulations for the Army 1961 (Part-I) (Revised). However, as regards payment of the Provident Fund, the same is being now processed for payment. Therefore, instant OA deserves to be dismissed by the Hon’ble AFT at the initial stage itself, in the interest of Justice.

7. We have heard the learned counsel for both parties and have gone through the averments as also the Departmental Records that have been produced before us. The basic fact that emerges in this case, which is not in dispute, is that the applicant was enrolled in the Army Medical Corps on 30-9-1965 and his service was terminated by an order dated 27.9.1984 by the GOC-in-C Central Command, Lucknow. The applicant has submitted that he was discharged by an order dated 30-1-1985 on account of contracting plural marriage. Thus, there is some dispute with regard to the date of termination of service. While the respondents have stated that his service was terminated from 27-9-1984, the applicant claims that the date is 30-1-1985. However, from Annexure-R2 to the reply affidavit, we find that although the Competent Authority (GOC-in-C, Central Command) issued the order of termination on 27-9-1984, it further appears from annexure-R7 that irregular retention of the applicant for a total 125 days i.e. from 27.9.84 to 29.1.85 was regularized by the sanction of the President by granting different kinds of leave to the applicant. Therefore the date of actual termination of service of the applicant is 30-1-1985. Be that as it may, we need not to go into this aspect because the date of termination/discharge is now a settled issue. In this application the applicant has only prayed for release of Provident Fund dues and also grant of pension on his discharge/termination.

8. So far as P.F. dues are concerned it is the applicant's own money and therefore the respondents cannot withhold the same. From the reply of the respondents it appears that the authorities forwarded the documents to the home address of the applicant, but he was not found. In fact, it is stated that the applicant's whereabouts were not known and hence the relevant documents could not be processed. In order to examine this issue, we called for the concerned Jt. CDA I/C (Mr., Surendra Pal), who appeared in person before us and explained that the PF

money was already paid to the applicant and he had also signed on the payment order in token of its receipt. Although the applicant, who was present during the hearing, admitted that the signature was his own, denied having received the payment, we are, however, not convinced by this denial of the applicant. The payment was made long back and the applicant's signature is affixed thereon. Had he not received the actual payment, he could have agitated on the issue long back. After lapse of so many years, it is not possible to accept the contention of the applicant that he did not receive PF dues on the face of the original records that have been shown to us. In such circumstances, we have to hold that the PF amount has already been paid to the applicant and the prayer in that regard has become infructuous.

9. Now coming to the question of payment of pension, as claimed by the applicant in this OA, the respondents have categorically stated that in terms of para 113 (a) of Pension Regulations for the Army 1961, it is clearly stipulated that an individual who is dismissed under the provisions of Army Act, is ineligible for pension or gratuity in respect of previous service. It will be relevant to quote Para 113(a) & (b) of the Pension Regulations for the Army 1961 which is as under:

“113 (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is removed from service under Army act, Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.”

10. A perusal of Regulation 113 reveals that in case of dismissal in exceptional cases, President can grant service pension or gratuity. It is also seen that an individual

who is removed from service under Section 20 of Army Act may be considered for grant of pension and gratuity.

11. From a perusal of the averments made in the counter affidavit filed by the respondents and quoted above, it is seen that the AMC Records initiated a case with the Pay Accounts Office (OR), Lucknow for issuance of Last Pay Certificate. It appears that on 15-3-1985 the Pay Accounts Office (OR) informed that since the applicant's service was terminated, no pensionary benefit would be admissible. The AMC Records then took up the matter with the higher authorities in order to process his case for grant of pension once again by a communication dated 25-6-1985. It was intimated to the AMC Records that no pensionary benefit was admissible to the applicant as his service was terminated. The AMC Records approached the next higher authority, i.e. Controller of Defence Accounts at Meerut, but to no effect.

12. It thus appears that the AMC Records had been repeatedly initiating action for sanction of pension in favour of the applicant, but they could not get the LPC which was a vital document for processing a case of pension. However, during the course of hearing, it was brought to our notice by the Jt. CDA, who appeared before us, by referring to the original records that LPC had been finally issued on 29.10.87, which was also modified on 23.9.93.

13. Now, we may take up the most vital issue regarding the validity and legality of the discharge order of the applicant. We are, however, aware that the applicant has not in clear terms challenged his discharge/termination order in this OA; but the manner and legality of discharge/termination of service directly impact his eligibility to receive pension for which he has prayed. Therefore this vital point regarding the manner, circumstances and legality of discharge/termination of service must be adjudicated first. During the course of hearing, it has been brought to our notice that

the applicant's service was terminated under regulation 333 of Regulation for the Army, which apparently does not confer any power to terminate or discharge an army personnel for plural marriage. Therefore, we thought it fit to go into this issue for dispensation of complete justice in this case.

14. The respondents have stated that an application was received from the applicant's wife, Smt. Gita Rani Dass that her husband, i.e. the applicant was not sending money for her for maintenance. The Commanding Officer of 431, Field Ambulance immediately interviewed the applicant, who informed that Smt Gita Rani Dass was not his wife. He further stated that he married to one Baby Rani Das in December 1983 and to that effect he produced a Marriage Certificate dt 21-12-1983. However, from the original records, we find that in the personal file of the applicant, the photograph of Smt. Gita Rani Dass is pasted and it is mentioned that she is the wife of the applicant. Therefore, it appears that as per official record, the applicant married Smt Gita Rani Dass in April 1974 and had three children out of the said wedlock. Thereafter, the respondent authorities, i.e. GOC-In-C issued an order on 27-9-1984 terminating the service of the applicant under the provisions of para 333 (C) (b) of Regulation for the Army, 1962. It will be relevant to quote the said order which is available at annexure-R2:-

“Case No. 130203/1036/A1 (B)

ORDERS OF THE GENERAL OFFICER COMMANDING-IN-CHIEF,
GENERAL COMMAND, PLURAL MARRIAGE – NO.13905588 NK/ABT
SK DASS OF 431 FD AMB

1. I agree with the recommendations of Offg General Officer Commanding, 1 Corps.

2. I direct that services of No.13905588 NK/ABT SK Dass of 431 Fd Amb be terminated for contracting plural marriage in contravention to para 333 (C) (b), Regulations for the Army, revised edition, 1962.

Sd/- X X X X X
 (Bhupinder Singh)
 Lieutenant General
 General Officer Commanding-in-Chief
 Central Command

Station: Lucknow

Dated: 27 Sep 84”

Regulations 333 (C) (a) & (b) are quoted below:

“333 (C) Plural Marriage by persons in whose case it is not permissible -

(a) A plural marriage solemnized, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. This offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of bigamy is prescribed in Sections 494 and 495 of the Indian Penal Code.”

(b) When it is found, on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17.

Sub-para (B) (g) is also quoted below for reference:-

“(B) ***** ***** ***** ***

(g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in clause (a) above will be dealt with as under :-

- (i) cases of officers will be reported through normal channels to Army Headquarters (AG/PS-1) with the recommendations as to whether ex-post-facto sanction is to be granted or administration is to be taken against the individual.
- (ii) Cases of JCOs an OR will be submitted to the GOC-in-C Command who will decide whether ex-post-facto sanction should be obtained or administration action should taken

against the individual. In cases, where it is decided that administrative action should be taken against the individual, his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities intermediate commanders will endorse their specific recommendations with reasons thereof. Here too recommendations will be signed by the Commanders themselves or be personally approved by them. Also an opportunity to 'show cause' against the order of termination of service will always be given to the individual concerned. “

15. A careful and close reading of the above provisions make it quite clear that this para of the Regulations for Army empowers the authority to initiate “administrative action” in case of plural marriage of an individual and not to terminate the service straightway. It is also clear that in case of JCO and OR, GOC-in-C is the competent authority to decide if “administrative action to terminate the service should be taken” or not. “Administrative action” to terminate service can only be taken under Section 20 of Army Act read with rule 17 of the Army Rules. In the instant case the learned counsel for the respondents has tried to convince us that the service of the applicant was terminated under Section 20 read with Army Rule 17. However, no such order is available from the records. On the other hand from Annexure A1, we find that the applicant has annexed his discharge order wherein it is clearly stated that “terminated under Regulation 333 (C) (b)” which is not legally tenable. We have also quoted the order dt. 27.9.84 passed by the GOC-in-C above (Annexure R-2). From the said order also it is clear that the service of the applicant was terminated under para 333(C) (b) of RA and not under Section 20 of the Army Act read with Rule 17 of Army Rule. Therefore, it is quite clear that the applicant’s service was terminated under the above para of the Army Regulations and not under the Army Act and Army Rules. Ibid army regulation only empowers the authorities to

initiate the process of termination administratively by resorting to appropriate provision of Army Act and rules. No Army personnel's service can straightway be terminated under the provisions of para 333 of the RA.

16. There is also nothing on record to establish that the applicant was given any Show Cause Notice prior to his termination, which is mandatory if Army Rule 17 was followed. The Show Cause Notice and the reply that has been mentioned in the reply of the Counter Affidavit relates to the complaint of his first wife. It is seen that on receipt of complaint, the authorities wanted to know the version of the applicant on such complaint, to which the applicant gave a reply. This is in no way connected to his termination of service, because his service was terminated subsequently. It is the settled position of law that when an adverse order is passed against an individual he is required to be given an opportunity of showing cause and on receipt of such reply to Show Cause the authority can take appropriate decision. The provision of Army Rule 17 as also para 333(B) (g) provides for issuance of show cause notice before any administrative action is taken. But no such procedure was followed in this case as per records that have been produced before us. To be sure on this score, we adjourned the hearing and directed the respondents to ascertain the position and apprise us. Mr. Mukherjee later on submitted on instruction that no such show cause notice was issued to the applicant prior to termination of his service. Ultimately the respondents were unable to produce any proof to substantiate that the applicant's service was terminated under the provisions of Army Act (Section 20) read with Army Rule 17.

17. In view of this submission and in the absence of any other documents to contrary, we are of the opinion that the termination of service of the applicant under para 333 of Regulation for Army was illegal, irregular and against the rules and as such, it cannot be sustained in law. Therefore the termination order dated 27.9.1984

issued by the GOC-in-C of Central Command (Annexure R-2) against the applicant is an illegal order that ought to be quashed.

18. In the instant case we have already stated that the applicant's service was terminated based on the ibid order dated 27.9.1984 issued by GOC-in-C Central Command in the year 1984. He had already rendered about 20 years of service. He was a Naik at the time of termination of his service; had the termination order not been there, he would have continued in service till completion of terms of service in that rank.

19. In view of above, we dispose of the OA with the following directions:-

- a) The order terminating the service of the applicant dated 27.9.1984 issued by the GOC-in-C Central Command (Annexure R-2) stands quashed.
- b) The applicant shall be deemed in service in the rank of Naik till completion of his terms of service on notional basis in that rank. He will not be entitled to any salary during such notional period of service but would get notional increments till he completes the term of service notionally.
- c) The respondents are directed to process the case for pension as if he was discharged after completion of his terms of service and for the purpose his last pay be reckoned by notionally granting him increments till the date of his notional discharge and LPC be issued accordingly.
- d) However, the arrears of pension will be restricted to three years prior to the filing of this OA i.e. from December 2008.

e) The above exercise be completed and pension paid to the applicant within three months from the date of communication of this order. No costs.

20. Let the Departmental records in original be returned to the respondents under proper receipt.

21. Let a plain copy of this order be furnished to the parties free of cost on observance of usual formalities.

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

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER