
(1995) 10 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 4824 of 1988

Arun Laxman Salunkhe

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Citation : (1996) 2 BomCR 539 : (1996) 1 MhLj 696

Hon'ble Judges : S.M. Jhunjunwala, J;B.P. Saraf, J

Bench : Division Bench

Judgement

S.M. Jhunjunwala, J.—The petitioner who was recruited in the services of the Respondents in a Technical line i.e., Combatant Wireless Operator Mechanic II on 6th January, 1972 and who has been discharged with effect from 31st January, 1987 has challenged denial by the Respondent of the pensionary benefits to him.

2. At the time of his enrolment in the Air Force, the petitioner was 16 years and 147 days old. Thus petitioner was enrolled in the Air Force 218 days prior to attaining the age of 17 years. The petitioner had executed a bond of 15 years of regular service with the respondents. At the time of recruitment of the petitioner in the services of the respondents, a writing was executed admitting awareness on the part of the petitioner that the services which would be rendered by him before attaining the age of 17 years would not be counted towards pension. The petitioner was discharged on 31st January, 1987. According to the petitioner, though his enrolment was for 15 years, he had served with the respondents for 15 years and 26 days and as such, was eligible for pensionary benefits. Accordingly on 14th March, 1986, the petitioner addressed a letter to the Commanding Officer, Air Force, Signal Centre, New Delhi requesting the respondents to consider the service rendered by him prior to attaining age of 17 years as reckonable towards pensionary benefits. On 2nd May, 1986, the Civilian Gazetted Officer of the respondents addressed a letter to the petitioner informing the petitioner that as per pension regulations, to earn a minimum pension, an airman must have 15 years of qualifying service and that service rendered before

attaining the age of 17 years in non-reckonable for pension. The petitioner was further informed that the Competent Authority can condone the deficiency in service to a maximum of six months to enable an airman to get a minimum pension. Since the deficiency of the petitioner was to more than six months, the petitioner was informed that the same could not be condoned and as such, the petitioner was not eligible for pensionary benefits. Thereafter, the petitioner made further representation which was rejected by the respondents and the petitioner was communicated of the said rejection vide the letter dated 11th March, 1987, a copy whereof is annexed as Exh. "F" to the petition. The petitioner has, in the petition, sought to quash and set aside the said communication dated 11th March, 1987 recording rejection of the representation of the petitioner by the respondents.

3. The facts are not in dispute inasmuch as it is admitted that the petitioner was recruited in the service of the respondents on 6th January, 1972 and at the time of enrolment of the petitioner in the Air Force, the petitioner was 16 years and 147 days old. Admittedly, the petitioner was enrolled in the Air Force 218 days prior to attaining the age of 17 years and was discharged with effect from 31st January, 1987. The pensionary benefits are governed by "Pension Regulations for Air Force" and Regulation 111(ii) thereof in terms provides that the service rendered prior to attaining the age of 17 years is treated non-qualifying service for pensionary benefits. Regulation 114(c) of the said regulations provides for condonation of deficiency of service for eligibility to pensionary benefits and empowers the Competent Authority to condone deficiency upto six months only. Admittedly, the deficiency of the petitioner was in excess of six months and as such, the Competent Authority has no power to condone the same.

4. The learned counsel appearing for the petitioner, has submitted that the classification for making pensionary benefits available in the Pension Regulations for Air Force has been arbitrarily made and, in the facts of the case, the petitioner ought to have been granted pensionary benefits even though at the time of his enrolment in the Air Force the petitioner was 16 years and 147 days old. We find no merit in the submission made on behalf of the petitioner. The Pension Regulations for Air Force applicable to the facts of the case are specific and clear and reasonable classification for entitlement to pensionary benefits has been made therein. All the employees who are recruited prior to completion of age of 17 years are treated equally and those employees who are recruited prior to completion of 17 years age are treated differently. In our view, there is valid classification for entitlement of pensionary benefits under the said Regulations. Moreover, as per the writing executed on 6th January, 1972, i.e., on the day of enrolment of the petitioner, the fact that the services which the petitioner would be rendering below the age of 17 years would not be counted for the purpose of pensionary benefits was admittedly brought to the notice of the petitioner and the petitioner had made no grievance about the same till 14th March, 1986 when he for the first time addressed the said letter to the Commanding Officer.

5. In the circumstances the petition being devoid of any merit is dismissed. Rule is discharged. There shall, however, be no order as to costs.
6. Writ petition dismissed.