
(2001) 11 DEL CK 0059

In the Delhi High Court

Case No : C.W. No. 3510 of 1997 and C.M. No. 6788 of 1997

Birbal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Defence Service Army Regulations, 1987 — Regulation 122, 132

Citation : (2002) 97 DLT 96 : (2002) 62 DRJ 185

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : V.P. Sharma, for the Appellant; Jayant Bhushan and Anil Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—In this writ petition, the petitioner has prayed for a direction to the respondents to grant into the petitioner service pension from the date of his discharge from the Army after quashing the orders dated 7th March, 1991 and 1st August, 1997. m

m 2. The petitioner was enrolled in the Indian mArmy as a Sepoy. While serving in the Indian Army, mthe petitioner was declared a deserter for a period mof 797 days that is with effect from 21st mSeptember, 1965 to 26th November, 1967. The mpetitioner finally retired from service on 19th mJune, 1972. A claim was made by the petitioner to mthe effect that while computing the total length of mservice of the petitioner, his entire period of mservice should be reckoned including the period mduring which he was declared a deserter that is, mwith effect from 21st September, 1965 to 26th mNovember, 1967. m

m 3. It is an accepted position that in case mthe aforesaid period is computed towards the total mand actual length of service of the petitioner, the mpetitioner shall have 15 years of service in the mIndian Army which is the qualifying service to earn mservice pension as provided for under the Army mRegulation. However,

in case the said period is excluded, the petitioner shall not have 15 years of qualifying service which, according to the respondents, is mandatory for earning service pension. The aforesaid issue as to whether the period from 21st September, 1965 to 26th November, 1967 could be computed as the period spent on duty was referred to a Full Bench of this Court. The said issue came up for consideration before the Full Bench of three Judges of this Court and by judgment and order dated 11th May, 2001, the decision rendered by this Court in *Ex-Sappu S.D.P. Yadav v. Union of India and Ors.* (C.W.P. No. 4156//1995 decided on 22nd August, 1997) was over-ruled. It was further held by the aforesaid judgment and order that as the petitioner did not render any service during the aforesaid period, the benefit of the said period could not be given to the petitioner for the purpose of earning service pension in terms of Regulation 132 of the Army Regulations.

4. In that view of the matter and in the light of the aforesaid decision of this Court, the period from 21st September, 1965 to 26th November, 1967 cannot be treated to be actual service of the petitioner rendered in the Indian Army and he is not entitled to the benefit of the same for the purpose of earning service pension in terms of Regulation 132 of the Army Regulations. Therefore, the petitioner did not have 15 years of army service as is required under Regulation 132 of the Army Regulation which provides that the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension would be 15 years. Regulation 122 defines the words "qualifying service for pension and gratuity". (iii) of Regulation 122(a) provides that all service from the date of appointment or enrolment/transfer for man's service to the date of discharge would qualify for pension or gratuity with the execution of any period of unauthorised absence unless pay and allowances are admitted for the period of absence.

5. As the period between 21st September, 1965 to 26th November, 1967 cannot be computed as the petitioner's actual service rendered for earning service pension, the requirement of the provisions of the Army Regulation 132 is not satisfied in the present case.

6. Counsel appearing for the petitioner at this stage sought to submit that the petitioner was at least entitled to payment of pro rate pension as the petitioner had rendered 10 years of qualifying service. In this connection, the petitioner sought to rely upon the resolution issued by the Ministry of Personnel, Public Grievances and Pensions dated 18th March, 1987 annexed with the writ petition as "Annexure P-10" and placed at page 99 of the paper book. In support of his contention, the counsel also sought to rely upon the notification dated 30th October, 1987 which is issued by the Government of India, Ministry of defense. Counsel also sought to rely upon the period of weightage which would be added to actual qualifying service as set out in paragraph 5 at running page 104 of the paper book.

7. I have also heard the learned counsel appearing for the respondents on

the aforesaid missue. m

m 8. A similar issue came up for consideration mbefore this Court in the case of Ex-Sep. Mahinder mSingh v. Union of India and Ors.: m(C.W.P.No. 1448/1999) disposed of on 22nd February, m2001. In the aforesaid case also reliance was mplaced on the notification issued by the Ministry mof Personnel, Public Grievances and Pensions in msupport of similar contention. Rejecting the said mcontention, it was held in the said decision that mthe aforesaid notification issued by the Ministry mof Personnel, Public Grievances and Pensions would mhave no application to the case of pension of Army mpersonnel, as the said notification cannot amend mand/or substitute the Pension Regulations for the mArmy which alone govern the cases of pension of the mArmy personnel. It was further held in the said mcase that the petitioner did not have 15 years of mqualifying service for grant of service pension munder the Pension Regulations for the Army, 1961. m

m 9. Pension so far the army personnel is mconcerned is required to be paid as per pension. mRegulations for the Army, 1961 and the qualifying mservice for grant of pension provided for under mRegulation 132 is 15 years of qualifying service. mThe aforesaid Regulation cannot be said to have mbeen in any manner modified and/or substituted by missuance of a Resolution/Notification dated 18th mMarch, 1987 issued by the Ministry of Personnel, mPublic Grievances and Pensions. So far the mnotification dated 30th October, 1987 issued by the mMinistry of defense is concerned, the same as it mappears from paragraph 2.1 thereof would be mapplicable to the armed forces personnel who were min service as on 1st January, 1986. The petitioner mretired from service on 19th June, 1972 and, mtherefore the said notification ex facie cannot be mmade applicable to the case of the petitioner even mif it is assumed that the said notification is mapplicable to the nature of the pleas argued. So mfar the weightage of five years is concerned, such mperiod of weightage is explicitly excluded under mthe provisions of Regulation 132 of the Army mRegulation and, Therefore, the same is not mapplicable. None of the contentions, Therefore, mhas any merit. m

m 10. The petitioner did not have 15 years of mqualifying service for grant of service pension munder the Pension Regulations for the Army, 1961 mand, Therefore, he is not entitled to be paid any mservice pension in terms of Regulation 132, nor the mpetitioner is entitled to grant of any pro rata mpension as claimed during the course of arguments mby the counsel appearing for the petitioner. m

m 11. The writ petition, Therefore, has no mmerit and is dismissed accordingly. Pending mapplication stands disposed of accordingly. m

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