
(2007) 02 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 14031 of 2005

Chhathu Sah

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Army Act, 1950 — Section 20(3)

Citation : (2011) 1 PLJR 449

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties.

2. The Petitioner has moved this Court for a direction upon the Respondents to bring on record the order dated 30.4.1975 by virtue of which he was declared deserter and dismissed from Army. The Petitioner had earlier moved the Court by filing a writ application, namely, C.W.J.C. No. 10260 of 2003. There his prayer was for grant of pension to him for the period he had served in the Army. The Court, however, did not adjudicate upon the issue but the relevant records available with the authorities was produced before the Court from which it became apparent that the Petitioner was dismissed in the year 1975 on failing to report for duties in the year 1971 when India had to go to war with Pakistan.

3. The Petitioner is again before this Court taking a stand that the order in question has not been given to him and the same be produced and quashed on the grounds urged by him mainly being that proper procedure was not followed nor was he heard in the matter.

4. According to the Petitioner's own averments in the writ application he was enrolled in the Army on 4.6.1958 as a Sepoy in Bihar Regimental Centre. After 9 years and 60 days of active Army service he was transferred on 10.10.1967 as a reservist in the reserve force. After transfer of the Petitioner to the reserve force

he got employment in Bokaro Steel Plant under Steel Authority of India Limited. He worked there as a Driver and superannuated ultimately after rendering 31 years 8 months and 14 days of service. The Petitioner is getting his pension and other retiral dues for having worked under Steel Authority of India Limited. His retirement was on 1.5.2000.

5. After retirement of the Petitioner in the year 2000 he returned home and it seems that as an afterthought and also to augment his income he decided to file a writ application making a demand upon the Respondents to pay him pension for the period he had rendered service in the Army. Since the Petitioner had not rendered minimum qualifying 15 years of service, therefore, the authorities refused his pension.

6. I have already indicated above in this order that while disposing of the earlier writ application on 14.10.2004, the Court took notice of the fact that the Petitioner, who was a reservist was dismissed from service on 30.4.1975. Now after more than 32 years he wants quashing of his dismissal by way of this present writ application so that he can raise a bogey of a claim for pension.

7. The Respondent authorities by way of their counter affidavit have stated that the Petitioner was moved/transferred as a reservist vide an order dated 10.10.1967. When the country had to face a war in the year 1971 he was called for reservist training on 29.10.1971. Since it was national emergency the entire armed forces had to be mobilised. It is further stated that the Petitioner failed to report or join duties and he was declared illegally absent as a deserter with effect from 29.10.1971. Subsequently, the authorities invoking its powers u/s 20(3) of the Army Act declared him as a deserter as well as untraceable and vide Regiment Part-II Order No. 063/0012/75 dated 16.4.1975 dismissed him from service. This fact is borne out from part of the record which is available with the authorities. In so far as main service record of the Petitioner is concerned the same was destroyed in the year 1997 after completion of 25 years in terms of Army Regulations. In other words, the Petitioner now wants to take advantage of the fact knowing fully well that after 25 years the necessary service records are not maintained by the Respondents. The Respondents, however, have brought on record certain extracts which establishes the fact that the Petitioner was dismissed u/s 20(3) of the Army Act vide order dated 16.4.1975 and his services forfeited.

8. That being the settled position the present writ application of the Petitioner asking the Respondents to produce the order of dismissal when the service record stood destroyed after 25 years is an unfair prayer. It is not the case that the Petitioner after having been put in reserve was looking forward to his survival only on the pension which he might have got from the Army but he got employment under a public sector undertaking where he worked for almost 32 years and he is deriving his retirement benefits from that organisation.

9. In fact the narration of the events itself indicates that the present litigation

has been initiated by the Petitioner by way of taking a chance rather than assertion of his bona fide right. A reflection on the past events also leads this Court to belief that since he had found a comfortable employment in a public sector undertaking, therefore, he did not respond to the call of the Army to report in the year 1971 and it is very easy for him now to deny any knowledge or communication of orders knowing well that the original records stand destroyed in year 1997.

10. In view of the above factual and legal position this Court is disinclined to grant any relief to the Petitioner.

11. This writ application is accordingly dismissed being devoid of merit.