

(2004) 09 DEL CK 0062

In the Delhi High Court

Case No : Writ Petition (C) No. 1482 of 1994

Ex. Capt. Rameshwar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Citation : (2004) 113 DLT 765 : (2004) 76 DRJ 448

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

Bench : Division Bench

Advocate : S.M. Hooda, Sumitra and Ritu Rastogi, for the Appellant; Barkha Babbar, Sidharth Mridul and Vinay Nair, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—As the facts and the legal issues arising for consideration in both the aforesaid writ petitions are similar, we had taken up both the writ petitions for hearing and by this common judgment and order we are disposing of both the writ petitions.

2. Both the writ petitions have been filed by the petitioners praying for a direction to the respondents to grant pension to the petitioners at a higher rate than what is fixed by the respondents.

3. The prayer of the petitioner in W.P.(C) 2052/94 is that there should be a direction to the respondents to grant pension to the petitioner of the rank of the captain w.e.f 1st April, 1969. In W.P.(C) 1482/94, the prayer of the petitioner is to issue a direction to the respondents to pay pension and arrears to the petitioner in the revised rate of pension as applicable to the last rank, which is Honorary Captain, held by the petitioner

4. The petitioner in W.P.(C) 2052/1994 was enrolled in the Air Force as combatant soldier on 19th January, 1955 and he was granted emergency commission w.e.f 9th February, 1964 and was released from service on 2nd April, 1969. Thus, the said petitioner had total 13 years and 195 days of qualifying

service, which includes 8 years 142 days in Air Force service and 5 years 53 days as Emergent Commission Service.

5. The petitioner in W.P.(C) 1482/1994 was enrolled as regular combatant soldier on 6th September, 1951 and he was granted commission in the regular army on 9th February, 1964. He was promoted to the rank of Captain w.e.f 10th February, 1966. The petitioner was, however, discharged and he was sent on pension w.e.f 1st July, 1969.

6. In the light of the aforesaid background facts, counsel appearing for the petitioner in WP (C) 2052/1994 while placing reliance on Para 5 of the memorandum of the Government of India, Ministry of defense dated 30th October, 1987, submitted that the petitioner was entitled to get the benefit of full pre-commission service and also the service rendered as a Commissioned Officer computed towards qualifying service for pension and is also entitled to the benefit of 9 years weightage. He also submitted that the petitioner would be entitled to the benefit of the circular issued by the Ministry of defense, Government of India dated 7th June, 1999 whereby it was decided by the Government of India that 50% of the minimum pay in the revised scale of the rank and group held by the pensioner is to be paid to the officer. In this connection, the petitioner has also placed on record a copy of a decision rendered by this court in WP (C) 1990/2003 - Ex. Subedar Shamsheer Singh vs. Union of India and Others disposed of on 20th July, 2004.

7. Counsel appearing for the respondents, however, refuted the aforesaid allegations and submitted that neither the circulated dated 30th October, 1987 nor the particular provision referred to and relied upon by the petitioner of the memorandum dated 7th Jun, 1999 is applicable to the case of the petitioner. It was submitted that the case of the petitioner (in WP (C) 2052/94) was regulated under paragraph 6 of A.I. 6/S/65. It was submitted that the petitioner had opted for grant of pension under provisions of Para 6(b) of A.I.6/S/65, as amended, which according to the counsel for the respondent is also applicable to the facts and circumstances of the present case. It was submitted by her that the total qualifying service of the petitioner herein as Commissioned Officer had been worked out as 10 years and 268 days when computed on the basis of para 6(b) of the aforesaid memorandum, which is less than 12 years, the required minimum service for grant of pension as Commissioned Officer. Accordingly, the petitioner was sanctioned pension as provided for under Para 6(b) of A.I. 6/S/65.

8. So far the other writ petition being W.P. (C) No.1482/1994 is concerned, it was the submission of the counsel appearing for the petitioner that the petitioner had worked both as pre-commissioned officer as also Commissioned Officer. Therefore, he shall be entitled to the benefit of both the services to be computed as qualifying service for the purpose of grant of pension. The same had not been computed accordingly as his service as Captain having been ignored by the respondents, it is a fit case where a direction should be issued in terms of the prayer in the writ petition. The said submission was also refuted by the counsel

appearing for the respondent by referring to the aforesaid provisions of Para 6 of A.I.6/S/65.

9. We have perused the records placed before us. In the light of the pleadings of the parties and since the issues raised before us are similar in nature, we propose to discuss the legal issues arising for our consideration, in this consolidated judgment and order.

10. According to the respondents, the cases of both the petitioners are regulated by Para 6 of the aforesaid memorandum which provides as follows:-

"Retiring Pension

6. Serving JCOs and Other Ranks (including corresponding ranks of the Navy and Air force) granted Emergency Commission will have the option either:-

(a) to accept any pension (including ad hoc increase)/gratuity earned for pre-commissioned service under the rules which would have applied had the officer concerned been discharged on the date immediately prior to that on which he was granted emergency commission, and draw terminal gratuity for EC service;

OR

(b) to forego the terminal gratuity for EC service and count his emergency commissioned service towards service pension / service gratuity in the substantive rank held before grant of emergency commission; in no case, however, will pension be granted at a rate lower than that indicated below:-

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10. Both the petitioners were granted emergency commission and they had opted for grant of pension under Para 6(b) of A.I 6/S/65. According to the aforesaid provision of A.I. 6/S/65, as amended, the total length of qualifying service of the petitioner in W.P.(C)2052/1994, for the purpose of grant of pension was worked out to be as follows:

(i) Qualifying service as other rank = 8 years & 142 days.

(ii) Period of qualifying service as emergency commission officer = 5 years & 53 days

The qualifying service for the grant of pension of this petitioner as commissioned officer under the provisions of Rule 26 (26-b(2)(ii) worked out as under:-

(i) Full service as emergency commissioned officer- 5 years & 53 days.

(ii) Reckonable service rendered as other rank (i.e 2/3rd of 8 years and 142 days) 5 years & 215 days

Therefore, total qualifying service is 10 years & 268 days.

The rate of pension admissible to the rank of Emergency Commissioned Officer are also prescribed in Para 7(b) of Corrigendum A.I.113 dated 13.12.69.

Therefore, total qualifying service for pension for the rank of C.P.L as per the rates given in the table below para (b) as amended for 13-1/2 years works out to Rs.103/- per month, which was sanctioned to the petitioner by the respondents.

11. As per para 7 (b) of the aforesaid memorandum, minimum qualifying service as reckoned for commissioned officers service should be 12 years or more to be eligible for pension for the rank of commissioned officer. The petitioner's total qualifying service as commissioned officer works out to 10 years and 268 days, which is less than 12 years of the minimum service required for the grant of pension as commissioned. If the aforesaid computation is followed, in that event the petitioner would not be entitled to grant of any pension and thus the petitioner was sanctioned for pension as 'other rank' as contemplated under para 6 (b) of A.I 6/S/65.

12. Similar is the case of the petitioner in W.P. (C)1482/1994. The said petitioner would also have less than the qualifying service as commissioned officer than what is prescribed as minimum service required for grant of pension as commissioned officer. Consequently, Therefore, in his case also the total qualifying service for grant of pension as 'other rank' has been worked out and pension has been sanctioned to the petitioner.

13. The petitioners at the time of their retirement also opted for pension under the provisions of Para 6 (b) of A.I.6/S/65. The said claim was also found to be just, proper and beneficial to the petitioners and was in accordance with the provisions of the memorandum issued by the respondents. The circular dated 30th October, 1987, on which reliance was placed, is not applicable to the case of the petitioners herein as the petitioners were emergency commissioned officers and not regular permanent commissioned officers. The aforesaid circular dated 30th October, 1987 ex facie and on a bare reading of the same would be applicable only in the case of regular permanent commissioned officers and the provisions thereof cannot be made applicable to the cases of the petitioners herein, who were emergency commissioned officers. The cases of the petitioners herein were governed by the aforesaid circular of the respondents, which was issued by the Ministry of defense, Government of India, in the year 1965. In our considered opinion, the decision of this court in W.P.(C) No.1990/2003 in the case of Ex.Subedar Shamsheer Singh (supra) , on which reliance was placed by the counsel appearing for the petitioners, is not applicable to the facts of the present cases as the said decision was rendered in the case of a personnel who was holding other ranks and not a commissioned officer of the army, as is the case of the present petitioners. The aforesaid decision was rendered in the light of the circular dated 7th June, 1999. However, as the said decision is not applicable to the facts and circumstances of the present cases, the said decision has no relevance in the context of the present cases.

14. In the light of the aforesaid discussion we are of the considered opinion that the respondents have applied and resorted to the most beneficial provision applicable to the cases of the petitioners for the purpose of fixation of their pension. The decision of the respondents in the facts of the present cases are found to be just and legal. We find no merit in both the aforesaid writ petitions and the same are dismissed.

15. There will be no order as to costs of the proceedings.