

(2013) 01 DEL CK 0310
In the Delhi High Court
Case No : Writ Petition (C) 1664 of 2012

Ex-Cpl Pritam Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 3 ILR Delhi 1719

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Gulab Chandra, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.

CM No. 6568/2012

This is an application for condonation of delay in filing the counter affidavit. However, the counter affidavit is already brought on record. The application is disposed of as being infructuous.

WP (C) No. 1664/2012

1. The instant petition assails an order dated 15th December, 2011 passed by the Armed Forces Tribunal in O.A. No. 541/2011, Ex-CPL Pritam Singh v. Union of India & Ors. The petitioner was discharged from the Indian Air Force on the 16th May, 1974 as per the discharge book extract placed before the court. The Armed Forces Tribunal was of the view that he had filed the petition for grant of pension after 37 years and therefore the petition was dismissed on this sole ground.

2. The petitioner has drawn our attention to a judgment dated 12th January, 2011 passed by the Armed Forces Tribunal in TA No. 564/2010, Sh. Sadashiv Haribabu Nargund & Ors. v. Union of India & Ors. This petition was originally filed as a writ petition in this Court [W.P. (C) No. 6458/2009]. The writ petition was

filed by the petitioner 46 years after the Sadashiv had been discharged from the Indian Air Force. The respondents had contested the same on the ground of delay and had pointed out that all record pertaining to him stood destroyed except the Long Roll. The Armed Forces Tribunal noted that the petitioner was seeking the relief of pension and on the objection of delay and laches the Armed Forces Tribunal vide judgment dated 12th January, 2011 held as follows:

5. It is true that this petition is extremely belated but this petition has been admitted by the Bombay High Court and, therefore, it will not be proper for us to dismiss the petition on account of laches alone. We can limit the relief to the petitioner on account of laches. However the pension is not a bounty payable on the sweet will and pleasure of the Government as has been held by the Apex Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, . Therefore we will accordingly consider modulating the relief after considering the case on the merits.

3. So far as the relief on merit was concerned, the Armed Forces Tribunal observed as follows:

6. It is admitted position that petitioner when recruited in Indian Army, he was under an obligation to serve 9 years as regular service and 6 years as reserve service and that has to be counted for making 15 years for the purposes of qualifying service. The qualifying service for PBOR is 15 years. A similar matter when approached before Hon''ble Kerala High Court, Hon''ble Kerala High Court took a view that the respondent Union of India is bound to take into consideration the reservist service for grant of pension Against this order an appeal was filed before the Division Bench which was dismissed as is clear from the judgment dated 3151 May 2006 in W.P. (C) No. 29497 of 2004 In that judgment it has been mentioned that a similar order has been passed in earlier writ petitions also. In this connection, our attention was invited to the detailed Judgments delivered by the Chennai Bench and the Kolkata Bench which have taken a view relying on the decision given by the Hon''ble Kerala High Court and the two decisions of the Division Bench of same Court held that reserve period is also liable to be counted for the purpose of pension. As a matter of fact in the initial appointment given to the petitioner it was clearly mentioned that petitioner will have to serve 9 year as regular service and 6 years as reserve service. Subsequently the respondents cannot reverse the situation that since the appointment has been terminated, therefore, they are not entitled to cunt 6 years reserve service. The respondents are bound by principle of promissory estoppels, that once they made a representation and asked the other party to act on it and petitioner has served for 9 years as regular service and kept him in reserve service for 6 years, they cannot wriggle out of this on the moral ground that subsequently after China War their services were terminated also. This is clear breach of terms and conditions of appointment. Once respondents availed the services of petitioners for 9 years as active service and kept them on reserved service for 6 years they cannot go back. During the reserved period,

the petitioners were called in 1962 emergency i.e. at the time of China War and all the petitioners alleged to have offered their services at the disposal of the respondents. Therefore, the respondents have fully utilized all the services of these petitioners i.e. 9 years regular service and summoned them during the 1962 China War also. Now it does not lie in the mouth of the respondents to turn back and say that since they have been terminated they are not entitled to get the benefit of reserved service. This is immoral and unjustified view and against the canons of principles of natural justice. We fail to appreciate that once the appointment has been given and petitioners have as per the terms of the appointment given their services to the respondents how can now they back and say that since we have terminated the services of the petitioners, we will not give them benefit of reserved service. This cannot be accepted and respondents cannot be permitted to take this plea.

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13. Therefore, respondent cannot be hard to say that we terminated the services of the petitioner, therefore, they are not under obligation to grant them pension taking into consideration the reserve liability.

14. The view taken by the Hon'ble Kerala High Court as well as Kolkata Bench of Armed Forces Tribunal is fully justified. The Kolkata bench of the tribunal has even directed the respondent to condone the delay, if there is any, for completing 15 years for qualifying service for pension maximum to the extent of one year.

4. The petitioner before us has pleaded facts which are similar to those placed by Sh. Sadashiv Haribabu Nargund before the Armed Forces Tribunal. Given the similarity of the facts and the identity of the objection raised, it would appear that the petitioner would have been entitled to the same relief.

5. In view of the above, the order dated 15th December, 2011 is hereby set aside. The matter is remanded for consideration afresh before the Armed Forces Tribunal in accordance with the principles laid down in the judgment dated 12th January, 2011 passed by the Armed Forces Tribunal in TA No. 564/2010, Sh. Sadashiv Haribabu Nargund & Ors. v. Union of India & Ors.

6. The present writ petition is allowed in the above terms. Parties shall appear before the Registrar of the Armed Forces Tribunal on 6th February, 2013 for directions.

Dasti to both the parties.