

(2001) 05 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17069 to 1999

Ex. Dafedar Clerk Didar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 05 P&H CK 0121

Hon'ble Judges : R.L. Andnd, J

Bench : Single Bench

Advocate : Mr. Bhim Sen Sehgal, for the Appellant; Mr. Gurpreet Singh, for the Respondent

Judgement

R.L. Anand, J.—Shri Didar Singh petitioner has filed the present petition under Articles 226/227 of the Constitution of India and he has prayed that a writ in the nature of certiorari be issued quashing the order Annexure P-11 dated 1st November, 1999, vide which his case for mustering-out pension has been rejected by the respondent-authorities and that a writ in the nature of mandamus be issued against the respondents directing them to give him the benefit of this pension according to rules and regulations along with interest.

2. The case set up by the petitioner is that he joined the Royal Indian Army directly as a learner Dafedar Clerk on 5th November, 1941. He completed his training and was inducted as War Substantive Dafedar on 1st May, 1942. He served during the active war period from 3rd October, 1942 to 15th June, 1946 and he was discharged from service after the petitioner gave an option and refused to be reverted to the lower rank on 29th July, 1953. As per the case of the petitioner the respondents had admitted that the discharge of the petitioner from the Army was on account of reduction in the establishment, therefore, he is entitled to the benefit of mustering-out pension but to no effect. So much so he gave legal notice to the respondents on 14th October, 1996. He filed a Civil Writ Petition earlier which was disposed of on 21st October, 1997 with the direction to

the respondents to decide the case of the petitioner within six months from the receipt of the copy of the order. Finally, the case of the petitioner was declined by the respondent authorities. Hence the present writ petition,

3. Notice of the writ petition was given to the respondents. The stand of the respondents as per the amended written statement can be summarised in the following manner :

" 1. That the petitioner was enlisted in the Army on 5th November, 1941 as learner Clerk. He was promoted War Substantive Dfr (3rd Grade) on 1st May, 1942. On 30th October, 1948 he was deprived of the rank of Dafedar and reduced to the rank of Sowar for an offence under the IAA Section 27(e). On 25th November, 1949, he was re-promoted Dafedar and allowed to count seniority w.e.f. 16th August, 1943. He was again reduced to rank on 4th March, 1952 on grounds of inefficiency. As per declaration certificate given by the petitioner, he was unwilling for said reversion and opted to leave the service with mustering out concessions.

Further, the petitioner cannot claim mustering out pension as he was not a Dafedar at the time of his discharge on 29.7.1953, as he had been demoted to the rank of Sowar with effect from 4.3.1952. With regard to claim for service pension, the petitioner was not eligible for the same in terms of paraM32 of Pension Regulation Part-1 (1961) as he has rendered 11 years and 263 days of qualifying service which is less than 15 years minimum qualifying service required for earning service pension under the pension Regulations slated above.

2. That as per records held, the petitioner was granted 60 days annual leave from 30th May, 1953 to 28th July, 1953 pending discharge from the Army service under provisions of Government of India, Ministry of Defence letter No. 53888/AG/Orgl.(A/2369-S/D(AG) dated 13th November, 1952 being supernumerary to establishment of Hav Clerks and unwilling to revert to lower rank as intimated vide CDDA (P) Allahabad letter No. G2/11044/XXXV1 dated 3rd July, 1953. He was reduced to rank on 4th March, 1952 due to inefficiency. It can be seen from Army HQ letter No, 67283/AG/Org-1(b) dated 7th July, 1953, that he was not holding the rank of Dfr. on the date of issue of Army HQ letter No. 53888/AG/Org-1(a) dated 19th July, 1952 and therefore, he was not entitled to an option for release. As such, his release was declared illegal by Army HQ vide their letter No. 67283/AG/Org-l(b) dated 7th July, 1953, Army HQ instructed to cancel his release order and recall him to service and treat the period of leave availed till he reported for duty to adjust against his annual leave vide Army HQ letter No. 71576/AG/Org-l(b) dated 5th January, 1956."

4. I have heard Shri Bhim Sen Sehgal on behalf of the petitioner and Shri Gurpreet Singh on behalf of the respondents and with their assistance have gone through the record of this case.

5. Learned counsel for the petitioner has referred to paragraph 2 of the written statement filed by the respondents and submitted that it is the admitted case of

the respondents that the petitioner was discharged from the Army on account of supernumerary to the establishment of Havildar Clerk and, therefore, the case of the petitioner is covered by the instructions Annexure P-4 appearing on page 15 of the paper-book.

6. On the contrary, learned counsel for the respondents submitted that the petitioner has read astray line from the written statement of the respondents but the joint reading of paragraphs 1 and 2 makes it abundantly clear that the case of the petitioner does not fall within the parameters of Annexure P-4, rather he was discharged from the Army as a case of Sowar. He was never Dafedar. His discharge from the Army is not on account of supernumerary in the cadre of Sowar, Therefore, the petitioner cannot take the benefit of these instructions and regulations Annexure P-4. It was also submitted on behalf of the respondents that mustering-out pension is discretion of the Government and there does not exist any vested right in favour of the petitioner.

7. I have considered the rival contentions of the learned counsel for the parties and in my opinion, this writ petition must fail. Annexure P-4 is the document upon which main reliance has been placed by the learned counsel for the petitioner. It deals with mustering-out pension and gratuity. According to regulation 316, the Governor General may, at his discretion sanction the grant of mustering-out pensions and gratuities to the individuals, to the commissioned officers of the Viceroy's and other ranks of the Indian Army and similarly holding combatant status in ancillary service, including reservists. Before this benefit is to be given, it is obligatory upon the personnel to make out his case in Categories (a), (b), (c) and (d) mentioned in Regulation 316. The petitioner wants to take the benefit of the clause "Discharge on account of reduction of establishment". The principal argument raised by Shri Sehgal was that since the discharge of the petitioner was on account of reduction of establishment in the rank of Dafedar, therefore, he is entitled to the benefit of mustering-out pension. The learned counsel for the petitioner further submitted that in the alternative even assuming for the sake of argument that the petitioner was a Sowar on the relevant date and that he had served more than 10 years, therefore, by virtue of sub-section (ix) of Regulation 318, he is entitled to the benefit of mustering-out pension.

8. I do not subscribe to the argument of Mr. Sehgal as it would be clear from the stand of the respondents in the written statement that, in fact, the petitioner was never holding the post of Dafedar, rather he had already been reverted to the post of Sowar on two occasions, firstly, on 30th October, 1948 and, secondly on 4th March, 1952. Thereafter, the petitioner was never promoted to the post of Dafedar and, in fact, he was never discharged from the Army while occupying or holding the post of Dafedar and in fact he was Sowar. Sub-section (ix) of Regulation 318 is not applicable because the petitioner had not been discharged on account of reduction of establishment, rather he was asked to join the duty as Sowar. Since the petitioner has not been able to show to me his entitlement to

the benefit to mustering-out pension, therefore, I am not in a position to give any relief to the petitioner.

The writ petition is without any merit and the same is hereby dismissed with no order as to costs.

9. Writ petition dismissed.