
(2002) 02 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 352 of 2000

Ex-Gnr. Mangatu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 164, 167

Citation : (2003) 2 JKJ 560

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : Ajay Abrol, for the Appellant; Neeru Goswami, Addl. CGSC, for the Respondent

Judgement

T.S. Doabia, J.—The facts as stated in the counter affidavit filed by the Union of India If taken note of makes it apparent that the present

petitioner was enrolled in the Indian Army on 1.10.1942, as a non-combatant (boot maker) for the duration of the war and 12 months thereafter.

He was later on mustered as a combatant w.e.f. 9.6.1945. This was done in terms of an order described as Annexure 2-ALFRO -- 392 of 1945.

Thereafter, his services were brought to an end, as these were no longer required. This happened on 20-3.1955. The petitioner submits that he is

entitled to pension. His claims have been negated on the ground of delay and laches and also on the ground that the petitioner had not completed

15 years of service which period could have enabled the petitioner to earn pension, as a matter of right.

The petitioner is invoking the provisions of Regulation 164 of Pension Regulations for the Army. According to the petitioner, there is a provision for

special pension and this can be granted where the strength of a Unit or

Establishment is reduced. It is further, stated that the discretion which is to be exercised in this regard is not unregulated, but is governed by what is said in Regulation 167. As the petitioner is specifically placing reliance on these provisions, these are being reproduced below:-

164. Special pension or gratuity may be granted at the discretion of the president to individuals who are not transferred to the reserve and are discharged in large number, in pursuance of Government's policy;-

- (i) of reducing the strength of establishment of the Army, or
- (ii) of re-organisation, which results in disbandment of any unit/formations.

176. The scale of special pension or gratuity is:-

Qualifying Service Scale of Special pension/gratuity

1 2

Combatants

15 years or more Pension at the rates specified in Regulation 136

10 years or more but less Pension proportionate to the minimum service than 15 years pension, under Regulation 135 appropriate to the rank and group in, the ratio that the completed years of qualifying service rendered bears to 15.

5 years, or more but less Gratuity at the scale of 11/3 months pay for than 10 years. each completed years of qualifying service.

Less than 5 years Gratuity equal to 3 months pay.

Non-combatants

20 years or more Pension at the rates specified in Regulation 146.

15 years or more but less Pension proportionate to the minimum service than 20 years person under Regulation 146 in the ratio that the completed years of qualifying service rendered bears to 20.

5 years or more but less Gratuity at the scale of 11/3 months pay for than 15 years. each completed years of qualifying service.

Less than 5 years Gratuity, equal to 3 months pay.

2. So far as Regulation 167 is concerned, it deals with both combatants and non-combatants. Therefore, to say that there is no provision which

enables a person falling under the category to which the petitioner belongs, to claim pension, is an argument which cannot be accepted. Special-

pension is payable on the basis of plain reading of Regulation 164. The scale of this has also been indicated in para 167.

3. This petition is accordingly, allowed with a direction to the respondents to take notice of the regulations reproduced above and consider the

petitioner's claims for pension in terms of regulation noticed above. It be further seen that the prayer of the petitioner was rejected by the

respondents vide communication dated 8.6.1999. For facility of reference, this order is being reproduced below:-

GRANT OF SERVICE PENSION

1. Refer to your petition dated nil.

2. It is for your information that minimum qualifying service required to earn service pension is 15 years for combatants and 20 years for non

combatants. It is seen from your petition/service documents that you were enrolled in the Army on 1 Oct. 1942 and discharged w.e.f. 20 Mar.

1955. Thus you have rendered total service less than 15/20 years. You are, therefore, not entitled for pension as per existing rules.

3. It is regretted to inform you that this Office is not in a position to grant you old age pension/II world pension in the absence of any such orders.

However you are ----- your District soldier Board to enable them to take up the matter with State Govt. in case any such order exist with

them.

4. In case you are financially distress please forward DO-40 form duly completed through your DSS & A Board to this office.

Sd/-

Lt/CGO

Asst. Record Officer

for Commanding Officer.

4. As Such, the petitioner would be entitled to benefits three years earlier to date of filling of application which came to be rejected, This much

claim of the petitioner would be well within time. This would not be hit by delay and laches and to this extent the petitioner is held entitled to the

relief. Petitioner is held entitled to interest at the rate of 6% on these arrears. Let the petitioner's claims be settled within a period of three months

from the date a copy of this order is made available by the petitioner to the respondents. In case the needful is not done by the respondents within

the above stipulated period, then the petitioner would be entitled to interest. The rate of interest would be 12% per annum.

Disposed of accordingly.