
(2013) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14745 of 2012 (O and M)

Ex. Naik Baljit Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) LabIC 3581 : (2013) 4 SCT 284

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : R.A. Sheoran, for the Appellant; D.S. Bishnoi, for the Respondent

Judgement

A.K. Sikri, C.J.—The petitioner herein, was enrolled in the Army on 4-4-1984. He was discharged from services on 28.2.1999 under Rule 13(3) Item III(iv) of the Pension Regulations for the Army, 1961. He had, thus, completed 14 years and 324 days of service. For an employee to earn pension in the Army, minimum service of 15 years is required. Service of the petitioner was less by 41 days. Since the period short is less than three months, this fact is to be ignored as provided in Regulation 9 of the Pension Regulations for the Army, 1961. This regulation reads as under:-- Fraction of a year equal to 3 months and above but less than 6 months shall be treated as a completed one half year.

9. In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.

On the application of this provision, the aforesaid service of 14 years and 324 days is to be counted as 15 years service. On that basis, the petitioner seeks his claim for pension which was, however, rejected by the respondents.

2. Challenging that action, the petitioner preferred O.A. No. 385 of 2011 before the Armed Forces Tribunal, Chandigarh Bench.

3. In the written statement filed by the respondents, plea taken was that during

his service, the petitioner had been punished eight times under various sections of the Army Act, thus incurring eight black and red ink entries in his record. Because of this reason, 98 days service became "non-qualifying service". Therefore, for the purpose of pension, it is not 14 years 324 days service rendered by the petitioner but after deducting the aforesaid period of 98 days, qualifying service was 14 years 7 months and 16 days and in these circumstances, the provisions of Regulation 9 of Pension Regulations for Army, 1961, were not applicable as the deficiency was more than three months.

4. The Tribunal has accepted the aforesaid plea of the respondents resulting into dismissal of the O.A. filed by the petitioner. Challenging the order of the Tribunal, the instant petition is preferred.

5. Learned counsel for the petitioner argues that the period of 98 days absence could not be ignored while counting the qualifying service, in as much as, as per Regulation 122 of Pension Regulations for the Army, 1961 (Part-I), it is only that period of unauthorized absence which is to be excluded where pay and allowances are also not given treating the period as unauthorized absence. If the pay and allowances are admitted, for the purpose of absence, then that period is to be counted. Likewise, whenever period of absence is without leave but the leave is regularized without pay and allowances, only then such period of absence is to be excluded while counting qualifying service for pension.

6. Clauses (iii) and (iv) to sub-rule (a) of Rule 122 are the concerned provisions which read as under:--

122. (a) All service from the date of appointment for enrolment/transfer for man's service to the date of discharge shall qualify for pension or gratuity with the exception of:

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) Any period of unauthorised absence unless pay and allowances are admitted for the period of absence;

(iv) Any period of absence without leave which is regularised as extraordinary leave without pay and allowances;

7. Learned counsel has also pointed out that in the instance case, in the discharge certificate issued by the respondents themselves, it is mentioned that the petitioner had served for 14 years and 324 days.

8. We find the aforesaid submission of the petitioner to be meritorious. In the discharge certificate, issued to the petitioner which is annexed as Annexure P-1, total service of the petitioner is shown as 14 years and 324 days.

9. Learned counsel for the respondents, on the other hand, could not point out as to whether the period of absence of 98 days was without pay and allowances.

In view of the aforesaid discharge certificate of the respondents themselves stating the service rendered by the petitioner as 14 years and 324 days, we are of the opinion that it is clinching evidence in favour of the petitioner and having regard to Regulation 9 of Pension Regulations, the fraction of a year equal to three months and above but less than six months is to be treated as a completed one half year, therefore, the petitioner had rendered 15 years of service. It is not in dispute that 15 years of service is the qualifying service to earn pension. The petitioner would thus be entitled to pension. In view of the above, the impugned order passed by the Armed Forces Tribunal is set aside. The writ petition is allowed giving direction to the respondents to calculate the pension and pay arrears within a period of three months, and start paying pension regularly in future. If the arrears are not paid within three months, the petitioner shall also be entitled to 9% interest for the period after the expiry of three months.