
(2012) 05 DEL CK 0308

In the Delhi High Court

Case No : Writ Petition (C) No. 3294 of 2012

Ex. N.K. Satbir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 145, 148, 302, 325, 506

Citation : (2012) 05 DEL CK 0308

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 3rd May, 2010 passed by Principal Bench, Armed Forces Tribunal, New Delhi in O.A No.102/2010 titled as Ex.Nk Satbir Singh v. Union of India & Ors. dismissing his petition seeking service pension. The Tribunal while dismissing the original application of the petitioner seeking service pension had noticed that the petitioner was sentenced for life imprisonment by Session Court in a case regarding the murder of his cousin under Sections 302, 148, 145, 325 & 506 of Indian Penal Code which sentence was reduced to 7 years in appeal by Punjab & Haryana High Court on 20th July, 1995.

2. The petitioner was also granted casual leave with effect from 2nd August, 1992 till 11th August, 1992 but he had absented after 11th August, 1992 and had reported back on 9th September, 1992. The petitioner was discharged from service with effect from 17th April, 1996.

3. The Tribunal has also noted that though the petitioner alleged that he had put in 16 years 4 months and 13 days of service and since for service pension, a JCO is liable to render 15 years of service, therefore, he is entitled for service

pension. However, considering the period of absence of the petitioner which was deducted from his alleged service of 16 years 4 months and 13 days, the petitioner does not have qualifying service period for pension.

4. The petitioner had challenged this fact that he did not have minimum qualifying service period of pension by filing a writ petition, being W.P(C) No.1328/2002, where the High Court found that the petitioner had put in 14 years and 98 days of service and, therefore, by order dated 11th December, 2008 the matter was remitted back.

5. After considering the case of the petitioner by the order dated 12th March, 2009, the petitioner was not granted pension and it was held that the petitioner was discharged from service in terms of Para 423 of Army Regulation, 1987 read with Para 13(3) item III (V) of Army Rules, 1954 being an undesirable soldier.

6. The Tribunal has dismissed the original application on the ground that good conduct is an implied condition for grant of service pension and since the petitioner was guilty of murder and was sentenced to 7 years of imprisonment, therefore, his conduct was immoral and the respondents were within their rights to deny service pension to the petitioner.

7. The learned counsel for the petitioner, Mr.Hooda is unable to show any rules and regulations or any precedent on the basis of which it can be held that though the petitioner was found guilty of charge of murder and he was also sentenced to 7 years of imprisonment, still his conduct will be deemed to be good so as to entitle him for service pension. No ground has been made out by the petitioner which will entitle him for service pension in the facts and circumstances of this case.

8. The learned counsel for the petitioner is also unable to disclose any cogent reason for undue delay in filing the present writ petition as original application of the petitioner being O.A No.102/2010 was dismissed by order dated 3rd May, 2010 and the present writ petition has been filed by the petitioner on 24th May, 2012 almost after two years. No cogent ground rather no ground has even been disclosed condoning the delay in filing the writ petition.

9. It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and that the failure to make out grounds to condone the delay in seeking remedy in law is sufficient in itself to oust the petitioner. In this connection, reference can be made to the following precedents:

(i) Rajalakshmiah v. State of Mysore AIR 1967 SC 993

(ii) Jagdish Narain Maltiar Vs. The State of Bihar and Others,

(iii) C.B.S.E. Vs. B.R. Uppal and Others,

(iv) Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others,

10. In Shiv Dass Vs. Union of India (UOI) and Others, the Supreme Court had held at page 277 in paras 8 as under:

8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the totality of facts and circumstances, there are no grounds to interfere with the order of the Tribunal dismissing the original application of the petitioner nor any illegality, irregularity or any perversity has been made out by the petitioner so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.