

(2001) 02 DEL CK 0005
In the Delhi High Court
Case No : C.W.No. 1448 of 1999

Ex-Sep. Mahinder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49, 59

Citation : (2001) 02 DEL CK 0005

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. V.P. Sharma, for the Appellant; Ms. Ranjana Kaul, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—The writ petition is filed by the petitioner claiming grant of pro rata pension from the date of discharge of the petitioner from service i.e. w.e.f. 26.3.1985. The petitioner was enrolled in the Indian Army as Sepoy on 28.11.1972. The petitioner was discharged on 26.3.1985 after 12 years of service i.e. from 28.11.1972 to 26.3.1985. The petitioner submitted a representation to the Chief of the Army Staff in December, 1997 praying for grant of pro rata pension to the petitioner on the ground that he had rendered 12 years of service. The aforesaid claim of the petitioner for grant of pro rata pension is based on the notification issued by the Ministry of Personnel and Training, Department of Pension, Government of India, which according to the petitioner is applicable also to the defense personnel regarding grant of pro rata pension.

2. Learned Counsel appearing for the petitioner during the course of his submission submitted that the petitioner is entitled to grant of pro rata pension in terms of Rule 59 of CCS (Pension) Rules, 1972 which provides that a person would be entitled to grant of pro rata pension upon 10 years of qualifying service. In support of his claim he also relied upon the notification of the Ministry

of Home Affairs, dated 27.12.1995. He also relied upon copies of several decisions which are annexed to the writ petition namely - Division Bench decision of this Court in Kuldip Singh Vs. Union of India, ; the decision single bench of this court in Jagpal Singh Vs. Delhi Transport Corporation, and also the decision of Dhanraj and Others Vs. State of Jammu & Kashmir, 1998 Lab. I.C. 1477.

3. Counsel appearing for the respondents however, submitted that not only the writ petition is belated and is liable to be dismissed on the ground of delay and laches but that there is also no merit in the writ petition. He stated that the provisions of CCS (Pension) Rules on which reliance is placed by the petitioner are not applicable to the Army personnel, for the Army personnel are governed by the specific provisions of Pension Regulations for the Army, 1961, Part I. He drew my specific attention to the provisions of paragraph 132 of the said Regulations which provides that the minimum service which qualifies for service pension is 15 years. He also stated that in the aforesaid regulations which are applicable to the Army personnel there is no provision for the grant of pro rata pension.

4. In the light of the aforesaid submissions let me proceed to decide the present writ petition. The petitioner retired from service in 1985 and he filed a representation claiming grant of pro rata pension only in the year 1997. No Explanation has also been given in the writ petition citing reasons for approaching this court after such a long period of time. In the writ petition it is also submitted by him that the petitioner was discharged from service before his completion of term of engagement and the petitioner had rendered 12 years 4 months service and Therefore, the petitioner has become entitled to pro rata pension. The aforesaid statement made in paragraph 7 of the writ petition is denied by the respondent and it is contended that the petitioner was discharged from service on 26.3.1985 as "Service no longer required" being indisciplined soldier. he was discharged on 26.3.1985 before he could earn 15 year qualifying colour service. Therefore, the said statement made on oath by the petitioner is found to be false and incorrect.

5. The decisions on which the counsel appearing for the petitioner relied during the course of his arguments based on interpretation of the provisions of rule 49 of CCS (Pension) Rules. Although the counsel for the petitioner submitted that he is also governed by the provisions of the said rules, I am unable to accept the said contention for the fact that there is a specific provision in the Pension Regulations applicable to the Army personnel that the minimum service which qualifies for service pension would be 15 years in the case of Army personnel. The petitioner is governed by the said provisions of para 132 of Pension Regulations for the Army, 1961, Part-I, and Therefore, the said provision is also applicable in his case. The pension of the Army personnel is required to be paid as per Pension Regulations for Army, 1961 and the qualifying service for pension cannot be reduced in the light of rule 49 of the CCS (Pension) Rules. There is also no provision in the Pension Regulations for the Army for making payment of

any pro rata pension for the Army personnel. Reliance on the decisions interpreting the provisions of Rule 49 of the CCS (Pension) Rules is misplaced, for the said provision cannot be made applicable to the fact and circumstances of the present case. Counsel appearing for the petitioner also relied upon the notifications issued by the Ministry of Personnel, Public Grievance and Pension and the Ministry of Home Affairs in the case of Border Security Force. The said notifications also have no application to the present case, for the said notifications cannot amend and/or substitute the Pension Regulations for the Army which alone govern the cases of pension of the Army personnel. The petitioner did not have 15 years service qualifying him for grant of service pension under the Pension Regulations for the Army, 1961.

6. Thus there is not only inordinate delay in approaching this court and there is no Explanation Therefore in the writ petition but there is also no merit in the writ petition. The writ petition is accordingly, dismissed. However, there will be no order as to costs.