

(2004) 08 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12570 of 2000

Ex Sepoy 10403951 Hansraj Singh Yadav

APPELLANT

Vs

Officer Commanding, 56 Defence Security Corps Platoon,
Attached to Air Force Station

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Army Act, 1950 — Section 36, 39, 39(A)
Army Rules, 1954 — Rule 13(3)

Citation : (2004) 08 AHC CK 0053

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.K. Jain, Tej Pal and Rahul Jain, for the Appellant; Bal Mukund and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri Rahul Jain, learned Counsel for the petitioner, and Sri Bal Mukund, learned Counsel appearing for the respondents.

2. In this petition prayer has been made for quashing the order dated 09.12.1999 passed by the respondent No. 1, whereby in compliance to the order of this Court dated 17.09.1999 passed in Civil Misc. Writ Petition No. 40134 of 1999 (Ex. Sepoy No. 10403951 Hansraj Singh Yadav v. Union of India and Ors.) the representation and grievances of the petitioner were considered and decided, and the petitioner has further sought relief for quashing of the discharge order dated 01.05.1988).

3. The brief facts necessary for adjudication of the case are that initially the petitioner was appointed on 13th December, 1971 with 114 Infantry Pattawori (TA) and had with the same upto 25th March, 1979 and thereafter he March, 1979. was re-enrolled in Defence Security Corps on 26th March, 1979 and as per his option, his initial terms of engagement in Defence Security Corps (contract period) was for ten years, whereas, his embodied service of 5 years and 101

days rendered with Infantry Battalion (TA) was allowed to be counted towards pension/gratuity in Defence Security Corps. However, during short span of service with Defence Security Corps, the petitioner was tried for various offences under the Army Act and was awarded punishment as under:-

(a) 7 days confinement to lines u/s 39(b) of the Army Act (overstaying leave from 21st April, 1980 to 23rd April, 1980) on 25th April, 1980;

(b) 7 days imprisonment for offence u/s 36(c) (when on sentry duty, found sleeping upon the post) of the Army Act on 10th September, 1981;

(c) 8 days imprisonment for offence u/s 39(a) (absent without leave from unit lines from 1300 hrs to 2230 hrs on 21st September, 1981) of Army Act on 22nd September, 1981;

(d) 28 days rigorous imprisonment and 14 days detention u/s 39(a) (absent without leave from unit lines at field from 1400 hrs to 2230 hrs) of Army Act on 4th November, 1981;

(e) 7 days imprisonment for offence u/s 39(b) of Army Act for overstaying leave from 10th January, to 30th January, 1987, on 05th February, 1987;

(f) 7 days detention for offence u/s 39(d) of Army Act for without sufficient cause, failed to appear between 1200 hrs to 1400 hrs for duty, on 06th May, 1987;

(g) 28 days rigorous imprisonment and 14 days detention for offence u/s 39(a) of Army Act for absence without leave from 14th May, 1987 to 11th January, 1988 on 21st March, 1988.

4. Consequently, on incurring red ink entries as mentioned above [from (a) to (e)] Defence Security Corps records vide letter No. 10403951/P1-56/71 dated 23rd April, 1987 had intimated the office of the respondent No. 1 to consider the petitioner's desirability for retention in service or otherwise in the best interest of the Corps and the State. After issuance of said letter, the petitioner was incurred another two red ink entries as stated above in Sub-paras (f) and (g), therefore, his retention in service from service and a show cause notice initiated for his discharge from service and a show cause notice was issued to the petitioner, who also replied the same. Since petitioner's reply to the show cause notice did not merit consideration, therefore, his discharge from service was sanctioned by the competent authority i.e. Commander, Meerut Sub Area on IAFY-1948 A (Discharge Roll) and the petitioner was discharged from service on 01st May, 1988 (AN) and SOS of the Corps w.e.f. 02nd May 1988 under Army Rule 13(3) Item III (v) on administrative grounds, which is in order within the frame work of military rules. Against the discharge order petitioner filed a Writ Petition No. 40134 of 1999, which was disposed of by this court with direction to decide representation of petitioner. In pursuance to which the petitioner filed representation, which too was rejected by the order, which is impugned in the present writ petition.

5. As per the provision contained in Rule 132 of Pension Regulations for the Army 1961 (Part I), minimum qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years. Since the petitioner had rendered less than 15 years of qualifying service including former embodied service rendered with T.A., therefore, he is not eligible for service pension. Hence, the petitioner admitted a sum of Rs. 19,575/- on account of service/DCR gratuity for his qualifying service rendered with DSC plus embodied service rendered with T.A. and this amount was remitted to the petitioner by money order by DSC Records. The petitioner's existing terms of engagement (contract period) in DSC had already been expired on 25th March, 1989 and since the petitioner was discharged from DSC on 01st May, 1988 (AN) on administrative grounds under Army Rule 13(3) Item III(v), therefore, petitioner's discharge from service in order within the frame work of military rules and he is not eligible for re-instatement in DSC.

6. According to the learned counsel for the petitioner, the compliance of circular dated 11th March, 1985 has not been made and the Commanding Officer was under obligation to consider the nature of offence, for which red ink entries were awarded to the petitioner, and he was not to be too harsh with the individual when the individual was about to complete pensionary service and before taking decision the long length of service is also to be considered.

7. A detailed counter affidavit has been filed on behalf of the respondents. As per requirement of Rule-132 of Pension Regulations for the Army, 1961 (Part-I), minimum qualifying service actually rendered and required for earning service, pension shall be 15 years, whereas, in the case of petitioner out of which his total service of 9 years 37 days rendered with the Defence Security Corps from 26th March, 1979 to 1st May, 1988, the petitioner has got only 8 years and 133 day qualifying service as the remaining 269 days are non-qualifying service due to overstaying leave as well as absent with leave during the service period, as such, the petitioner I had got only 133 years 234 days total qualifying service, which is not sufficient for grant of pension.

8. According to the respondents out of seven punishments there are six punishments awarded to him as red ink entries and each red-ink entry has been analysed along with adverse material. Taking into consideration former service rendered by the petitioner with 114 Infantry Battalion i.e 5 years and 101 days i.e. counting his former service Rs. 19,575/- as service/ DSC Gratuity has been made payable to the petitioner, which has been sent to the petitioner by money order No. 629 to 648/9p, which was accepted by him. According to the respondents the petitioner being a habitual Offender and not amenable to the military discipline tried for Various offences and at the administrative grounds provided under Army Rule 13(3) item III (V) was discharged on 01st May, 1988.

9. I have heard learned Counsels for the parties. I find that on the available documents the punishment was Awarded to the petitioner and keeping in view six red-ink entries and after considering the same the petitioner was not entitled

to be retained in service. The impugned order against the petitioner has been passed after affording him opportunity of hearing and after careful consideration of the relevant records as by and through a speaking order. In these circumstances, I do not find any illegality and impropriety in the impugned orders, therefore, no relief as prayed for could be given to the petitioner.

10. In view of the above observations, the writ petition is dismissed.