
(2001) 02 DEL CK 0111
In the Delhi High Court
Case No : C.W. No. 3470 of 1999

EX-SM. Ashfaq Ahmad

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
Navy (Pension) Regulations, 1964 — Regulation 78

Citation : (2001) 02 DEL CK 0111

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

Bench : Single Bench

Advocate : Mr. V.P. Sharma, for the Appellant; Mr. Amit Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukudakam Sharma, J.—This 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. 21.1.1977. The petitioner was enrolled in the Indian Navy as Sailor on 20.1.1967. The petitioner was discharged on 21.1.1977 after 10 years of service i.e. from 20.1.1967 to 21.1.1977. The petitioner submitted a representation to the Chief of the Naval Staff on 20.4.1999 praying for grant of pro rata pension to the petitioner on the ground that he had rendered 10 years of service. The aforesaid claim of the petitioner for grant of pro rate 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 qualified service. In support of his claim he also relied upon the notification of the Ministry of

Personnel, Public Grievances and Pension dated 18.3.1987 issued by the Ministry of defense, Government of India. He also relied upon several decision 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 also that there is no merit in the writ petition. He stated that the provisions of CCS (Pension) Rules on which reliance is placed by the petitioner, for the Naval personnel are governed by the specific provisions of Navy Pension Regulations, 1964. He drew my specific attention to the provisions of regulation 78 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 Navy 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 1973 and he filed a representation claiming grant of pro rata pension only in the year 1999. 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 after completion of 10 years the petitioner was to apply for the grant of extension of his service beyond the period of 10 years but because of his personal problem he could not make representation for further extension of his service beyond 10 years and thus the petitioner was discharged from service on 21.1.1977 on completion of ten years of service. The aforesaid statement made in paragraph 6 of the writ petition is denied by the respondent and it is cont ended that the petitioner specifically expressed his unwillingness to sign pensionable and further services and Therefore, he was discharged on 21.1.1977 on expiry of his engagement with a total service of 10 years. In support of the said contention the unwillingness certificate signed by the petitioner is also placed on record as Annexure 1 to the counter affidavit.

5. The decisions on which the counsel appearing for the petitioners 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 Navy personnel that the minimum service which qualifies for service pension would be 15 years in the case of Navy personnel. The petitioner is governed by the said provisions of the Navy Pension Regulations and Therefore, the said provision is also applicable in his case. The pension of the Navy personnel is required to be paid as per Navy Pension Regulations, 1964 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 Navy Pension Regulations for making payment of any pro rata pension for the Navy 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 facts 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 Navy Pension Regulations which alone govern the cases of pension of the Navy personnel. The petitioner did not have 15 years service qualifying him for grant of service pension under the Navy Pension Regulations.

6. Thus there is not only inordinate delay in approaching this court and there is no Explanation Therefore in the writ petitioner 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.