
(2010) 01 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2144 of 2002

Godawar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-01-2010

Acts Referred:

Citation : (2010) 2 JKJ 117

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Invoking Rule 13 (III) 4(1) of the Army Rules, 1954, the Petitioner was discharged from service on compassionate grounds.

2. It is contended that the order of discharge was prompted by Petitioner's application seeking voluntary discharge. On the date of his discharge

the Petitioner had completed service of 10 years and 11 months. The order of discharge was sanctioned on 13.08.1967. For having failed to

complete 15 years of regular service, Petitioner was found not entitled to any pensionary benefits. Under Rule 132 of Pension Regulations for the

Army 1961-Part-I, completion of 15 years qualifying service is mandatory for earning service pension. Aggrieved by this order the Petitioner has

filed the present writ petition after a lapse of 35 years.

3. I have heard learned Counsel for the parties.

After having been enrolled in the Army on 20.08.1956, the Petitioner filed an application seeking his voluntary discharge from service in August,

1967. The ground for seeking voluntary discharge was that Petitioner had completed ten years and 11 months regular service and he sought his

transfer as a reserve. For facility of reference the contents of the application are quoted as below:

Sub: VOLUNTEER FOR RESERVE.

Sir,

With due respect and humble submission I beg to lay down the following few lines for your sympathetic consideration and favourable action

please. My presence at home is essential due to the following reasons:

(i) That I am the responsible male member of my family.

(ii) That I have completed 10 years and 11 months of my service and am eligible for transfer to reserve,

(iii) That I have landed property that gives a poor yield due to my absence from home.

In view of the above mentioned reasons I am not in a position to serve any more efficiently.

I, therefore, request your honour to sanction my discharge from service or transfer to reserve establishment.

4. Perusal of the application shows that Petitioner had sought voluntary discharge on the ground that he may be transferred to reserve. This

application cannot be construed to be un-conditional willingness shown by the Petitioner to seek his discharge. It was a conditional willingness on

the part of the Petitioner that he should be sent to reserve before his discharge. Even though there is no obligation on the part of the Respondents

to absorb the Petitioner in Reserve, but all the more it was incumbent upon them to inform the Petitioner before his discharge that his request for his

transfer to Reserve was rejected. This has not been done by the Respondents. The order of discharge was not appropriate and it cannot be

construed to be a voluntary discharge.

5. The only question this is required to be considered is as to whether the Petitioner is entitled to pension without having completed 15 years of qualifying service.

6. It is revealed that Petitioner has filed an application requesting for grant of service pension on the ground that some persons have been granted

the said benefit, who had not completed 15 years of service. Regulation 132 of the Pension Regulations for the Army 1961-Part-I, provides for

grant of pension after completion of 15 years of qualifying service. Rule 138 of the Pension Regulations for the Army 1961-Part-I provides that an

individual transferred to the reserve after earning a service pension shall be granted pension from the date of such transfer. Rule 155 states that an

reservist, who is not in receipt of a service pension may be granted pension, on completion of the prescribed combined colour and reserve

qualifying service, of not less than 15 years a reserve pension equal to 2/3rd of the lowest pension admissible to a sepoy. For facility this rule is

quoted:

155. An OR reservist who is not in receipt of a service pension may be granted, on completion of the prescribed combined colour and reserve

qualifying service, of not less than 15 years a reservist pension equal to 2 /3rd of the lowest pension admissible to a sepoy, but in no case less than

Rs. 375/- p.m. on his transfer to pension establishment either on completion of his term of engagement or prematurely, irrespective of the period of

colour service.

7. The import of the aforementioned Rule is that even if a person has not earned the qualifying service still he is entitled to the pension on

completion of the prescribed combined colour and reserve qualifying service. It is to say that he should have a combined service of 15 years both

in regular establishment as well as a reservist.

8. Applying this principle to the facts of the present case, it be seen that the Petitioner, even though has not completed 15 years of qualifying

service, was discharged from service on account of his making voluntary request for discharge, without taking into consideration his prayer for

being adjusted as a reservist. The voluntary act of the Petitioner for seeking his discharge or transfer to reserve, was not unconditional. The

Petitioner, normally, should have been allowed to continue in service till his age of superannuation, however, his service was cut short on the basis

of having made a voluntary request for discharge. It would be appropriate in this case that Respondents take a decision in the matter for grant of

pension by either invoking Rule 155 of the Pension Regulations for the Army 1961-Part-I or in exercise of its power for granting such relaxation, in

the facts and circumstances of the case, which are peculiar in nature.

9. The last aspect of the matter is that whether the writ petition is hopelessly

time barred.

10. There is no dispute that the Petitioner has slept over the matter for a period of 35 years, as such, no equity can be done to a person who has

remained silent. Normally in case of belated approach the writ petition has to be dismissed as representations would not be adequate explanation

to take care of the delay. However, in case of pension the cause of action continues. In such cases the relief which could be granted to the

Petitioner to a reasonable period of three years. This view has been taken by Hon'ble Supreme Court of India in Shiv Dass v. Union of India

reported as 2007 (1) Supreme 455, where it has been held as under:

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to over look delay in filing

the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the court would

reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether

on merit Appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition

on that score alone.

11. Mr. Sharma has relied upon a judgment of Delhi High Court delivered in case titled Hans Ram v. Union of India and Anr. In this case the

Division Bench of Delhi High Court while dealing with the issue of grant of pension, has held that since the record of the Petitioner was not

available, as such, it is not known as to in what circumstances the Petitioner was paid merely the gratuity and yet felt satisfied there with when no

pension was paid. The Division Bench, however, held that ordinarily in matters relating to pension the Writ courts do not deny the relief on account

of delay merely. Mr. Sharma has also relied upon a judgment of Supreme Court in Bhoop Singh Vs. Union of India and others, . In this case it was

the order of termination which was challenged after 22 years without any cogent explanation for the inordinate delay. The facts of the present case

are entirely different. The Apex Court has time and again held that grant of pension is a continuous cause of action which is not the case where

order of termination is challenged after 22 years.

12. For the reasons, I allow this petition and direct that Petitioner be granted

pension after invoking Regulation 155 of the Pension Regulations for the Army 1961-Part-I or by granting such relaxation so as to allow him to draw the pension which he would have drawn if he was allowed to complete his qualifying service of 15 years. This direction is being issued for the reasons that the order of discharge of the Petitioner was not in consonance with rules as his request for discharge was conditional and he is required to be treated in service till he completes service of 15 years so as to become entitled for pension. The Petitioner shall be entitled to receive pension only for a period of three years and for future. He shall be entitled to receive arrears of pension for the last three years only.

Let the exercise of consideration be completed within a period of four months from the date a copy of this order is served upon the Respondents.