

(2001) 12 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3839/92

H.J. Warren

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Pension Regulations for the Air Force Act, 1961 — Regulation 144

Citation : (2002) 1 MPHT 235 : (2002) 2 MPLJ 136

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant; Indira Nair, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The question involved in the writ petition is whether the shortfall of 81 days of service should have been condoned so that the petitioner could qualify for reservists pension.

The facts lie in narrow compass. Petitioner was appointed, in Royal Indian Air Force on 27-5-1949, initially as Motor Transport Driver. Thereafter he was remustered as Corporal (Musician). Petitioner worked till 27-5-1958. He was kept in reserved list and was recalled on 14-12-1962 and was discharged on 5-3-1964. Initially the regular term of engagement was 9 years. An order of discharge P-2 indicates that total service in the regular air force reserve was five years 284 days. Thus, the petitioner's total service comes to 14 years 284 days. 15 years is the minimum qualifying service of obtaining the reservists pension. It is not disputed that period of 60 days, the petitioner is entitled to add on account of annual leave, which has to be added to his credit on the date of his discharge from service in the year 1964.

The total shortfall of the petitioner is service comes to 81 days, reducing the period of 60 days, which is entitled to be added on account of annual leave, the

short fall comes to 21 days. Petitioner submitted various representations to the authorities; Annexures P-4, P-5, P-6, ultimately on 13-8-1991 an order - Annexure P-7 was passed by the Directorate of Personnel (Air Head-quarter), which is reproduced below :

"Pensionary Benefits : Ex-206051 CPL Warren HJ

(1) Please refer to your Dy. No. 964/DO I/D (Air III) dated 10th May, 91 recorded on attached representation of above named ex-airman.

(2) It is intimated that after completion of 9 years regular service, Ex. Cpl Warren HJ was transferred to Regular AF Reserve on 27 May, 58. Subsequently, he was called up for Air Force service from Regular Air Force Reserve and he reported for duty on 14 Dec., 62. Finally, he was discharged from Regular Air Force Reserve on 5 Mar., 64 under the clause "Service no longer required". At that time, he had a total of 14 years and 284 days (Regular + Reserve) service to his credit.

(3) As per the rules, a minimum of 15 years of qualifying service (Regular + Reserve) is required to become eligible for Reservist Pension. Since he has less than 15 years of qualifying service to his credit, he is not entitled for Reservist Pension.

(4) As regards for condonation, of deficiency it is informed that condonation of deficiency is applicable only in those cases where the airmen have completed minimum of 15 years service but run short of service due to certain spells of non-qualifying service. As such, condonation of deficiency also is not permissible in his case. These facts have already been brought to the notice of individual. However, a copy of this note has also been endorsed to the ex-airmen. Min of Def/D (Air III) may like to send a suitable reply to the individual."

It is clear from the above quoted order that the petitioner was denied the benefits of condonation on the ground that condonation of deficiency is applicable only in those cases where airman has completed minimum 15 years of service, but, run short of service due to certain spells of non-qualifying service.

The respondents' case is that the petition has been filed belatedly. The service record has been destroyed except sheet roll. The respondents submits the order Annexure P-7 is proper.

The relevant provision relating to qualifying service is contained in Defence Service Regulations for Air Force, 1961. Para 121 of the Regulations reads as under:--

"121. Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years."

Provisions of condonation of deficiency in service for eligibility to service of reservists pension is provided in Part-I Chapter-III: Airmen, Section I-General, which is reproduced below:

Condonation of deficiency in service for eligibility to service/reservists pension.

"114. Except in the case of-

(a) an individual who is discharged at his own request,

(b) an individual who is eligible for special pension or gratuity under Regulation 144, or

(c) an individual who is invalided with less than 15 years" service, deficiency in service for eligibility to service pension or reservist pension or gratuity, in lieu, may be condoned by a competent authority up to six months in each case."

Para 114 (c) of the Regulation provides that except in the case of an individual who is invalidated with less than 15 years" service, deficiency in service for eligibility to service pension or reservist pension or gratuity, in lieu, may be condoned by a competent authority up to six months in each case. Excepted clauses are; an individual who is discharged at his own request, second excepted clause is an individual who is eligible for special pension or gratuity under Regulation 144 or an individual who is invalided with less than 15 years. There is clear power to condone, even in case where 15 years service has not been completed.

In the instant case the effective shortfall is by 21 days only. As 60 days the petitioner is entitled to add on account of annual leave. It is clear that the petitioner's case has not been dealt with properly. He was called from the reserved list on 14-12-1962. The petitioner was discharged just before 21 days of the qualifying period which would have made the petitioner eligible for reservist pension. He was called from reserved list after about 4 years. Since the petitioner had 14 years 284 days of actual service to his credit in addition 60 days of annual leave which are undisputedly to be added, the period of 21 days ought to have been condoned exercising the power under Para 114 of the Pension Regulation, 1961 for the Air Force. When the petitioner has rendered the service in his hay days of life, there is corresponding obligation on the part of respondents to look after him in his old age. The shortfall was not so much it was of 21 days, though technically it was there, but, it should have been condoned, power exists to condone the deficit in service upto six months. The deficit of 21 days ought to have been condoned.

The reason mentioned by the respondents in Para 4 of the order Annexure P-7 quoted above is contrary to Regulation, Para 114 of the Pension Regulations and is not acceptable.

Yet another view of the matter as respondents case is there is power to condone upto six months which can be exercised when total tenure is 15 years but certain period are to be excluded. There appears to be no good reason not to exercise the power to condone the shortfall in qualifying service if it was less than 15 years up period of six months. Otherwise very object of power to condone the shortfall provided under Para 114 of Pension Regulation would stand defeated.

Resultantly, the writ petition is allowed. The impugned order Annexure P-7 refusing to condone the shortfall is set aside. The respondents are directed to condone the shortfall and process the case of the petitioner for reservist pension/ service pension in accordance with Regulation within a period of 4 months from today. The petitioner is entitled to the same with effect from the date of his original entitlement. If pension is not finalized and paid in the manner aforesaid, within four months, same would carry interest at the rate of 8% per annum. Costs on parties.

Misc. Petition allowed.