

(1994) 08 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 341 of 1989

Inder Sen Smaddar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Citation : (1994) 3 AD 1017 : (1994) 30 DRJ 458

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : D. Latifi, S.S. Roy and V.K. Shall, for the Appellant;

Judgement

Jaspal Singh, J.

(1) It is just a coincidence that while the Nation is preparing to celebrate its Day of Independence, I am penning these lines to dispose of a writ petition filed by a soldier who fought for India's independence by joining the Indian national Army (INA for short) and after achieving the cherished goal, served free India in various capacities. The irony is that he loses this legal battle.

(2) The petitioner served in the IN a from June 2, 1942 to July 14, 1946. Later, from January 17, 1947 to February 5, 1949 he saw himself in Civil Service. On February 9, 1949 he joined (Officers Training School (OTS for short). His stay there lasted 200 days. From August 28, 1949 to December 19, 1960 he served as Tc Officer having been granted temporary Commission in the Army. The total service so rendered by him was 11 years and 114 days. Thereafter, he was selected and granted Short Service Regular Commission with effect from December 22, 1960 from where he was released with effect from December 19, 1967. The case of the petitioner is that he was entitled to permanent regular commission on the basis relaxation of age limit allowed by communication of December 12, 1962 and since in his case no such relaxation was allowed, he was, consequently, deprived unlawfully of pensionary benefits amounting to Rs.1500.00 per month. He has thus sought the issuance of a writ of mandamus to

grant pension to him with effect from December 19, 1966.

(3) Needless to say the respondents have not responded favorably. Their defense is that the petitioner was not eligible for grant of permanent regular commission and that as per the terms and conditions of his service he was not eligible even for pension.

(4) Since Mr. Danial Latifi, Senior Advocate raised the edifice of his case on the basis of letter of January 12, 1962 addressed by the Government of India, Ministry of defense, to the Chief of the Army Staff and on the subsequent corrigendum of February 15, 1962, let me take the liberty of reproducing the same. It runs as under: "Copy of the Government of India, Ministry of defense New Delhi letter No.6(5)/61/129/D(AG- II) dated 12 January, 1962, addressed to the Chief of the Army Staff. Subject: Grant Of Prc To NON-REGULAR Officers Selected By The Special Review Board Set Up By The Ministry Of defense Vide Letter N0.6(4)/D(AG.II)57 Dated The 5TH AUG; 1957 Sir, I am directed to refer to this Ministry's letter No.6(5)/57/D(AG.II), dated the 9th September, 1958, granting certain relaxations in respect of the non-regular officers approved by you for the grant of Prc on the recommendation of the Special Review Board and to say that the President is pleased to decide that the age limit specified in para I(a) thereof will be waived in the case of such non regular officers among them as are still in service on the date of issue of this letter. 2. This letter has been issued with the concurrence of the Ministry of Finance (defense) vide their Up No.186.PA dated 12 January, 1962. Yours faithfully, sd/- (S.DEVANATH) Deputy Secretary to the Govt. of India Copy of Govt. of India Ministry of defense New Delhi Corrigendum No.6(5)/61/333/D(AG.II) dated 15th Feb. 1962. The following amendment is made to the Ministry of defense letter No.6(5)/61/129/D (AG.II) dated 12th January, 1962 regarding grant of Prc to non-regular officers selected by the Special Review Board set up by the Ministry of defense, under their letter N0.6(4)/D(AG.II)57 dated 5th August, 1957 - At the end of para I for the word "as are still in service on the date of issue of this letter" read "as were in service on the first Jan. 1962." This issued with the concurrence of Ministry of Finance/ Defense vide their No.506.PR dated the 5th February, 1962. sd/- R.K. Sen GUPTA. Under Secretary to the Govt. of India"

(5) It was contended, on the basis of the communication reproduced above, that since the petitioner was in the Short Service Regular Commission from December 22, 1960 to December 19, 1966 the benefit of age relaxation ought to have gone to the petitioner also. I wish it could be so.

(6) The perusal of the letter of January 12, 1962 would go to show that to avail of its benefit the person concerned must have been; (a) A non-regular officer, (b) He must have been approved by the Chief of the Army Staff on the recommendation of the Special Review Board, and (c) "such" non-regular officer "among them" (among those approved by the Chief of the Army Staff on the recommendation of the Special Review Board) must have been still in service on the date of issue of the letter. Unfortunately for the petitioner he has not shown

that at the relevant time he was a non-regular officer. He has also not shown that in his case condition (b) had also been satisfied. Rather, the record shows that he was released from the temporary commission with effect from December 19, 1960 and on being so released he had even received terminal gratuity for his temporary Commission service. It was only thereafter that he was granted Short Service Regular Commission. The Order of November 18, 1960 clearly goes to show that the selection was for the grant of "fresh" Short Service Regular Commission for three years and that the grant of Commission was under at 8/5/57 and that too "with effect from the date of your reporting for duty." The letter further makes it clear that the petitioner was to be released from Temporary Commission with effect from December 20, 1960 and was to report for duty on December 22, 1960 bringing in a deliberate break between the two services.

(7) As noticed above the grant of Short Service Commission to the petitioner was under at 8/5/57. Para 17 of the Army Instruction 8/5/57 which deals with the subject "Pension/Gratuity", says:

"17.No gratuity will be admissible to an officer for Short Service Regular Commission Service rendered under this Army Instruction."

Para 22 of the Army Instruction 8/5/57 is also not without significance. It notes:

"22.Officers granted Short Service Regular Commission under this Instruction will not be eligible for the grant of Permanent Regular Commissions."

(8) Para 17 and 22, to my mind, clearly demolish the case of the petitioner.

(9) The position thus boils down to this. The letter of January 12, 1962 is of no help to the petitioner as it does not apply to him. Secondly ,the petitioner having been released from the Temporary Commission on December 20, 1960, grant of Short Service Regular Commission with effect from December 22, 1960 constituted a fresh service. Continuity of two services was neither envisaged nor desired. They were two separate services with an intended break of service in between. Thirdly the service rendered in the Short Service Regular Commission did not entitle the petitioner to grant of pension nor did it make him eligible for grant of Permanent Regular Commission.

(10) There is yet another reason which prompts me to go against the petitioner. He retired from the Temporary Commission on December 129, 1960 and from the Short Service Regular Commission on December 19, 1966. The writ petition was filed in February, 1989. The long silence amounting to laches comes in his way.

(11) Mr. Danial Latifi while reminding me that the petitioner now in the winter of his life had spent his plastic age fighting for the freedom and independence of our country read out the following passage from the written note submitted by him:

"If the Rules subsequently made in 1962 were not given proper and liberal interpretation, by this Hon'ble Court, the stand that "Government have Therefore come to the conclusion that ex-INA officers and men should not be reinstated in the Army.." followed by refusal to employ the IN a personnel in the Indian Army for all times would remain perhaps the most striking monument, in the annals of modern states, of ingratitude shown by any newly liberated nation to the cream of the heroes of its national liberation struggle. We may contrast it with the treatment of the Free French Forces, led by De Gaulle, into the French Army after the liberation of France following the defeat of Germany in World War II. It will be recalled that the Free French were indeed integrated; and were placed at the head of the French Army! If such different treatment indeed be that which we shall finally mete out to our heroes of the IN a history shall judge us poorly."

(12) The exhortation, I must confess, saw me in the world of Sangfroid "Sassoon's "Attack", and "The" General", Wilfred Owen's "Disabled". "The Send-off" and "A Terre" and Gavin Ewart's "The Poetry of War 1939-45", (ed. Ian Hamilton, 1965); and made me remember the following from Stephen Spender : "The names of those who in their lives fought for life. Who were at Their hearts the fire's centre, Born of the sun. They travelled a short while toward the sun And left the vivid air signed with honor(Stephen Spender : Beethoven's Death Mask) And yet it is sheer helplessness which besieges me. My esteemed brother Bhat J. who was earlier seized of the matter also perhaps felt that way and hoping for a silver- lining suggested to the learned counsel for the Union of India to take a "generous view" of the petitioner's case and "advise" the respondents to find a "solution to the case by awarding suitable pension". However, the Union of India stood by its stand. Though my efforts also met with a stony stare, I do hope somebody, somewhere will stand up and do the needful and that too before the petitioner turns into an "archeological monument" meant only to provide a ceremonial platform for empty speeches.

(13) The writ petition is dismissed but with no order as to costs.