

(2007) 04 SHI CK 0046
In the High Court Of Himachal Pradesh

Jaipal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Army Act, 1950 — Section 38

Citation : (2007) 3 ShimLC 295

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—This judgment is being dictated in open Court in presence of the learned Counsel for the parties.

2. Petitioner was enrolled in the Indian Army on 30th November, 1979. He was served with a show-cause notice dated 18.9.1995. Perusal of the same shows that during his service, he has incurred various entries in his conduct sheet, details are given as under:

-----		Date
of Offence under AA Section	Punishment	Date of offence awarded
-----		awarded
		(a)
25 Jul. 83 AA Section 39(b)	Without 10 days pay fine.	25 Jul. 83 sufficient cause
OSL	-----	
(b)	06 Mar. 85 -do- 14 days RI.	18 Mar. 85
		(c)
01 Nov. 87 AA Section 38(1)	Deserting the Tried by SCM and 13 Nov. 90 service.	
awarded 09 months RI in military prison and to be under stoppage of pay and allowances	for	Rs. 432.44
		----- 12
12 Sep. 90 AA Section 54(b)	Lossing by Neglect the property of the Govt.	
12 Sep. 90 AA Section 54(B)	Lossing by Neglect clothing & equipment the property of the Govt.	

----- (d)
 21 Apr. 92 AA Section 39(b) without 28 days RI and 14 09 Jun 92 sufficient
 cause OSL days detention
 ----- (e)
 21 Apr. 95 AA Section 39 (a) Absenting 28 days RI 20 May 95 himself without
 leave.
 ----- (f)
 02 Aug. 95 AA Section 39(b) Without 28 days RI 31 Aug 95 sufficient cause
 OSL -----

3. In the notice, it was indicated that the petitioner had become a bad example for other soldiers and his further retention in the service was undesirable in the interest of discipline. An opportunity in compliance of Rule 13(3), Table III (V) of the Army Rules, was afforded to the petitioner. However, he did not respond to the said show-cause notice. He was dismissed from the Army on 29th September, 1995. Even though the order of his dismissal is not on record, however, his certificate of service placed as Annexure P-1, on record, indicates the reason of his dismissal as "Undesirable soldier". The certificate shows that he has rendered 15 years 10 months 16 days of service, which also includes non-qualifying service also.

4. Petitioner preferred an appeal dated 29th June, 1992 seeking condonation of 3 years and 291 days of non-qualifying service to enable him to fulfill the eligibility criteria of availing the pension under the Pension Regulation for Army 1961. The same was, however, rejected by the respondents vide letter dated 9th September, 1999 (P-3), relevant portion of the letter is reproduced as under:

You were discharged from service on 28 September 95 under Army Rule 13(3) Item III(V) as undesirable soldier before fulfill the terms and engagement of your service. Hence, this office is unable to take any action on your petition. As per existing rules, your non-qualifying service cannot be included towards pension by this office.

5. Petitioner further sent a legal notice dated 19th September, 2000 and for want of response in the affirmative from the respondents, petitioner preferred the present writ petition on 11th August, 2002.

6. Section 38 of the Army Act, 1950 (hereinafter referred to as "the Act") stipulates that a person who desert or attempt to desert service shall, on conviction by a Court Martial be liable to suffer imprisonment for a term, which may extend upto seven years. The Pension Regulation for Army, 1961, Part 1, Regulation 123 provides that a person who has been guilty of an offence of desertion u/s 38 shall forfeit the whole of his prior service towards pension or gratuity upon being convicted by Court Martial with one exception that on completion of period of three years further service, in the colours with exemplary conduct and without any red ink entry, he shall be eligible to reckon the forfeited service towards pension.

7. Admittedly, the petitioner has been awarded rigorous imprisonment for a period of nine months in the year 1990. Show-cause notice as reproduced hereinabove indicates that the petitioner had further been inflicted with punishment of rigorous imprisonment on three different occasions. Para 2 page 34 of the counter-affidavit categorically states that thereafter petitioner has again suffered three more red ink entries after trial by Summary Court Martial. There is no rebuttal to the same by the petitioner.

8. The respondents have categorically stated that out of the total length of 15 years 10 months and 16 days of service rendered by the petitioner, his non-qualifying service of 3 years 287 days has to be deducted for the offences for which the petitioner has been convicted. The qualifying service for entitlement under the Regulation is a minimum of 15 years.

9. In this view of the matter, I see no reason to interfere in the orders passed by the respondents rejecting the application of the petitioner for his entitlement for pension under the Pension Regulation.