
(2012) 01 DEL CK 0351

In the Delhi High Court

Case No : Writ Petition (C) No. 474 of 2012

K.L. Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0351

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sukhjinder Singh, for the Appellant; Ravinder Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of the communication dated 23rd February, 2006 and 7th December, 2006 and communication dated 10th December, 1975 discharging the petitioner from the Naval service on the ground that his services were no longer required. The petitioner has also sought the quashing of the order of the Tribunal dated 22nd July, 2011 dismissing the original application of the petitioner in T.A.No.328 of 2010. The petitioner has further prayed for a writ of mandamus for the grant of pensionary benefits, for the service period rendered by him as if without a break till his superannuation from the service, in the rank of Master Chief Petty Officer, 1st Class, the rank to which he would have arisen had he not been discharged or such other pensionary benefits.

2. Some relevant facts to comprehend the disputes are that the petitioner was enrolled as an Artificer Apprentice in terms of Sections 11 & 12 of the Navy Act, 1957 on 18th August, 1962 and after undergoing training from 18th August, 1962 to 19th August, 1966, the petitioner was promoted to the rank of Aircraft Artificer 5th class. Finally the petitioner was promoted to the rank of Aircraft Artificer 2nd class i.e. Chief Petty Officer on 9th July, 1974.

3. However, according to the petitioner he was, illegally and arbitrarily discharged from the Naval service on 10th March, 1976 on the ground of "Services no longer required".

4. The petitioner contended that his discharge from the service on account of "services no longer required" is in complete violation of Section 15 (2) (b) of the Navy Act, 1957 read with Regulations 279, Regs. Navy Part III (Statutory) since it was without administering any warning or counseling him and without issuing any show cause notice, though his conduct at that point in time was "very good", since he had received many "Good Conduct Badges".

5. The petitioner did not challenge his discharge from 10th March, 1976 up till 2005, which is when he started sending representations to the respondents alleging that he had been discharged arbitrarily. He thereafter, filed a writ petition in the year 2007 in the High Court of Delhi which was subsequently transferred to the Tribunal and was registered as T.A.No.328/2010.

6. The petition was contested by the respondents on the ground of delay and laches. The respondents also asserted that they did not have any record pertaining to the petitioner's service, as it had already been weeded out.

7. The petitioner relied on Union of India (UOI) and Others Vs. Tarsem Singh, ; S.S.Phogat v. Chief of Naval Staff & Ors., (1999) LAB. I.C 1512 ; Brij Nath Pandey Vs. State of U.P. and Others, to contend that the delay in the present matter would not affect his right to claim pensionary benefits and that the delay does not in any case affect the rights of any third party.

8. The petition was contested by the respondents on the ground that there had been a delay of 31 years and that no explanation had been given by the petitioner as to why he had remained silent for all this while. The respondents also contended that the petitioner had been persistently reported throughout his career as being of "Below Average" intelligence and initiative and requiring constant supervision. It was also urged that on account of the fact that the conduct of the petitioner was below average and that his professional competence was not upto the mark, on the recommendation of the Commanding Officer, INS, Vikrant, the petitioner was discharged from the service by order dated 10th December, 1975 pursuant to the approval granted by the competent authority i.e. the Chief of the Naval Staff. The respondents also contended that the issuance of a warning was not the criteria, while discharging the sailor on the ground of "Service No Longer Required" (SNLR) as per Regulation 279(3) of the Navy Regulation Part III (Statutory), however, on taking into consideration the petitioner's service, he was not found suitable to be retained in the service. The respondents had also produced correspondences before the Tribunal that clearly showed that the authorities had warned the petitioner from time to time and on the basis of the record which was available, he was not found suitable to be retained in the service. It was also contended that the petitioner had only produced a sheet of the good character and not the original ACR for alleging that

he had rendered good service, as the original record pertaining to him had been weeded out after 30 years, since it was not possible to retain the same.

9. The Tribunal considered the pleas and contentions of the parties and on taking into consideration the Regulations 279 of the Navy Regulation Part III (Statutory) held that the petitioner had outlived his utility and therefore, he was discharged from the service on the ground that his service was no longer required as his retention was considered to be undesirable. Regarding the ACRs, it was held that since they are not available, thus in the circumstances, it would be presumed that the official act had been done by the respondents in the manner as was required under the relevant Rules and Regulations.

10. Referring to the judgment relied on by the petitioner, the Tribunal held that the delay in the case of the petitioner is fatal as he is not only claiming the pension but what is being claimed by the petitioner is that his discharge in itself is not justified. The petitioner cannot challenge his discharge after 31 years when his record is already weeded out. The Tribunal held that in discharging the petitioner, the respondents have not acted arbitrarily and in any case, the petitioner has not given any satisfactory explanation as to what prevented him for approaching the Court within time. The Tribunal further held that since the records pertaining to the petitioner have already been weeded out, it now cannot be examined whether the petitioner's conduct was below average or not, and whether his professional competence was up to the mark or not.

11. The Tribunal in para 5, 6, 7 & 8 of the order has held as under:

5. We have heard learned counsel for the parties and gone through the record.

6. After going through the record and the correspondence which has been placed before us, it appears that the petitioner had outlived his utility in service and therefore, provisions of Regulation 279 were invoked. It is true that the petitioner was promoted to the post of Chief Petty Officer but his total service career appears to be not satisfactory therefore the authorities are well within their rights to weed out such unsuitable person from service. As in the Civil Service also, if an incumbent has put in 25 years of service and has outlived his utility, then he can be compulsorily retired. Similarly, Regulation 279 is also identical provision that if an incumbent has outlived his utility, then he can be discharged. Such discharge cannot be treated to be punishment as is clear from the reading of Regulation 279. Regulation 279 reads as under:-

279. Discharge "S.N.L.R." - (1) Discharge S.N.L.R (Service no longer required) shall not be considered as a punishment but only as the appropriate method of dispensing with the services of a man:

(a) Who is surplus to requirements.

(b) Whose retention would be to the detriment of the Service but who has not recently committed a specific offence for which dismissal would be an appropriate punishment in addition to any other sentence awarded.

(c) On whom an adverse report has been forwarded in the post-enrolment verification report.

(2) Subject to the provisions of sub-regulation (1), if the retention of any sailor is considered undesirable on grounds of conduct or character, a report accompanied by his Service Documents, shall be forwarded to the Administrative Authority, with a recommendation that the man be discharged "Service No Longer Required".

(3) In all cases of recommendations for discharge of sailors as "Service No Longer Required" except those who are to be discharged as being surplus to requirements, Captains shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation. In exceptional cases, when in the opinion of the Captain, the retention of a sailor is clearly undesirable, a recommendation may be forwarded and discharge may be approved although the sailor has not been previously been warned.

(4) The Administrative Authority, if satisfied that discharge "Service No Longer Required" is appropriate, shall forward the application to the Chief of the Naval Staff through Captain Naval Barracks with his recommendation. It is essential the man's Service Documents completed upto date shall accompany the application for discharge.

(5) Abroad, sailors recommended for discharge "Service No Longer Required" shall not be sent home until the approval of the Chief of the Naval Staff for discharge has been received. If in the interim, the man is transferred to another ship, the Service Document sent with the man shall be annotated to the effect that an application for his discharge has been made and a copy of the application shall accompany his papers.

Regulation 279 clearly stipulates that if the incumbent has outlived his utility and if he is being discharged from service as "Service No Longer Required" because his retention is considered undesirable on grounds of conduct or character, a report accompanied by his service Documents, shall be forwarded to the Administrative Authority with a recommendation that the man be discharged "Service No Longer Required". All this communication has been shown to us by the respondents and it has been clearly mentioned that his ACR is also forwarded but on account of the fact that all records have been weeded out, his ACR is not available. It is true that the petitioner has kept mum for 31 years and did not challenge his discharge. Therefore, in such a situation, official act will have to be presumed to have been done in the manner required as correspondence show that ACR of petitioner along with the recommendation was forwarded to Chief of Naval Staff and after his approval, order of discharge was issued. So far as the decision given by the Apex Court in the case of "Union of India & Ors Vs. Tarsem Singh 2009 (1) SCC 371" (Supra) is concerned, in that case, their Lordships have laid down the proposition that if delay does not affect the third parties then delay

can be condoned. But in a case where delay is results in weeding out of record, then can it be said that there was no material to weed out the petitioner. Our answer is in negative. Delay is fatal for petitioner.

7. So far as the promotion of the petitioner to the post of Chief Petty Officer is concerned, learned counsel referred to the decision of Supreme Court in Brij Nath Pandey Vs. State of U.P. and Others, ". However, that is a matter of crossing the efficiency bar, but this is not the case in hand. It is a case of compulsory retirement, therefore, all the entries which are on the record will have to be taken into consideration for assessing the utility for retention in service. Similarly, this is not a case of termination, therefore, no notice is required. This is a case of compulsory retirement whether the incumbent is fit to be retained in service or not. The Navy is in discipline force and if the incumbent by his poor performance has outlived his utility, then it is well within the rights of the authorities to discharge the incumbent from service. Similar provisions also exist in the Army & Air Force. Therefore, the only thing which should be considered as whether the exercise of power was arbitrary or not. In the present case, there is no question of arbitrariness in the matter. The petition is extremely belated and has been filed after a long gap of 31 years. There is no satisfactory explanation as to what prevented the petitioner from approaching the Court within time. As the record has already been weeded out, therefore, it cannot be examined whether petitioner's conduct was below average or not and his professional competence was up to the mark or not as the originals have been weeded out. However, whatever correspondence is available, it transpires from it that relevant material was taken into consideration and the same was placed before the Chief of Naval Staff and he after satisfying himself, approved the same. At one point of time, learned counsel also urged that this discharge order was not approved by the Chief of Naval Staff but the order clearly mentions that the discharge has been made with due approval of the Chief of the Naval Staff. Since the petitioner raised the objection that it was not approved by Chief of Naval Staff, we directed the respondents to produce the original record but the respondents filed the affidavit that the records have been weeded out as there is a delay of 31 years. Since the order speaks that it has approval of Chief of Naval Staff, we have no reason to disbelieve it. The official act is presumed to have been done in the manner required unless it is proved otherwise.

8. Hence, we are satisfied that this is not a fit case which warrants interference by us and the same is dismissed. No order as to costs.

12. Learned counsel for the petitioner has challenged the order of the Tribunal contending, inter-alia that the delay is not fatal in his case and that the Tribunal could not have dismissed his petition on the said ground. The learned counsel for the petitioner has relied on Union of India (UOI) and Others Vs. Tarsem Singh, ; S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, ; W.P.(C) No.17459/2006 decided on 3rd April, 2008 titled as, "Lt. Commander Anup Kumar Mehrotra v. Union of India & Ors.", W.P.(C) 1393/2004 decided on

14th September, 2004 titled as, "Lt. Commander Kailash Prasad Ray v. Union of & Ors." and T.A.No.564/2010, titled as "Sh.Sadashiv Haribabu Nargund & Ors. v. Union of India & Ors., decided on 12th January, 2011.

13. In Tarsem Singh (supra), the employee was invalidated out of the Army service in the medical category on 13th November, 1983 and he had approached the High Court in the year 1999 seeking his disability pension. The High Court had allowed the grant of disability pension for the past 16 years rather than restricting the pension to three years. The matter was carefully assessed by the Supreme Court and it was held that normally, a belated service related claim is to be rejected on account of delay and laches, however, the Apex Court carved out an exception in the case of continuing wrong. It was held that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking the remedy. The Supreme Court further carved out an exception to the above exception by holding that if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the reopening of the issue would affect the settled rights of the third party, then the claim would not be entertained. The Supreme Court in para 5 at page 374 has held as under:-

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong create a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted inspite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc, affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

14. In S.K. Mastan Bee (supra) relied on by the petitioner, the widow of a railway employee who had died in the year 1969 had claimed family pension only in the year 1991, and she justified the delay on the ground that on account of ignorance and lack of legal assistance she could not stake her claim for family pension till 12th March, 1991. When she made an application for grant of family pension to the Divisional Railway Manager, her request was rejected. The High

Court while adjudicating on the matter had granted the family pension to the widow, however, it had restricted the grant of the arrears from the day the appellant had issued the legal notice to the Railways i.e. on 1st April, 1992 and not the day her husband has passed away, the day from which the pension was due to her. In such circumstances the Supreme Court had held, the delay would not affect the right of the widow as it was obligatory for the Railways to have computed the family pension payable to the appellant and offer the same to her without her having to make the claim or without driving her to litigation, also in view of the fact that her husband was only a gangman in the Railway who might not have left behind sufficient resources for the widow. The Supreme Court also held that the Division Bench of the High Court in the circumstances, had fallen in error in restricting the period of computing the family pension to the date when the appellant had tendered the legal notice on 1st April, 1992 whereas the husband of the widow had died on 21st November, 1969 which is when the family pension became due to her. Therefore the Supreme Court directed the respondents to pay the entire arrears due to the appellant from 21st November, 1969 within three months. Apparently, the case of the petitioner is distinguishable. Although the petitioner has averred that he is entitled for pensionary benefits as he was in service without break till his superannuation from the service, however, in the absence of the record, it is not apparent whether the petitioner is entitled for pension or not. In contradistinction to the case of Mastan Bee (supra) it was not denied that the widow of the deceased Railway employee was entitled for pension. In any case, the primary relief of the petitioner is challenging his discharge order dated 10th March, 1976. Therefore, the petitioner cannot in the facts and circumstances rely on the ratio of the Tarsem Singh (supra) and S.K.Mastan Bee (supra) as both the cases are quite distinguishable.

15. In Lt. Kailash Prasad Ray (supra), a Division Bench of this Court while relying on Anuj Kumar Dey and Another Vs. Union of India (UOI) and Others, had held that that the benefits of the training period rendered by the an apprentice service cannot be denied for the purpose of computation of pension. Consequently in the instant petition, it was held that the said official was entitled for consideration of the service rendered during training for computation of his pension. However, in the case of the petitioner no record is available as to how long the petitioner had rendered the service on training, nor any explanation has been given as to why the petitioner is coming to the Court after 31 years of him being discharged by order dated 10th March, 1976.

16. In Lt.Commander Anup Kumar Mehrotra, (supra) a Division Bench of this Court had considered the grant of pro rata pension. In the said cases decided by the Division Bench all the records of the retired Naval personnel was available and it was held that there was no legal impediment in clubbing/tagging the employment as an Artificer in the Navy, regarding his training period or working as boy and the period he worked as sailor or an officer. However, in the case of the petitioner, no record is available and there is also a delay of 31 years and in

light of such inordinate delay, it cannot be ascertained whether the petitioner had become entitled for pension or not. In cases, where the right to get pension is not disputed, the delay may not defeat the right of such a person. However, in the case of the petitioner after 31 years, it is not possible to determine whether the petitioner had been entitled for pension or not, and therefore, the decision of the Tribunal rejecting the claim of the petitioner cannot be faulted. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

17. It is no more *res integra* that a belated service related claim is liable to be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation alone (where remedy is sought by an application to a Tribunal). Exception to the said rule is only in relation to a continuing wrong. There is another exception that if the grievance is in respect of any order or administrative decision which relates to or affects several others also, and if the reopening of the issue would affect the settled rights of third parties then the claim will not be entertained even if it is a continuing wrong though in the case of petitioner it is not even a case of continuing wrong. In the case of *M.R. Gupta Vs. Union of India and others*, it was held as under:-

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the

date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

18. It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and failure to make out grounds to condone the delay in seeking remedy in law is sufficient in itself to oust the petitioner. In this connection, reference can be made to the following precedents:

- (i) *Rajalakshmiah v. State of Mysore*, AIR 1967 SC 993
- (ii) *Jagdish Narain Maltiar Vs. The State of Bihar and Others*,
- (iii) *C.B.S.E. Vs. B.R. Uppal and Others*,
- (iv) *Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others*,

In *Shiv Dass Vs. Union of India (UOI) and Others*, the Supreme Court had held at page 277 in para 8 as under:

8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

19. The case of the petitioner cannot be termed to be of continuing wrong. The petitioner was discharged from service and the discharge order had not be challenged by the petitioner for almost 31 years. After such a long time, if the record of the petitioner is not available and weeded out, the petitioner cannot claim that he is entitled for an order that his discharge was not legal. The claim of the petitioner is not restricted to payment of his pension only but his relief is based on the claim that his discharge was illegal.

20. For the foregoing reason, there are no illegalities, irregularities or any perversity or any jurisdiction error in the order of the Tribunal dated 22nd July, 2011 which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed.