

(1999) 09 DEL CK 0176
In the Delhi High Court
Case No : CW. No. 5336 of 1999

Kulwant Singh (Havildar)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 AD 783

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. A.K. Mishra, for the Appellant; Mr. Rajiv Shakdhar Advocate, for the Respondent

Judgement

N.G. Nandi, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner prays for direction to the respondents to consider the petitioner's fresh option certificate for extension of two year's Army service.

2. The say of the petitioner is that the petitioner joined the Army service on 30.9.1975 at the age of 18 years and presently servicing with 53 Engineer Regiment completing his 24 years of service by 30.9.1999; that the Government of India, vide their Signal No. 351706/A5/PS-2 (C) dated 15.5.1998 had asked to submit the option/non-option certificate for extension /enhancement in retirement age by two years in all ranks in a specific form : that the Havildar is authorised for 24 years of service and age limit of 45 years, whichever is earlier ; that a privilege/opportunity has been given for those effected personnels who were going to discharge before completing their terms of engagement of service due to completing their early retirement age; that the petitioner being non-effected has submitted his non-option certificate for enhancement/extension in retirement age by two years and forwarded to Records Bengal Engineer Group Roorkee vide 53 Engineer Regiment Letter No. 1190-A/86/47 dated 20.7.1998; that as per Singal No. A-5600 dated 6.6.1998 issued by the Records Office, Option/Non option certificate for extension/enhancement in retirement age by

two years was asked for but as per contents of para (2) of 53 Engr. Regt. Letter dated 20.7.1998, it was forwarded for extension of service limit by two years which is in violation of Letter and spirit of Government order dated 15.5.1998 ; that the petitioner, as per his present terms of engagement, after completion of 24 years, has been sanctioned to be struck off from the Army service w.e.f. 30.9.1999 (A.N.), vide Records Bengal Engineer Group Roorkee letter No. 1458/27/53 ER/R/D-3 (A). dated 23.10.1998; that the Army Headquarters issued another amendment in the above signal and an opportunity was given also for extension of service by two years as well in retirement age vide their letter No. B/33098/AG/PS-2(c) dated 9.10.1998, which was communicated vide Records Letter No. 5211-A/49/Vol.-III/R/CA 3 dated 28.10.1998 and the petitioner's service would be extendable from 24 years to 26 years and hence submitted fresh option certificate dated 11.2.1999 for extension of service and retirement age by two years to the commanding officer 53 Engineer Regiment; that the Officiating Chief Records Officer has intimated the inability to accept the fresh option certificate as it would disturb their on going process of grant of extension to those retiring within next three years; that the petitioner belongs to District Shamba Sector, Village Rangoor Camp, J & K; that due to present situation in Kargil, it is not possible to survive for the petitioner and his family members after retirement ; that JC-199753F Sub/SKT Biru Ram Radhe of the same unit who had earlier submitted his non option certificate later on submitted his option certificate for extension of service by two years has been considered for retention in service vide Group Part -II Order No. 1/143/99 dated 1.3.1999.

3. Vide counter affidavit the respondent states that the writ petition is not maintainable as there is no cause of action disclosed inasmuch as there is no infringement of petitioner's legal or fundamental right; that the petitioner seeks to retract his own voluntary decision to opt out from the extension of option, given to all the personnel in the Army for extension of their retirement age/ service limit, whichever is earlier; that the petitioner went back on 16.7.1998 conveyed his decision not to opt for extension of his retirement age/service limit; that the petitioner in the normal course would retire from service on completion of 24 years of service or on attaining age of 47 years of age whichever is earlier; that the petitioner would thus retire from service in the normal course on 30.9.1999; that on the basis of non-option certificate dated 16.7.1998 the case of the petitioner was put before the Screening Committee constituted by the respondents, who, after screening the petitioner's case have vide their order dated 14.12.1998 cleared the petitioner's case for discharge from service in the normal course upon completion of service tenure as on 30.9.1999; that Sub. Biru Ram Radhe retracted his decision prior to his case being submitted to the screening Committee for scrutiny; that the case of Sub. Biru Ram Radhe falls in a separate class ; that as per the policy guide-lines a personnel decision to opt out the extension offer given by the respondents becomes final and irrevocable after the case has been scrutinized by the screening committee. In fact, the screening committee in the case of Sub. Biru Ram Radhe after screening his case

(subsequent option Certificate) recommended his name for retention in service; that the petitioner made a representation through his Commanding Officer on 28.2.1999 which was rejected on 16.3.1999; that the petitioner had made a second representation on 6.6.1999, which was again rejected on 14.6.1999 and that the present petition has been filed after a gap of 13 months from the date of decision not to accept the extension offer given by the petitioner; that the petitioner was issued a warning order informing him about his impending retirement 18 months in advance and the final discharge order at least 12 months in advance and that the petition is liable to be dismissed on the ground of laches and delay also.

4. It is admitted that the petitioner filed non-option certificate on 16.7.1998 as he was completing 24 years service or 45 years age whichever is earlier on 30.9.1999. The petitioner filed fresh option on 11.2.1999, which came to be rejected.

5. Annexure-A is the copy of signal No. 351706/A5/PS-2(C) dated 15.5.1998. It firstly suggests that " the Government issued O.M. vide No. 25012/2/97-Estt(A) of May 13 for extension in retirement age by two years for all ranks and pending issue of Government letter action be taken only in respect of those retiring on or after 31.5.1998 and secondly, all retirements held in abeyance; thirdly; fourthly.....".

Annexure-B dated 18.6.1998 deals with extension of service limit/retirement ages by two years for all ranks. It provides firstly that "pending issue of Government letter action be taken only in respect of those retiring on or after 31.5.1998; secondly, all retirements held in abeyance; thirdly, fourthly, those retiring on completion of tenure of 24 years will proceed for retirement as ordered. Others remaining JCOs, NCOs and OR to sign option certificate for enhanced age of retirement for enhancement age of retirement.

Annexure D-1 is the option certificates for optee and non optee PWD. The same refers to the Signal No. A-5600 dated 6.6.1998. It is suggested there from that the option certificate optees and non optees for extension of service limit by two year have been forwarded/signed by individuals and counter-signed by C.O. for further action. The petitioner has been shown at Serial No. (a) and has been shown as non-optee.

Annexure-F dated 28.10.1998 suggests that the Screening Board in respect of personnels who have not opted till 2.9.1998 for enhanced service/age limit by two years is required to be conducted at Regt/Unit level before three years from the date of their revised colour service and all Regt/Units were requested to screen the personnels" retirement in next three years through Screening Board latest by 31.3.1999.

6. It is suggested from Annexure R-2 (page 18) that the NCOs mentioned therein have not been approved by the Screening Committee for retention in service beyond the date given therein. This petitioner is at Serial No. 0019 and the date

shown is 29.9.1999 i.e. 30.9.1999. Thus, the Screening Committee on 14.12.1998 considered/screened the non-option certificate filed by the petitioner on 16.7.1998. The administrative instructions dated 14.10.1998 for the implementation of enhancement in ages/limit of retirement by two years have been produced vide Annexure R-3. Sub-clause (b) of clause 6 therein deals with option clause provides that the option exercised up to 2.9.1998 by those POBR who are retiring in next three years and have been screened will be considered final and irrevocable.

7. It is submitted by learned counsel for the petitioner that till 16.7.1998 when the petitioner gave the non-option certificate Signal dated 15.5.1999 was not known to him and that it is only when Biru Ram has been granted extension, he came to know that he can also request for extension and filed the second option. This argument is noted for being rejected for the reason that the petitioner is belied by Annexures A and B.

8. It clearly emerges from the Signal dated 15.5.1998 extending service limit/retirement age by 2 years for all ranks was known to all concerned and all retirements were held in abeyance. Even the letter dated 18.6.1996 (Annexure-B) also makes it very clear that all retirements were held in abeyance and the JCOs, NCOs and OR were required to sign the option certificate for enhancement of age of retirement. The petitioner exercised his option on 16.7.1999 by filing non-option certificate and the same was forwarded on 27.8.1998 as suggested from Annexure- D-1. Thereafter, the Screening Committee considered and concluded the non option certificate filed by the petitioner on 14.12.1998 as suggested from Annexure R-2. Even the administrative instructions dated 14.8.1998 (Annexure R-3) particularly clause 6 (b) suggests that the option exercised up to 2.9.1998 by those PBOR retiring in the next three years and have been screened will be considered final and irrevocable.

9. The case of Sub. Biru Ram Radhe Service No. JC1997753F can not be considered as discrimination since Subedar Biru Ram appears to have retracted his decision prior to his case was submitted to the Screening Committee for scrutiny and Therefore Sub. Biru Ram would be a separate class as per the guidelines Annexure R-3. The exercise of second option by the petitioner on 10.2.1999 being after the screening committee concluded the non option certificate dated 16.7.1997 filed by the petitioner, in view of clause 6 (b) of the Administrative Guidelines, referred to above , having become conclusive it is not open to the petitioner to contend contrary to clause 6 (b) of Annexure R-3.

10. In the above view of the matter since no interference under Article 226 is called for, the petition is liable to be dismissed. Order accordingly.