
(2000) 04 DEL CK 0009

In the Delhi High Court

Case No : CWP. No. 4862 of 1999

Om Pal Singh Ex-Commandant (ITBP)	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Citation : (2000) 5 AD 181 : (2000) 86 DLT 474 : (2000) 54 DRJ 920

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

Bench : Single Bench

Advocate : Mr. Anil Gautam Adv, for the Appellant; Mr. S.K. Kaul and Mr. M.K. Bhardwaj, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner was working in Central Reserve: Police Force from where he retired on 31st December, 1996 on attaining 55 years of age after completing 31 years, 9 months and one day's service. He is being given the pension but full pension is not released to him. His contention is that since he had completed 30 years of service before retirement he is entitled to full pension. On the other hand respondents stand taken in the counter-affidavit is that as per the petitioner had not completed 33 years of service, which is maximum service provided under the Rules, petitioner is not entitled to full pension and pro rata pension on the basis of length of service rendered by the petitioner is correct.

2. The question involved is no more rest integra and has been decided by this Court in number of cases and copies of these orders are annexed with the petition. Particulars thereof are as under:

1. Birbal Ram Sharma Vs. UOI and Others in CWP 935/92 dt. 20.12.92 High Court of Jammu and Kashmir, at Jammu.
2. Shri Sant Ram Vs. Union of India & Others CWP NO. 4208/94, dt. 13.10.95 by the High Court of Delhi at New Delhi.
3. It is further contended by the respondents that in view of specific stipulation in

the rules of the respondent i.e. Rule 49(2)(b) of CCS (Pension) Rules which stipulates 33 years service for being eligible to maximum pension, the claim of the petitioner is not correct. It is further submitted that in the aforesaid judgments, this point was not argued or considered. However, this contention of the respondent specifically came up for consideration before another Bench of this Court in Civil Writ No. 2421/97 entitled as S.S. Ranade & Others Vs. Union of India & Others and repelling this argument, this Court held that petitioner would be entitled to full pension after completing 30 years of service. Relevant portion of the said judgment reads as under:

"6. It is not in dispute that the petitioners are the retired BSF personnel superannuated at the age of 55 years admittedly completing more than 30 years of service but less than 33 years of service. It is also not in dispute that CCS (Pension) rules 1972 are applicable to BSF personnel and the rule relevant for the present purpose is Rule 49(2)(B) which reads as follows:-

"49. Amount of pension.

(1)

(2)(a)

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy-five per mensem;

7. It may be appreciated that CCS(Pension) Rules 1972 speak of superannuation age of the Government servants to be 58 years and keeping in view the superannuation of Central Government employees covered under the said Rules. Rule 49(2)(b) reproduced above, provides for qualifying service of 33 years for claiming full pension.

8. In the case of Raghunandan Lal Chaudhary and others Vs. Union of India (supra), the supreme Court, while dealing with the writ petition of defense personnel under Article 32 of the Constitution of India, considered the provisions contained in Sections 18, 25 of the Army Act and held that "the qualifying service for pension should be 30 years when retiring age is fixed at 55 years and the pension equivalent of Gratuity is recoverable from 1.1.1986..... There can also be no dispute that pension equivalent of gratuity will be recoverable from 1.1.1986. The only other question which requires determination is whether the appropriate period of service should be 30 years or 33 years. At the relevant time when each of the petitioners superannuated, the retiring age was 55 years. We are of the view that the period of qualifying service as indicated therein should be Therefore be 30 years."

It is submitted by counsel for the petitioner that respondents have complied with

the aforesaid judgment and did not prefer any appeal against the same.

4. Writ petition is accordingly allowed. Respondents are directed to refix the pension entitlement of the petitioners on the basis of the qualifying service for full pension being 30 years and more. The respondents are further directed to pay the arrears of unpaid pension, as above, within a period of three months from today; failing which the petitioners would be entitled to 12% interest on the amount due and payable, as above from the date of their entitlement till the actual payment is made by the respondents to each of the petitioner.

5. No order as to costs.