

(2007) 04 DEL CK 0033

In the Delhi High Court

Case No : Writ Petition (C) 2224 of 2004

Parmjit Singh Nayyar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Navy (Pension) Regulations, 1964 — Regulation 69, 78
Navy Act, 1957 — Section 58

Citation : (2007) 04 DEL CK 0033

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Sukhjinder Singh, for the Appellant; Maninder Acharya, for the Respondent

Judgement

T.S. Thakur, J.—In this petition for a writ of mandamus, the petitioner prays for a direction to the respondents to grant pensionary benefits in his favor by condoning the short fall in his qualifying service period. The facts giving rise to the petition may be summarized as under:

2. The petitioner was enrolled in the Indian Navy in the year 1977. He was in due course promoted as Master Chief Air Artificer, 2nd class. In August, 1991, the petitioner was tried and dismissed from naval service on being found guilty of an offence punishable u/s 58 of the Navy Act, 1957. Thirteen years later he appears to have written to the naval authorities for grant of pensionary benefits. A legal notice was also issued to the respondents demanding release of such benefits. The respondents, however, ignored the said request, aggrieved whereof the petitioner has approached this Court with the present writ petition seeking a mandamus for the grant of the said benefits after condoning the short fall in the qualifying service period required for earning pension.

3. The respondents have filed a counter affidavit in which it is inter alia pointed out that the petitioner has rendered a total service of 13 years 11 months 29 days up to the date of his dismissal. This period, according to the respondents,

includes the period rendered by him as Artificer apprentice. The respondents version is that the petitioner having been dismissed from service after a Summary Court Martial is not eligible for grant of any pension. Reliance in support of that contention is placed by them on Regulation 69 of the Navy Pension Regulation, 1964.

4. Appearing for the petitioner Mr. Sukhjinder Singh argued that the petitioner had put in the qualifying service period of 15 years if he is given the benefit of policy letter dated 30.10.1987 and the period of 13 years 11 months and 29 days is taken as 14 years and the shortfall of remaining period of one year condoned in terms of the general policy under which such relief of condensation is granted to the officers in the Armed forces including the Navy. It was further submitted that dismissal from service did not ipso facto result in forfeiture of pension unless there was an order of such forfeiture. Reliance in support was placed upon the decision of the Supreme Court Lt. Col. (T.S) Harbans Singh Sandhu v. Union of India and Ors. 2002(1) SCC 427.

5. On behalf of the respondents, it was on the other hand contended that the question of giving to the petitioner the benefit of the policy or condoning the shortfall in terms of the general policy permitting such condensation, did not arise in the instant case. That question was, according to the respondents, wholly academic keeping in view the fact that the petitioner was not eligible for the grant of any pension or gratuity in respect of service rendered by him on account of his dismissal in the light of Regulation 69. The Government could, however, grant pension or gratuity in exceptional circumstances in terms of the proviso to Regulation 69 but since the petitioner has not claimed any such relief in the writ petition nor even approached the government for consideration of his case under the proviso, the question of granting any relief to him does not arise.

6. We have given our anxious submissions made at the bar and perused the record.

7. Regulation 78 of the Navy Pension Regulation reads as under:

78. Minimum qualifying service for pension:

Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years.

8. A plain reading of the above would show that the minimum service which qualifies for service pension is 15 years. The petitioner does not, thus, qualify for the grant of the pension as he had rendered less than 15 years of service at the time of his dismissal. Even if the benefit of the policies relied upon by the petitioner were given and the shortfall condoned, the petitioner would remain ineligible keeping in view the provisions of Regulation 69 of the above regulation which reads as under:

Regulation 69: A sailor who is dismissed under the Act is ineligible for pension or gratuity in respect of the service rendered by him before his dismissal.

Provided that the Central Govt. may, where it satisfied that the exceptional circumstances of the case justify it, grant service pension or gratuity, at a rate not exceeding that for which the sailor would have been eligible had he been discharged on the date of his dismissal.

9. A bare perusal of the above leaves no matter of doubt that a sailor who is dismissed under the provisions of the Navy Act is ineligible for pension or gratuity in respect of the service rendered by him before his dismissal. The petitioner, by reasons of the said provisions, was and continues to be ineligible to claim any pension or gratuity in respect of the service rendered by him in the Navy. That consequence flows from the Regulation proprio vigore rendering ineligible any one who has been dismissed from service. Such being the position, the petitioner who was admittedly dismissed from service in consequence of a Summary trial against him was ineligible to make any claim. It would in that view make little difference whether or not the petitioner is granted any condensation in the shortfall of the qualifying service. Having said that we must hasten to add that the Regulation does not debar the government from making an order granting service pension or gratuity at an appropriate rate in special circumstances. Proviso to Regulation 69 is in the nature of an exception to the General rule under which the dismissed employees are dis-entitled to claim pension. The petitioner shall, however, have to make out a case for grant of pension in terms of the proviso before the government. It is not the case of the petitioner that any such claim or effort has been made by him so far. The question of considering the validity of the denial of pension under the proviso does not, Therefore, arise for consideration before us nor is there any room for issuing a mandamus to the respondents to grant pension to the petitioner. All that can be said, is that in case the petitioner makes a representation claiming benefit of the proviso to Regulation 69 for the grant of pension and the government is of the view that the circumstances in which the claim is made are exceptional in nature, the said claim shall be considered and disposed of in accordance with law.

10. In the result this petition fails and is hereby dismissed but in the circumstances without any order as to costs. Liberty is, however, given to the petitioner to seek pension in terms of proviso to Regulation 69 by making a proper representation to the government in which event the government shall examine the said representation and pass appropriate orders in accordance with law on the same expeditiously and as far as possible within six months from the date the representation is received.

11. No costs.