
(2001) 02 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : CSA No. 7/96

Sarwan Singh Reen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Defence Pension Regulations, 1961 — Regulation 132, 145

Citation : (2001) KashLJ 243

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.Bhat, Advocates appearing for the Parties

Judgement

1. The petitionerappellant is making a third attempt to convince that he is entitled to pension for having rendered service in the armed forces. He is unable to reconcile with the decision given by the respondents whereby this pension has been denied to him.

2. The facts as pleaded in the plaint be noticed in brief:

The plaintiff joined the armed forces on 3081961 and he continued to so serve till 2521975. When he joined the Army he was having Matric as

the qualification. He however, continued his further higher studies and has passed M.A. in Political Science as a private candidate from Jammu

University. This educational qualification he attained while in service. At present he also possesses the qualification of M.A. (Eng.) and L.L.B.

(Professional). As after acquiring these qualifications the plaintiff felt that he has a better prospects on the civil side, he sought voluntary discharge

from service. This prayer was declined. This was one the ground that the plaintiff being Naik (substantive) should have rendered minimum of 19

years of service. Thereafter the army authorities had taken a decision to reduce the strength in the armed forces. In the light of this and in the light

that the second request was made by the plaintiff, he was discharged. He applied for pension. For this he placed reliance on policy decision taken

by the Union of India from time to time. He had adverted to the recommendations made by the 4th Central Pay Commission. These

recommendations were to the effect that the pension can be given even if his service is 10 years or more but less than 15 years. What is said in

para 7 of the plaint is reproduced below:

7. That under recommendation of Fourth Central Pay Commission regarding pensionary benefits in pension rules para ii (special pension and

gratuity) Clause A (combatants) Subclause (a) (ii) (10 years or more but less than 15 years) are also authorised pensionary benefit equal to the

service pension as determined as per para 6.2 (b) of the same rules"".

3. The plaintiff goes on to make a recital in the plaint that he has completed 13Vz years in service. In addition to this he claimed certain other

amounts. These are adverted to in para 9 of the plaint. The basic contention of the appellant is that he having served 13Yz years and this being a

colour service he should be granted pension.

4. The respondents filed their written statement. It was admitted that the plaintiff has rendered 13 years, 6 months and one day service. It is

submitted that the term of engagement was that he would render 12 years of colour service and 8 years reserved liability. What is said in para 1 of

the written statement is reproduced below:

1. That in response to para 1, it is submitted that plaintiff was discharged from Army services on 2621975 at his own request from the rank of

Naik/ Lab. Asstt. on completion of Army service of 13 years 6 months and one day as he was initially enrolled on 3081961 under terms of

engagement of 12 years of colour service and 8 years of reserve liability"".

5. It is further pleaded in the written statement that the plaintiff/appellant was discharged at his own request. Ultimately in para 6 of the written

statement, it was pleaded that the requirement to have 15 years of qualifying service is a must for claiming pension. It is further submitted that the

petitioner is not entitled to the amount claimed by him in para 9 of the plaint.

6. Three issues were framed by the trial court. For facility reference, these are reproduced below:

1. Whether suit in the present form is not maintainable by this court ? OPD

2. Whether the plaintiff is entitled for service pension on the service rendered in the Army? OPD

3. Whether this court has the jurisdiction to try the suit ? OPD.

7. The plea of the plaintiff that he was entitled to pension after having rendered 12 years of colour service was negatived. Reliance was placed on

Regulation 132, which is to the effect, ""Unless otherwise provided for the minimum qualifying colour service for earning a service pension is 15

years"". As material issue was found to be issue no. 2 and as findings were recorded against the plaintiff, the suit came to be dismissed. An appeal

was preferred. Appeal was also dismissed. This is how the second appeal has been preferred.

8. The plaintiff/ appellant submits that if the terms of appointment are taken into consideration then it becomes apparent that in order to qualify for

pension he was required to serve for a minimum period of 12 years. Thereafter he could be kept in reserved service upto that period which could

lead to completion of 20 years. It is however, reiterated that on the completion of 12 years of colour service he would get the benefit of Regulation

145 of the Defence Service Regulations Vol.I, which deals with completion of colour service. This Regulation 145 lays down :

145. Completion of Colour Service An enrolled person will normally be required to complete his prescribed colour engagement before he is

transferred to the pension establishment, which reserve liability. Those who seek discharge before completion of prescribed colour service on

compassionate grounds will also have reserved liability. The relevant portion of the enrolment from IAFK1162 will be duly completed. Normally

releases/ retirements, including those of JCOs, NCOs and WOs will take place on the last date of the month in which due, except in case of

compassionate discharges on medical grounds and removal/ dismissal on disciplinary grounds in whose case the date of release/ retirement will be

the date of sanction of such release or discharge or dismissal or removal"".

9. The plaintiff submits that the terms of his appointment and regulation 145 referred to above is taken note of then he becomes entitled to pension

after serving 12 years of colour service. The proforma which was made use of for the enrolment of the plaintiff speaks of ""In Lieu of IAFK 1162"".

The requisite conditions on which the plaintiff/ appellant places reliance are produced below:

.....No person shall by reason of an error of his enrolment paper or otherwise, be compelled to serve for a period longer than that for which he should have been enrolled"".

When you have served (f) (as a boy till you reach the age of seventeen years you will be transferred to the ranks as a man provided you have

attained the specified standards and thereafter when you have served) for not less than 12 years in Army service and if required, to do so for a

further period in Reserve Service sufficient to complete a total period of 20 years service you will be discharged with all convenient speed

provided that (1) in the event of your deserting service between the date of desertion and that of apprehension or surrender shall (sick) reckon as

service towards discharge (2) you will not be entitled to be discharged, if war is imminent or existing (3) you will not be entitled to be discharged if

you are in Army Service and the regiment, battalion, company, establishment or unit to which you belong is ten present, below strength"".

I agree to extend my Army Service for the whole period of my enrolment instead of being preferred to the Reserve"". 10. Regulation 144 of the

defence Service Regulation is being reproduced below:

145. Continuance in the Service (a) when an OR completes his colour engagement and has not applied for his discharge he may be allowed to

continue to serve with the colours so long as it is desirable and he is within the prescribed age limit. Such continuance in the service does not

require formal sanction. The relevant portion in the Enrolment Form IAKF1162 will be duly completed,

(b) On completing the prescribed colour service, OR will be subjected to a strict medical examination. Only those personnel when it is desirable to

retain in the interest of service will be permitted by the competent authority to continue in service upto the maximum prescribed age limit. The

relevant portion of the Enrolment Form IAFK 1162 will be duly completed. Those who subsequently become unfit may be discharged from

service and transferred to pension establishment at any time during the

extended period of service"".

11. The Union of India is placing reliance on Regulation 132 of the Army Pension Regulations. This be also taken note of:

132. Unless otherwise provided for the minimum qualifying colour service for earning a service pension is 15 years"".

12. A perusal of the term of conditions of enrolment of the plaintiff/ appellant make it apparent that the plaintiff was to fulfill the colour service of 12

years in the Army. It was only if he was called upon specifically then he was to complete a total service of 20 years. Again the plaintiff/ appellants

agreed to extend his whole Army service for the period of enrolment instead of being transferred to the reserved, meaning thereby that the

requirement for the plaintiff to complete reserve service was not to be insisted upon. Whatever was his colour service was to be treated as total

service. If this be the position then in terms of Regulation 145, the plaintiff/ appellant would on discharge was to stand transferred to pension

establishment. The plaintiff/appellant's enrolment was governed by terms and conditions given in Form IAFK1162 and this is a manga Charta.

Thus on the plain reading of the terms and conditions given in the Form IAFK1162 and Regulations, it becomes apparent

(i) that the appellants was supposed to complete 12 years of colour service;

(ii) that the appellant had completed colour service of 13% years,

(iii) that the appellant was to remain in reserve, was not insisted upon;

13. If the last portion of the form of enrolment is taken into consideration then plaintiff/ appellant on completion of his 12 years of colour service

stood transferred to pension establishment. Regulation 132 on which reliance is being placed would apply only if there is nothing to the contrary. It

is Defence Service Regulation 145 which runs to the contrary and it would govern the case of the appellant. This appeal is accordingly allowed.

The appellant is held entitled to pension. His pension be calculated and be paid alongwith the arrears. The plaintiff/ appellant is held entitled to

interest at the rate of upto the date of filing of the suit. During the period the suit was pending, the rate of interest would be 9%. Let the payment be

made within a period of two months from the date a copy of the judgement is made available by the appellant to the Union of India. After this

period is over and if the pension is not released, the rate of interest would be 12

p.a.

14. Appeal allowed in the manner indicated above.