
(2010) 07 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) No. 7716 of 2009

Smt. Ganga Devi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 136, 164, 167

Citation : (2010) 07 DEL CK 0171

Hon'ble Judges : S.L. Bhayana, J;Gita Mittal, J

Bench : Division Bench

Advocate : Shailesh Kumar, for the Appellant; Ankur Chibber, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.

R.P. No. 291/2009

1. By this petition, the petitioner has prayed for review of our order dated 24.3.2009 rejecting the writ petition of the petitioner for grant of special pension in respect of services of her late husband Shri Pratap Singh who had been discharged on 09.02.1954 from service of the Indian Army on the ground that he had been found surplus.

2. It has been pointed by Learned Counsel for the petitioner that the case of the petitioner was covered under Regulation 167 of the Pension Regulations for the Army which had stipulated that the scale of special pension or gratuity which would be admissible to a person who has performed 10 years of service or more but which is less than 15 years. Our attention is also drawn to regulation 164 which stipulates that special pension would be admissible at the discretion of the President to such persons who are discharged pursuant to Government policy of reducing the strength on the establishment of the armed force.

3. Late Naik Pratap Singh joined the Indian Army on 13th October, 1940 and

served there till 9th February, 1954, when he was discharged after he had served for more than ten years. In view of the length of service of Naik Pratap Singh and reasons for his discharge, it is evident that the said Regulations 164 and 167 applied to the case of the petitioner's husband and hence her. These Regulations were not brought to our notice at the time of passing of consideration of the writ petition. The order dated 24th March, 2009 as such suffers from an error apparent on the face of the record and, therefore, requires to be recalled.

4. Accordingly, this review petition is allowed. The order dated 24th March, 2009 is hereby recalled.

W.P.(C) No. 7716/2009

5. Issue notice to show cause why rule nisi be not issued. Mr. Ankur Chibber, Advocate accepts notice on behalf of the respondents. It is contended by Learned Counsel for the respondents that so far as the record relating to Naik Pratap Singh, the petitioner is concerned, it stands weeded out as per the prescribed procedure and is not available. He has sought liberty, which we have granted, to make submissions on the basis of such extract of record as has been placed by the petitioner on record of the present case.

6. Rule D.B.

7. The writ petition relates to a claim for special pension by a soldier who was discharged in 1954 by his widow stated to be over 85 years of age who seeks award of family pension. Having regard to the narrow nature of the controversy and having regard to the record position noticed in para 5 above, we have taken up the writ petition for final hearing. Counsel for the parties have been heard.

8. The petitioner's husband, late Shri Pratap Singh, was enrolled with the Army Medical Corps at No. 91127 AO/NK on 13th October, 1940 and was in service as a Naik till his discharge on 9th February, 1954. The petitioner has placed before us copy of a communication dated 4th May, 1960 sent by the Record Office of the Army Medical Corps informing Naik Pratap Singh that he had been discharged to eliminate the surpluses over and above the authorised establishment. He was further informed that the service gratuity had been paid to him and that he was not entitled to pension.

9. Learned Counsel for the parties have drawn our attention to Regulations 164 and 167 of the Pension Regulations For The Army, 1961 which govern grant of special pension and gratuity. The relevant portion of these provisions deserve to be considered in extenso and are usefully extracted as under:

164. Special pension or gratuity may be granted at the discretion of the President to individuals who are not transferred to the reserve and are discharged in large numbers in pursuance of Govt's policy;

(i) of reducing the strength of establishment of the Armed Forces:

Or

(ii) of re-organisation, which results in disbandment of any unit/formation.

167. The scale of special pension or gratuity is:

Length of actual qualifying service Scale of rendered (without weightage special pension/gratuity.

(a) Special pension

(i) xxxx

(ii) 10 years or more but Equal to the service pension less than 15 years as determined as per Regulation 136

10. It is evident from the above that a person who has performed ten years or more of qualifying service but which is less than 15 years, is entitled to service pension determined as per Regulation 136. Regulation 164 mandates grant of special pension to such an individual who has been discharged pursuant to the Government policy of reducing the strength on establishment of the Armed Forces.

11. In view of the letter dated 4th May, 1960 noticed heretofore, it is evident that Naik Pratap Singh was discharged so as to eliminate the surpluses over and above the authorised establishment. He was, therefore, squarely covered under regulation 164 of the said Pension Regulations and was entitled to award of special pension. So far as the basis or scale on which such special pension is to be awarded, in terms of Regulation 167(a)(ii), such pension has to be calculated in terms of Regulation 136.

12. We may notice that representations of Naik Pratap Singh for special pension evoked no positive response. The respondents rejected his requests and he unfortunately expired on 2nd July, 1997 without getting any benefit of special pension during his lifetime.

13. The documents placed on record manifest that Naik Pratap Singh had service of over 13 years at the time of his discharge. It is an admitted position that the respondents denied pensionary benefits to Naik Pratap Singh and thereafter family pension to the petitioner on the ground that he had not completed 15 years of pensionable service on the date of his discharge.

14. The present petition has been filed by the petitioner who is stated to be his widow residing in Village Lejala, P.O. Peepli, District Pithoragarh with no resources at her command, praying for award of pension on account of her husband's service.

In the light of the Regulations noted above, it cannot be denied that Naik Pratap Singh was entitled to special pension which was wrongly denied to him. As a result, the petitioner deserves to be granted the relief which has been prayed for in the writ petition.

15. Learned Counsel for the respondents has contended that the petitioner has

approached this Court only in the year 2009 and, therefore, the relief which is to be granted deserves to be restricted to a period of three years prior to filing of the writ petition. We have noted hereinabove that the petitioner is a widow of a jawan who expired in 1997. That she is illiterate is evidenced by the writ petition and affidavit which bear her thumb impressions for such reason. She has stated in the writ petition that she was 85 years of age at the time of filing of the writ petition.

16. The record manifests the continued wrongful denial of the special pension by the respondents to late Naik Pratap Singh on the ground that he had not completed 15 years of qualifying service. Such stand was completely misconceived having regard to the provisions of regulations 164 and 167 of the aforementioned regulations. The communications placed on record reflect that late NK Pratap Singh represented to the respondents continuously for pension before his death. The respondents took the above stand and wrongfully denied the same to him. Some of the rejection letters placed on record are dated 4th May, 1960, 19th January, 1988 and 6th March, 1988.

17. Our attention is drawn by Learned Counsel for the petitioner to the communication sent by the respondents on the 24th August, 2003 reiterating their erroneous stand that the petitioner's husband had not completed the requisite pensionable service, disentitling her to grant of family pension. By this communication, the respondents have rejected a representation dated 1st of August, 2003 sent by the petitioner. The same stand has been reiterated by the respondents in a communication dated 2nd December, 2003. As per the afore noticed Regulations, the petitioner's husband was entitled to such pension and consequently on his demise, the petitioner became entitled to award of family pension.

18. It needs no elaboration that access to justice in this country is interfaced with many barriers which include, and are not restricted to, illiteracy, ignorance of law, poverty and social barriers. The petitioner unfortunately was handicapped by all the above. An 85 year widow who is stated to be a resident of a remote Village in District Pithoragarh (in the then Uttar Pradesh) has been compelled to travel many hundreds of miles to this Court and take the giant step of invoking the writ jurisdiction of this Court. This by itself manifests the many handicaps and difficulties faced by her. The respondents have not placed anything to the contrary before us.

19. Payment of pension is the duty of the respondents. They are expected to know the applicable law, rules and regulations and also to correctly apply the same. The respondents have miserably failed to do so in the instant case. The respondents by the wrongful denial of the petitioner's claim have created the situation compelling her to seek relief and redressal from this Court. The respondents having denied and deprived the petitioner of the pension are, in fact, responsible for the delay which has ensued in her coming to the court as she was not possessed of the means to file the case before the court. Therefore,

the respondents cannot be permitted to take advantage of their own wrong and successfully urge disentitlement to relief for the delay which has occurred for reasons created by and, in any event, circumstances to which the respondents have contributed.

20. The law prescripts no limitation for filing a writ petition. The court is required to consider the matter from the viewpoint of unexplained and gross delay and laches. Penury is more than sufficient explanation for delay in initiating legal redressal. Having regard to the afore noticed facts and circumstances, we hold that the petitioner has adequately explained the circumstances for the delay which has been occasioned in filing this petition.

21. In this background, In our view, interests of justice require that the petitioner is granted family pension at least for a period of three years preceding the issuance of the letter dated 24th August, 2003 which would be from 24th August, 2000 effectively.

22. In view of the above, we direct as follows:

(i) The respondents shall compute the special pension which was admissible to Naik Pratap Singh and the pension which the petitioner would be consequently entitled to with effect from 24th August, 2000. Such computation shall positively be effected within a period of six weeks from today. It shall be open to the respondents to consider the record filed by the petitioner in these proceedings to compute the amount of special pension. Such computation shall be served on the petitioner.

(ii) The order which is passed by the respondents shall be communicated to the petitioner as well as Learned Counsel who has filed the present writ petition immediately thereafter.

(iii) The amount towards arrears of the pension which is payable to the petitioner in terms of the above with effect from 24th August, 2000 shall be paid to the petitioner within a further period of four weeks thereafter.

(iv) The petitioner shall be entitled to costs of the present petition which are assessed at rupees fifteen thousand only. The costs shall be paid within a period of six weeks from now.

(v) The month by month future disbursement of pension shall be effected on or before the 7th day of each calender month.

(vi) The respondents shall facilitate the disbursement of the amount to the petitioner and may take the assistance of responsible persons in her village to ensure prompt and regular payments to her. It shall be ensured that the amount reaches the petitioner promptly.

(vii) The respondents shall report compliance of these directions and place proof of the receipt of the amounts by the petitioner on the record within a period of six weeks. The Registry shall list this matter for reporting compliance

immediately after expiry of six weeks from today.

(viii) The registry shall send a copy of this order by registered post to the petitioner as well.

This writ petition is allowed in the above terms.

Dasti.