

(2008) 07 RAJ CK 0101
In the Rajasthan High Court

Suresh Chand Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Army Act, 1950 — Section 36(c)

Citation : (2009) 3 RLW 2393

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Momammad Rafiq, J.—Heard the learned for the parties.

2. The petitioner has challenged the order dated 22.6.1991 by which he was discharged from service and also additionally prayed that action of respondents in not extending the term of his engagement be declared discriminatory and illegal and any rule which provides for non-extension of term of his engagement for the mere reason of offences which do not fall within the purview of serious misconduct be also declared illegal and unconstitutional.

3. The petitioner was initially enrolled in the Army in the regiment of Artillery on 10.4.1976. He sought discharge on his request and he was discharged on 22.7.1980. He was then re-enrolled in the Defence Security Corps on 15.6.1981 for a period of ten years. This enrollment was extendable by further five years or till one attains the age of 55 years. The petitioner was discharged from service on completion of term of initial engagement of 10 years.

4. Shri R.S. Bhadauria, learned Counsel for the petitioner has argued that the respondents ought to have extended the engagement of the petitioner till he attained the age of 55 years. But the petitioner was discharged from service on completion of term of initial engagement of 10 years. He was refused extension without any show cause notice or without providing him any opportunity of hearing. The petitioner has served Army and DSC for about 14 years 119 days

and non-extension of term of engagement resulted in serious prejudice to him because he would now be deprived of pension because Rule 132 of Pension Regulations for the Army, 1961 (Part-I) requires 15 years as the minimum period of qualifying service for eligibility of pension. The learned Counsel argued that the so called red ink entries on the basis of which the petitioner was denied extension related to the year 1984 and 1985 and they could not be relevant in the year 1981 when the question for extension of the engagement fell for consideration of the respondents. In fact, the Commending Officer had forwarded his application to the competent authority with a favourable recommendation that there was no such entry in service record of 1985. Learned Counsel for the petitioner in support of his arguments relied on the judgment of Supreme Court in *Major Singh v. State of Punjab* 2001 Lab. I.C. 2116 and Delhi High Court in *Ajit Singh v. Union of India* 2001 Lab I.C. 3864.

5. Mr. Dinesh Yadav, learned Counsel for the respondents opposed the writ petition and submitted that since the petitioner had incurred two red entries in the initial term of engagement in DSC, he was not eligible for grant of further extension. Reference was made to the fact that the petitioner was tried for an offence u/s 36(c) of the Army Act and awarded 7 days detention on 13.10.1984 and thereafter u/s 36(d) further awarded 7 days detention on 4.1.1986. The learned Counsel for the respondent referred to para 6(b) (ii) of ROI 2/S/89 which inter alia provides for eligibility conditions for grant of extension of period of engagement. The aforesaid provision provides that personnel seeking extension of service should have less than two red ink entries during the current period of engagement to become eligible for consideration of grant of extension. Learned Counsel further argued that para 132 of the Pension Regulations for the Army, 1961 (Part I) provides that the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years. However, deficiency in service upto 6 months can be condoned by the competent authority. In the present case, since the petitioner could complete the service of total 14 years and 119 days, it falls short by 246 days which is more than the period of 6 months. Therefore, the petitioner was not eligible either for grant of pension or relaxation or condonation of deficiency.

6. I have given my thoughtful consideration to the arguments advanced by learned Counsel for the parties and perused material on record and also cited judgments.

7. Contention that the petitioner ought to have been provided opportunity of hearing or a show cause notice prior to the decision taken by the respondents not to extend the term of engagement is sought to be supported by the judgment of Supreme Court in *Major Singh* (supra). In the instant case the factual position is entirely different. It is not the question of discharging or passing any positive order of discharge or otherwise terminating service. In the present case, the petitioner was discharged from service upon completion of term of engagement. There was thus no infraction of principles of natural justice.

His initial term of engagement was only 10 years which came to end on 30.6.1991. Hence the question to be decided by this Court is whether he should have been granted extension in the term of engagement which according to the respondents was a contract period. The term of engagement after one is discharged is regulated by the instruction contained in ROI (Record Office Instruction) dated 2/S/89. Instruction contained in para 6(b)(ii) of the said ROI is reproduced hereinbelow:

6. Eligibility condition for grant of extension of period of engagement.-Personnel must fulfill the following conditions to become eligible for consideration of grant of extension of period of engagement:

(b) Discipline:

(ii) Should have less than two Red Ink Entries during current period of engagement.

8. Bare reading of the aforesaid provisions makes it clear that a personnel already engaged on initial term of engagement becomes eligible for consideration of grant of extension or engagement, if he is able to show that he has less than two red ink entries during current period of engagement. Thus, the argument that the red ink entries in the year 1984 and 1985 cannot be used for deciding not to extend the engagement of the petitioner is untenable. Any entry within the period of engagement would be relevant for the purpose of aforesaid provision. The judgment of Delhi High Court which has been relied upon to argue that even if the petitioner was not able to complete 15 years of service, this was not attributable to any fault of the petitioner and he cannot be denied pension, is wholly inapplicable to the present case. In that case, Delhi High Court held that a decision of the authorities to discharge the concerned personnel was wholly erroneous and, therefore, he was not able to complete 15 years, but he had no role to play in such discharge, therefore, he cannot be denied pension. There is no such fact situation in the present case.

9. Lastly, the learned Counsel for the petitioner sought to submit that he may be given liberty to make a representation to the respondents because according to his perception the Central Government is competent to condone the deficiency of more than 6 months and grant relaxation in extra-ordinary situation. If that be so, he is always at liberty to make such representation, and obviously, it goes without saying, that the respondents would consider and decide the same in accordance with law.

10. I, therefore, do not find any merit in writ petition, which is dismissed with the aforesaid observation.