
(2007) 02 DEL CK 0198
In the Delhi High Court
Case No : Writ Petition (C) 287 of 2005

Sushila

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Army Act, 1950 — Section 193
Pension Regulations — Regulation 132

Citation : (2007) 139 DLT 1

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

Bench : Division Bench

Advocate : R.S. Dhull, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—Late sepoy Ramji Lal, husband of the petitioner was enrolled in the 11, Kumaon Regiment of the army and discharged on compassionate grounds after he rendered 10 years and 1 month of military service. From the date of his discharge in 1973 till the date of his demise in 2003, the deceased did not make any claim at any stage for payment of service or pro rata pension. Two years after his demise, the petitioner, widow of the deceased ex-serviceman has filed the present writ petition for a mandamus directing the respondents to grant what she describes as pro rata pension and special family pension in her favor. The petitioner's case is that since her husband deceased sepoy Ramji Lal had rendered over 10 years of service, he was entitled to receive service pension from the date of his discharge till the date of his demise and after his death, the petitioner is entitled to claim family pension.

2. In response to a notice issued by this Court, the respondents have filed a counter affidavit in which it is inter alias stated that the petition is barred by unexplained delay and also that the deceased Sh. Ramji Lal was not eligible for grant of either service pension or pension on pro rata basis. The respondents have accordingly prayed for dismissal of this writ petition.

3. Appearing for the petitioner Mr. R.S. Dhull strenuously argued that the petitioner was entitled to receive family pension and also the arrears of service pension due to her husband who was eligible to claim pension on account of his having rendered 10 years of service in the army. Elaborating that submission he contended that although Regulation 132 of the Pension Regulation for the Army 1961 stipulates a minimum period of 15 years of qualifying service for earning service pension, the said regulation stood amended on account of the recommendations made by the 4th Pay Commission. In support of that submission he draws our attention to a resolution dated 18.04.2007 issued by the Ministry of Personnel and Public Grievances and the annexure to the same inter alia stating that the recommendations made by the 4th Pay Commission relating to pension structures for pensioners had been accepted. He, in particular, relied upon the following part of the annexures to the said resolution in support of his submission that any one who had rendered 10 years service was qualified to receive pension:

Pension

(i) Existing system of paying lumpsum gratuity for service below 10 years and monthly ,pension for qualifying service of 10 years and more may continue (5-12) Accepted

4. He urged that the notification issued by the government was in terms of Section 193 of the Army Act tantamount to a rule which must be deemed to have amended and altered regulation 132 of the Pension Regulations for the Army, consequently reducing the qualifying period of service for pension purposes from 15 years to 10 years.

5. We have given our anxious consideration to the submission of Mr. R.S. Dhull but regret our inability to accept the same. We say so because Regulation 132 of the Pension Regulations for the Army, 1961 specifically stipulate a qualifying service of 15 years for grant of service pension for commissioned officers and other ranks. Regulation 132 reads:

132. The Minimum period of qualifying service (without weight age)actually rendered and required for earning service pension shall be 15 years.

6. It is not in dispute that the deceased Sh. Ramji Lal did not have 15 years of service at the time of his discharge from the army. On a plain reading of the above regulation, Therefore, neither he nor his widow, the petitioner before us, would be entitled to claim service pension from the respondents. The argument that the Regulation 132 (supra) stands amended because of the recommendations of the Pay Commission and acceptance of the said recommendations by the Government of India in terms of the resolution relied upon by Mr. Dhull needs to be mentioned only to be rejected. The argument it appears proceeds on a total misunderstanding of the legal implication of the recommendations and the resolution accepting the same. A careful reading of para 2 of the annexure to the government resolution extracted earlier would

show that the government have accepted the recommendations made by the Pay Commission to continue the existing system of paying a lumpsum gratuity for service below 10 years and monthly pension for qualifying service of 10 years and more. What is important is that the recommendation made by the Pay Commission and its acceptance apply only two cases in which the existing rules regulating grant of service pension to the employees provide for payment of pension upon completion of 10 years of qualifying service. The recommendations do not go further to suggest that pension must become payable on completion of 10 years of service even in cases where the existing service rules regulating the grant of such benefit did not provide for such payment. Mr. Dhull was unable to point out any provision in the pension regulations or elsewhere according to which pension may have been paid to any ex-army personnel upon his completing 10 years of service. Indeed there could be no provision in the light of the specific provisions contained in the Regulation 132 extracted earlier stipulating 15 years minimum qualifying service for purposes of pension. In the absence of any existing system of payment of service pension upon completion of 10 years of service prevalent in the Indian Army acceptance of the Pay Commission recommendations by the government would be of no assistance to the petitioner. It is common ground that the recommendations made by the Pay Commission were applicable to the central government employees and were extended even to personnel serving in the Indian Army, Navy and Air Force. The recommendation may benefit members of a service in which pension was payable upon completion of 10 years, unlike the Indian Army where pension is earned only upon completion of 15 years of service.

7. Apart from what we have said above, this petition must in our opinion fail even on the ground of unexplained delay and laches on the part of the claimant. As noticed earlier, the deceased Sh. Ramji Lal was discharged from service on compassionate grounds as early as in the year 1973 but nearly 30 years thereafter until his death in 2003, the deceased did not make any claim for payment of pension either before any authority or in any proceedings before the court. The present writ petition filed 2 years after his demise making a claim for payment of pension for the deceased is on the face of it barred by delay and laches. There is no Explanation worth the name either in the writ petition for this delay nor was any advanced before us in the course of hearing. The writ petition tries to dig up a stale claim and a matter which has attained finality with the passage of time.

8. In the totality of the above circumstances, Therefore, we see no reason to interfere. There is no merit in this writ petition which fails and is hereby dismissed but in the circumstances without any order as to costs.