

(2015) 03 MAD CK 0300

In the Madras High Court

Case No : Writ Petition No. 9701 of 2012

T. Kothandapani

APPELLANT

Vs

The Commodore, Senior Staff Officer

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 34

Navy (Pension) Regulations, 1964 — Regulation 69, 78

Citation : (2015) 3 LLN 517 : (2015) 2 LW 552 : (2015) 4 MLJ 168

Hon'ble Judges : R. Sudhakar, J;S. Vimala, J

Bench : Division Bench

Advocate : S.A. Sarangabani, for the Appellant; Haja Mohideen Gisthi, SCGSC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Vimala, J.—"May their souls rest in peace". This is how the sacrifices made by the veterans serving in Army, Navy and Air Force were remembered as part of Vijay Divas with a wreath-laying ceremony.

1.1. For those who departed the world, this extent of recognition may appear sufficient. But those who are still living after serving the Nation, what should be the appropriate mode of respecting their services is the issue to be considered in this petition.

"I have served with great patriotism in three wars (Indo-China in 1962 and Indo-Pakistan War during 1965 and 1971); I have been living either in the midst of sea or sub-marine or abroad; I have served for thirteen years and three months short of one year and nine months for the qualifying service of fifteen years, give me pension". This is the case of the writ petitioner herein.

2. The case of the respondent is that as per Regulation 78 of the Navy (Pension) Regulation, 1964, the petitioner is not eligible for pension. Regulation 78 reads as under:--

"78. Minimum qualifying service for pension-Unless otherwise provided, the minimum service, which qualifies for service pension, is fifteen years."

3. Based on this provision, the respondent passed the impugned order, intimating the writ petitioner that he ought to have completed fifteen years of reckonable service for pensionary benefits and as the petitioner has completed only service of thirteen years, three months and nineteen days, which is not sufficient for availing pensionary benefits, his request is rejected.

4. Therefore, the petitioner has filed the writ of mandamus seeking direction to the respondent to make regular payment of pension with retrospective effect.

5. Whether this prayer could be granted when there is shortage of service in order to qualify himself (the writ petitioner) to seek pension as per Regulation 78 is the issue to be answered in this writ petition.

6. Before going into the merits of the matter, it would be appropriate to point out that the maintainability of the writ petition has been raised by the Registry and it has been answered in affirmation by the order, dated 18.01.2012.

7. The petitioner, originally came before this Court with W.P. No. 10858 of 2007 and by virtue of Section 34 of the Armed Forces Tribunal Act, 2007, the matter was transferred to the Tribunal and it was renumbered as T.A. No. 7 of 2011. The Tribunal, in its order, dated 28.10.2011, dismissed the Application with liberty to challenge Regulation 78 of the Navy (Pension) Regulation, 1964, before the appropriate forum.

7.1. It has been pointed out that, there is nothing in the provisions of the Armed Forces Tribunal Act, 2007, that the Tribunal cannot decide the vires of the Central Government circulars, dealing with the pensions of Armed Forces Personnel. However, having regard to the stand taken by the Tribunal and relying upon the decision of the Supreme Court reported in the case of L. Chandra Kumar Vs. Union of India and others, AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147, this Court has decided to place the matter before the Division Bench of this Court.

8. The concept of pension is well known that it is not a charity but it is in the nature of social security. In fact, it is a reward for the loyal service till then rendered. Service in Army, Navy and Air Force stands on a different footing than the service in the other Government/Corporate Sectors. Service to Nation is service to humanity. It goes without saying that Service to Nation is a selfless superior service.

9. Courts have time and again pointed out that liberal approach should be taken while interpreting the provisions of the Pension Regulations. In a case reported in 2005 (2) TNLJ 290 (N. Venkatramani v. Indian Bank and another), the First Bench of this Court has held that the last spell of service can be treated as one

full year and that employee was entitled to get pension.

10. The judgment of the Hon"ble Supreme Court reported in *Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another*, AIR 1986 SC 509 : (1985) 51 FLR 345 : (1985) LabIC 1792 : (1985) 2 LLJ 564 : (1985) 2 SCALE 329 : (1985) 4 SCC 325 : (1985) 2 SCR 652 Supp emphasizing upon liberal interpretation to be adopted in respect of welfare legislations is worth reproducing:--

"9.....It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and provisions of law should be liberally construed in favour of the weak....

20. In the judgment in *All India Reserve Bank Retired Officers Association and others Vs. Union of India and others*, AIR 1992 SC 767 : (1991) 6 JT 400 : (1991) 2 SCALE 1264 : (1992) 1 SCC 664 Supp : (1991) 3 SCR 256 Supp , the Hon"ble Supreme Court has held that--

"the concept of pension is now well known, that it is not a charity and that it is in the nature of a social security plan to provide for the December of life of a superannuated employee.

21. Further, while dealing with the claim for pension based on the interpretation of the Regulations, it will have to be held that the construction of the Regulation which would achieve the object of the Regulation should be made. In other words, it is well known canon of construction that an interpretation of a provision in respect of a beneficial piece of legislation one would always construe it in a manner that would fulfill the object and purport of the legislation....."

11. When a dismissed Navy personnel sought for a direction from the Delhi High Court, seeking pension, the Delhi High Court passed an order (in a case of *Parmjit Singh Nayyar Vs. Union of India (UOI) and Others* directing the authorities to consider the request for pension and the order reads as under:--

"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....."

12. So far as this case is concerned, the petitioner is not even a dismissed personnel, but a discharged personnel, who had to discharge himself on health grounds.

13. We want to reiterate the view of the Delhi High Court that the Regulation does not debar the Government from making an order granting service pension or gratuity at an appropriate rate in special circumstances.

14. Further, it would be appropriate to refer the clarification issued by the Principal Controller of Defence Accounts (Pension), Allahabad, which in turn is based upon the communication issued by the Ministry of Defence, vide letter, dated 06.08.1984, which reads as under:--

"7. Pursuant to the said clarification of the Ministry, implementation order was issued by the Principal Controller of Defence Accounts (Pension), Allahabad, which reads as follows:

"Govt. of India, Ministry of Defence's letter No. B/38076/AG/PS4(a)/2190 (A) (pension/services) dated 6.8.84 on the above subject is reproduced as Annexure to this Group Order for formation and guidance of all concerned.

It may be clarified here that "a fraction of a year equal to 3 months and above shall be treated as a complete one half year period and reckoned as qualifying service for determining the amount of pension. The qualifying service of 9 months or more but less than a year has treated as a complete one year for purposes of pension." The case of the qualifying service i.e., less than 15 years, condonation orders would be looked for and DCRG assessed in such cases as per existing practice."

14.1. The respondent ought to have considered the claim for pension, in the light of the clarification issued, but it is not done so.

Under such circumstances, this writ petition is disposed of, with a direction to the respondent to consider the claim for pension afresh, in the light of Regulation 69

of the Navy (Pension) Regulations, 1964/Power to condone the shortfall, and the clarification referred in paragraph 15, cited supra, for the grant of pension, considering the exceptional services rendered and to pass the orders in accordance with law, preferably within three months from the date of receipt of a copy of this order. No costs.