

(2012) 07 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : LPA No. 22 of 2007

The Union of India

APPELLANT

Vs

Shri Bali Ram

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0084

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Sandeep Sharma, Assistant Solicitor General of India, for the Appellant; Ashwani Kaundal, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The Union of India, by means of this appeal, has challenged the judgment dated 26.4.2007 delivered by a learned single Judge of this Court whereby he allowed the writ petition filed by the respondent (hereinafter referred to as the writ petitioner) and directed the Union of India to consider the case of the petitioner for grant of pension by presuming that the petitioner has 15 years qualifying service to his credit. Briefly stated, the facts necessary for decision of the case are that the petitioner joined the Indian Army as a Sepoy on 17th January, 1957. He was discharged from the Army on 24th April, 1967 and the reason for discharge was shown to be "service no longer required". The petitioner sent an application to the competent authority on 16th June, 2001 i.e. 34 years after his discharge seeking service pension. The petitioner was directed to give all his service particulars vide letter of appellants dated 5th February, 2002. On 12th June, 2003, the petitioner was informed that since he did not have 15 years qualifying service to his credit he could not be granted service pension for which the minimum qualifying service was 15 years.

2. Thereafter, the petitioner filed CWP No. 867 of 2004. In this petition it was urged that the petitioner was discharged from the Army with fair character only and since this order has been passed without hearing the petitioner or without

giving any opportunity of hearing to him, the said order was illegal. The learned single Judge held that as per Annexure P-5 the reason for discharge of the petitioner from Army was that the petitioner was a habitual offender and there were several red ink entries made in his rolls. Therefore, the order cast stigma on the petitioner. The learned single Judge held that since the order was stigmatic and the petitioner had not been given reasonable opportunity of being heard as per the principles of natural justice, his discharge from Army was illegal and consequently it was held that this had led to the petitioner not completing 15 years of minimum required service. With regard to the issue of delay in filing the petition, the learned single Judge relying upon the judgments of the Supreme Court held that the Rule which says that the Court must not inquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion. The learned single Judge also relied upon a judgment of the Division Bench of this Court in CWP No. 145 of 1995 decided on 31.10.1995 titled as Smt. Yontan versus Union of India, wherein the Division Bench held as follows:

The first question that falls for consideration is whether this petition suffers from delay and laches. According to Mr. P.A. Sharma, Senior Central Government Standing Counsel, this matter has been agitated after a lapse of 15 years. The petitioner was intimated about the rejection of her claim by the Chief CD. A. (Pensions) Allahabad vide letter dated 23rd February, 1980. It was not assailed by the petitioner before the Government of India, though advised. We are not impressed by this submission. It is plainly clear that the rejection was communicated to Sonam Ram, father of the deceased in February, 1980. After Sonam Ram, the petitioner came in picture. She approached the Army authorities through Deputy Director, Sainik Welfare Board, Kullu (Himachal Pradesh) in June, 1990. There is a notice dated 20th October, 1994 from the petitioner's Counsel to the respondent. These facts point out that the petitioner was pursuing the matter actively. We have also found that the petitioner is a poor, illiterate lady aged 63 years belonging to the remotest tribal area of the State with no source of income and none else in the family to help her and at the verge of starvation. Despite this problem, she was able to take the deceased to Lady Willingdon, Hospital, Manali with hope to treat Sukh Dev but he died after some days of treatment. In the circumstances, we are of the opinion that the matter does not suffer due to delay and laches. Moreover, the claim for pension is a continuing claim. It does not lapse with the passage of time.

3. We are afraid that the aforesaid judgment does not help the petitioner. In the case before the Division Bench the total delay was 15 years but even during this period of 15 years the issue had been raised on a number of occasions. Furthermore, the claim was only for pension and not for anything else.

4. In the present case, the delay in making the representation is more than 34 years and the writ petition was filed 37 years after the discharge. In the reply it has been stated that after 25 years the record is destroyed. Once the record has

been destroyed there was no material to hold that no notice had been given to the employee. It is only if the record is available that the employer can show what action was taken. In any event, Annexure P-5, is not the order of discharge. That is a communication dated 10th July, 2001 which clarifies that the petitioner was discharged from Army with fair character only and this means that he was habitual offender having several red ink entries to his credit. This is an interpretation of an officer given on 10th July, 2001. The order of discharge is not at all stigmatic. It does not contain these words. Therefore, for both the reasons we are of the considered view that after 37 years, the question whether the petitioner had been terminated in accordance with law or not could not have been decided. If the petitioner is otherwise entitled to pension, the claim for pension being a continuing cause of action may not be defeated on the grounds of delay and laches though relief may be moulded and payment of arrears limited.

5. However, in the present case before granting the claim for pension, the order discharging the services of the petitioner was held to be bad and this order having never been challenged for 37 years the same could not have been permitted to be challenged at such a belated stage especially when the record had been destroyed after 25 years of service of discharge. In view of the above discussion, the appeal is allowed, the judgment of the learned single Judge is set-aside and the writ petition filed by the petitioner is dismissed with no order as to costs.