

(2012) 04 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No. 3617 of 2012 (Arising out of S.L.P. (C) No. 3352 of 2011)

Vinod Kulshreshtha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2012 SC 3202 : (2012) 134 FLR 689 : (2013) LabIC 508 : (2012) 5 SCALE 785 : (2012) 11 SCC 557 : (2013) 1 SCC(L&S) 113 : (2012) 2 SLJ 335

Hon'ble Judges : H.L. Dattu, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Delhi in Writ Petition (Civil) No. 7657 of 1999 dated 20.08.2010. By the impugned judgment and order, the High Court has dismissed the Writ Petition filed by the Appellant against the orders passed by the Central Administrative Tribunal (for short 'the Tribunal').

3. The issue that falls for our consideration and decision in this appeal is with regard to the fixation of pay and other terminal benefits of the Appellant, pursuant to the Office Memorandums (for short 'O.M.s') dated 31.07.1986 and 20.01.1991.

4. The facts in nutshell are:

The Appellant had joined the Indian Navy as Artificer apprentice on 24.1.1971. Subsequently, he worked as a sailor. After completing nearly 14 years of service, the Appellant was discharged from service on 31.01.1985. Nearly after four years, the Appellant was re-employed as Auditor under the Director General of Audit, Defence Services. While in service, the Central Government had come out

with a beneficial O.M. dated 20.01.1991 which prescribed the manner of re-fixation of pay of the re-employed ex-servicemen. Pursuant to the said O.M., the Appellant had exercised his option for computing the service in the Indian Navy for the purpose of pensionary and other monetary benefits. The Appellant was further directed to deposit gratuity and DCRG received from Naval Service. On depositing such amount, the Respondents, vide order dated 23.9.1991, allowed him to count his Naval Service as qualifying service towards his Civil Service as Auditor. However, the Appellant's request for re-fixation of his pay was rejected by the Respondent authorities by their communication dated 26.6.1996 and 14.05.1997. Being aggrieved by the orders so passed by the Respondents, the Appellant had approached the Tribunal by filing an application. The Tribunal, by its order dated 17.08.1998 rejected the application of the Appellant. The Appellant, aggrieved by the same, preferred a Review Application before the Tribunal and the same was also dismissed by the Tribunal on 20.09.1999. Disturbed by the said orders, the Appellant had approached the High Court by filing a Writ Petition under Article(s) 226/227 of the Constitution of India. The High Court has dismissed the said writ petition and, thereby, has confirmed the orders passed by the Tribunal. It is the correctness or otherwise of the said orders, is the subject matter of this appeal.

5. We have heard Shri R. Venkataramani, learned senior Counsel for the Appellant and Shri D.K. Thakur, Learned Counsel for the Respondents.

6. Shri Venkataramani, learned senior Counsel for the Appellant, would submit that the Appellant's employment in the Indian Navy from the year 1971 was a regular employment, initially as Artificer apprentice and, thereafter, as a sailor. He further submits that the Appellant had worked as a sailor for nearly 14 years in the Indian Navy, and he was discharged sometime in the year 1985. In aid of the aforesaid submission, the learned senior Counsel has taken us through the discharge certificate issued by the competent authority. The said certificate reads as under:

INDIAN NAVY CERTIFIED RECORD of SERVICE AND DISCHARGE CERTIFICATE

This is to certify that VINOD KULSHRESHTHA No. 052194-Z, RAK: CHIEF ELECTRICAL ARTIFICER (POWER) has served in the Indian Navy from 24.01.1971 to 31.01.1985 as per details overleaf.

There is yet another certificate issued dated 31.08.1988 and the same reads as under:

Commodore v. Bhatnagar, NM 240, C Wing Sena Bhavan Director of Ex-Servicemen Affairs Naval Headquarters, Tele: 3015744 New Delhi - 110011 E-mail: desa@nausena.mil.in

31 Aug. '98 Vinod Kulshreshtha, Ex-Chief EAP No. 052194-Z served in Indian Navy from 21.1.1971 to 31.01.85 inactive regular Naval Service.

Sd/- (V.S. Bhatnagar) Commodore

7. At this stage, we intend to notice that the certificates issued by the Respondent authorities would demonstrate that the Appellant was employed as a sailor "in active regular naval service". Therefore, the learned senior Counsel is justified when he contends that the Respondents were not justified in rejecting the reasonable claim of the Appellant for grant of benefits of the O.M.s dated 31.07.1986 and 20.01.1991.

8. Per contra, Learned Counsel appearing for the Union of India would submit that since the Appellant was employed on contractual basis in the Indian Navy, he is not entitled to any benefits of the aforesaid O.M.s dated 31.07.1986 and 20.01.1991. In aid of his submission, the Learned Counsel points out the orders passed by the Respondents dated 26.6.1996 and 14.05.1997. When we inquired with the learned Counsel to give us the letter of appointment of the Appellant, he is unable to produce the same before us.

9. Primarily, the Respondents have rejected the claim of the Appellant for grant of benefit of O.M.s dated 31.07.1986 and 20.01.1991 purely on the basis that the Appellant was not regularly employed in the Indian Navy, but he had worked in the Indian Navy only on a contractual basis and, therefore, those O.M.s cannot be made applicable to him.

10. A perusal of the certificates issued by the responsible and competent Respondent authorities would clearly demonstrate that the Appellant was regularly employed in the Indian Navy and he had completed 14 years of service "in active regular naval service". If that be so, it cannot be said that the Appellant was employed purely on a contractual basis and, therefore, he is not entitled to take the benefits of the O.M.s issued by the Central Government.

11. The Tribunal as well as the High Court have merely proceeded on an assumption that the employment of the Appellant was on contractual basis and after the discharge from the naval service, it cannot be said that he was a retrenched employee. This was purely an assumption and presumption of the Tribunal in arriving at the aforesaid conclusion. In our view, in the light of the certificates that were produced by the Appellant before the Tribunal and since the Respondent had not produced the letter of appointment of the year 1971, in our opinion, one and the only conclusion that can be reached is that the Appellant was employed on regular basis in the Indian Navy. If that be so, he would be entitled to all the benefits of the aforesaid O.M.s dated 31.07.1986 and 20.01.1991.

12. In that view of the matter, while allowing the appeal filed by the Appellant, we set aside the orders passed by the Tribunal in O.A. No. 1584 of 1997 dated 17.08.1998 and the order passed by the High Court in Writ Petition (C) No. 7657 of 1999 dated 20.08.2010. Now we direct the Respondents herein to extend the benefit of the O.M.s dated 31.07.1986 and 20.01.1991 to the Appellant and pass appropriate orders as expeditiously as possible, at any rate, within four months

from the date of receipt of a copy of the order.

13. In the facts and circumstances, we do not propose to impose any costs on the Respondents.

14. Ordered accordingly.