(2019) 11 AFT CK 0031

In the Armed Forces Tribunal

Case No : Original Application No. 1380 Of 2017

Vinod Prakash APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Pension Regulations For The Air Force, 1961 — Rule 114(a)
Pension Regulations For The Navy, 1964 — Rule 82(a)

Citation : (2019) 11 AFT CK 0031

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : A.K. Trivedi, Shyarn Narayan

Final Decision : Allowed

Judgement

1. The applicant through the medium of the instant O.A filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeks the

following reliefs:

(a) Quash/set aside the impugned order dated 21.04.2016; and

(b) Direct the respondents to treat the period of service of 345 days of the applicant as completed one year, thereby treating the applicant

completed 14 years of service and thereafter consider the claim of the applicant for the condonation of shortfall in qualifying service of 12

months in terms of Pension Regulations for the Air Force and in terms of the Government of India (Ministry of Defence) order dated

14.08.2001 to make eligible the applicant for grant of service pension and consequently the applicant may be entitled for grant of service

pension with effect from the date of his discharge i.e. with effect from

27.03.1995 along with arrears of back period pension with interest @

18% till payment.

2. Before entering into the merits of the case, it may be noted that the instant 0.A has been preferred by the applicant with a delay of 313 days. Since

the issue involved in the case relates to payment of pension, which is a recurring cause of action, we are of the considered view that the delay is to be

condoned. M.A No. 1150 of 2017 thus stands allowed.

3. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 16.04.1981. On his request, the applicant was

discharged from service on compassionate grounds on 27.03.1995, on completion of 13 years and 345 days of service, before fulfilling the conditions

of service. According to the applicant, he was not aware of the fact that for getting service pension, he had to complete 15 years of service, otherwise

he would have served for one more year to complete 15 years of service. The applicant was sanctioned only service gratuity and death-cum-

retirement gratuity for the services rendered. On 09.02.2004, the applicant submitted a representation claiming service pension by condoning the

shortfall in qualifying service. Thereafter, the applicant submitted further representations dated 06.06.2005 and 15.03.2016. However, the respondents,

vide the impugned order dated 21.04.2016, rejected the claim of the applicant for service pension stating that there is no provision to condone the

deficiency of service for grant of service pension of an individual who is discharged under the clause 'at his own request'. Hence the instant O.A.

4. Learned counsel for the applicant contended that the action of the respondents in not condoning the shortfall in service is illegal. According to

learned counsel for the applicant, since the applicant had rendered a total of 13 years and 345 days of regular service, his 345 days of regular service

should have been rounded off to one full year of service, which would make the total service as fourteen years and thereafter condoning the

deficiency of shortfall in service in terms of the Pension Regulations for the Air Force, 1961 (hereinafter referred to as Pension Regulations, for

brevity) and grant him pension for having served the organisation for fifteen years. The learned counsel further contended that as per the Government

orders on the subject and in terms of the Pension Regulations, fraction of a year equal to three months and above, but less than six months must be treated as a completed one half year and accordingly, the applicant is completing 14 years of service and is left with only 12 months to complete 15

years of pensionable service. As per the Government of India (Ministry of Defence) order dated 14.08.2001, there is provision for granting service

pension and the service HQs have been given powers for condonation of shortfall in qualifying service for grant of pension in respect of PBOR

beyond six months and upto twelve months. In support of his case, the learned counsel relied upon the decision of the Hon'ble Supreme Court in Union

of India and another v. Surender Singh Parmar (2015) 3 SCC 404 and contended that the applicant is entitled to claim total period of service a 14

years for the purpose of calculation of pension and the respondents have the power to condone shortfall in qualifying service for grant of pension

beyond six months and upto twelve months.

5. On the other hand, the learned counsel for the respondents submitted that the total service rendered by the applicant is not in dispute, which was

less than fifteen years and, therefore, the applicant was ineligible to get the service pension. Further, the applicant, on his own volition, had taken

discharge from service. Therefore, the benefit of pension could not be given to him as the condonation of deficiency of shortfall in service is to be

applied in all cases except where the person has sought voluntary discharge.

6. We have considered the rival submissions made by the learned counsel for the respective parties.

7. It is not in dispute that the applicant was discharged from service on compassionate ground upon his taking premature retirement after rendering 13

years and 345 days of qualifying regular service against the requisite pensionable service of 15 years. Had he completed 15 years of service by

serving the remaining period of service, he would have been eligible for service pension. Regulation 114(a) of the Pension Regulations for the Air

Force 1961 (Part I) denies the benefit of condonation of shortfall in pensionable service to a person who was discharged at his own request.

Regulation 114(a) is reproduced as under:

114. Except in the case ofâ?

(a) an individual who is discharged at his own request,

(b)

(c)

A similar provision is made in the Pension Regulations for the Navy 1964 also (Regulation 82(a). When the said Regulation was challenged before the

Hontble Bombay High Court in the case Gurmukh Singh v. Union of India and others (W.P (C) No. 430 of 2005, it struck down the same. Against the

said judgment, the Union of India preferred an appeal before the Hon'ble Supreme Court, which ended in dismissal.

8. It is to be noted that computation of pensionable service and benefit of condonation of shortfall in pensionable service, in almost all the three

Services of the Armed Forces, are similar.

9. Further, on the basis of the instructions issued by the Government of India (MoD), while calculating the length of qualifying service fraction of a

year equal to three months and above but less than six months should be treated as a completed one half year for reckoning qualifying service. In view

of the above provision, the applicant is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By the

Government of India (MoD) letter dated 14.08.2001, administrative power has been delegated to the competent authority and the competent authority

has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto twelve months. The said provision is

reproduced as under:

(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and upto 12 months.

In the case of Surender Singh Parmar(supra), the Hon'ble Supreme Court held as under:

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of

pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case

then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall

and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive

finding of the Tribunal. However, as we find that the respondent was allowed to retire from service on 24.6.1985 when the instruction dated

14.8.2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said instruction came

into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned.

10. As a result of the foregoing discussion, the 0.A is allowed. The shortfall in the applicant's pensionable service is condoned. The respondents are

directed to calculate the pensionable service of the applicant accordingly. However, since the applicant has approached this Tribunal after a

considerable delay, hence the arrears shall be restricted to three years preceding the date of filing of the 0.A, in view of the decision of the Hon/131e

Supreme Court in Shit/ Dass v. Union of India and others (2007(3) SLR 445). The instant 0.A was filed on 02.08.2017. The respondents are directed

to give effect to this order within a period of four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

11. No order as to costs.

Pronounced in open Court on this the 29 day of November 2019.