

(2004) 03 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 3104 of 2003

Waman Madhav Sakharkar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 48

Maharashtra Released Defence Services (Fixation of Pay and Seniority) Rules, 1974 — Rule 10, 2, 3

Citation : (2004) 3 ALLMR 848 : (2004) 6 BomCR 907 : (2004) 3 MhLj 787

Hon'ble Judges : D.Y. Chandrachud, J; A.H. Joshi, J

Bench : Division Bench

Advocate : R.S. Sundaram, for the Appellant; S. Wandile, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

1. Rule returnable forthwith. Learned counsel for the respondents waive service.

By consent taken up for hearing and final disposal.

2. The petitioner was engaged in the Army as a Signaller in the Corps of Signals between 13th February 1963 and 28th August, 1969. He came to be discharged on medical grounds. The Certificate of service that was issued by the Army authorities contains an endorsement that the Character of the petitioner is "Very Good"; that he has been awarded the Sainya Sewa Medal and had rendered War Service, in the theaters of operation in Jammu and Kashmir between 5th May 1964 and 9th April 1968. The petitioner was certified as fit for civil employment. After a relatively short break in service between 29th August 1969 and 11th March, 1970 the petitioner came to be employed as a clerk in the office of the Zilla Parishad, Chandrapur. Thereafter, with another break of two days, the petitioner came to be engaged in the service of the Police, as a Sub-Inspector with effect from 15th July 1974. The Deputy Inspector General of

Police, Nagpur Range, Nagpur passed an order dated 18th March, 1989 condoning the break between 29th August 1969 and 11th March, 1970 and of the two days of 13th and 14th July 1974, these being respectively before the petitioner joined the service of the Zilla Parishad and the Police Force. In exercise of the powers conferred by the Rule 48 of the Maharashtra Civil Services (Pension) Rules 1982, the petitioner was allowed the benefit of counting the past service rendered in the Indian Army and in the Zilla Parishad of Chandrapur for the purposes of pension and gratuity.

The petitioner retired from service on attaining the age of retirement on 30th June, 2003. The petitioner had moved this Court in a Writ Petition (W. P. No. 2172 of 1990) under Article 226 claiming the benefit of his past services for the purpose of pay - fixation and seniority. Upon the establishment of the Maharashtra Administrative Tribunal, the petition was transferred to the Nagpur Bench of the Tribunal and has been now disposed of by the impugned Judgment and order dated 19th June, 2001. Before the Tribunal, the petitioner had claimed the benefit of the Maharashtra Released Defence Services (Fixation of Pay and Seniority) Rules, 1974 which were notified by the Governor in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. The Tribunal, while dismissing the petition filed by the petitioner has come to the conclusion that he was not entitled to the benefit of the aforesaid rules on the ground that he had failed to produce documentary material to show that he was employed in the defence services for a fixed tenure.

3. In view of the finding of the Tribunal the short question which arises before the Court relates to the construction which must be placed on the provisions of the Maharashtra Released Defence Services (Fixation of Pay and Seniority) Rules, 1974 (hereinafter referred to as "the Rules"). Rule 3 of these rules lays down certain special provisions for the purposes of fixation of pay and seniority as follows :

"3. (1) For the purpose of fixation of pay and seniority. --

(a) an officer of the rank of an Emergency Commissioned Officer appointed to the reserved post, after selection at the first attempt, shall be treated as a candidate belonging to the year in which being eligible for that post he could have been appointed to a vacancy in that post after the date of joining the defence service or training, had he not joined the defence forces.

(b) An Emergency Commissioned Officer appointed to such post after selection at the second or third attempt, shall be treated as belonging to the corresponding succeeding years in which appointments to the unreserved vacancies were made by nomination.

(2) No officer shall, on his pay being fixed on the basis of his seniority as aforesaid, be eligible for any arrears of pay for the period commencing on the date of his appointment in the defence service and the date of his appointment to the reserved post on the basis of his pay fixed as aforesaid."

There are illustrations which amplify the Rule.

4. The expression Emergency Commissioned Officers/Short Service Regular Commissioned Officers is defined in Rule 2(a) to mean "a person Commissioned, Gazetted or in pay as an officer in the defence forces during the proclamation of the National Emergency for the period commencing on the 26th October, 1962 and ending on the 10th January, 1968". Plainly the petitioner was not an Emergency Commissioned Officer or Short Service Regular Commissioned Officer. Rule 2(b) then defines the expression "released defence service personnel" as follows :

"(b) Released Defence Service Personnel" means Emergency Commissioned Officers/Short Service Regular Commissioned Officers and other ranks who have been released by the defence services after completing fixed tenure."

Rule 8(a) stipulates that no Emergency Commissioned Officer shall be promoted by reverting to a lower post any other officer who was senior to him immediately before the commencement of the Rules. Rule 9 lays down certain provisions for condonation of breaks in service between Military and Civil Service for the purposes of pension. Rule 10 which is material for the present purposes is as follows :

"10. The provisions of these rules shall also apply to the released defence services personnel belonging to all other ranks (including released Short Service Regular Commissioned Officers) on their appointment to the reserved vacancies in the services and posts under the State Government."

5. The expression "released defence services personnel" in Rule 2(b) is comprised of two categories. Firstly, it comprises of emergency commissioned officers/short service regular commissioned officers. Secondly, it comprises of other ranks who have been released by the defence services after completing a fixed tenure. Rule 10 expands upon the ambit and purview of the Rules by laying down that the rules shall also apply to released defence Service personnel belonging to all other ranks, meaning thereby all other personnel, on their appointment to a reserved vacancy in services and posts under the State Government. The expression "all other ranks" obviously is a residuary category that includes all ranks and not only officers.

The construction which should be placed upon the provisions of the Rules came up for consideration before a Division Bench of this Court to which one of us, Chandrachud, J. was a party in *Madhavnath B. Tamboli v. State of Maharashtra*, (2003) 4 M.L.J. 65. In that case the petitioner had joined the Indian Air Force on 5th February 1964 and had been discharged on 28th February, 1985 on fulfilling his regular engagement. As in the present case, the discharge was not for disciplinary reasons. The petitioner was thereafter appointed as a Surveyor in the Revenue and Forest Department of State Government, whereupon he claimed the benefit of the aforesaid rules for the purposes of his seniority. The petitioner contended that he was entitled to his seniority with effect from the date on which

he joined the Indian Air Force. The Tribunal dismissed the application of the petitioner holding that he had not been released from the Air Force, but he had been discharged. Construing the provisions of the Rules the Division Bench adverted to the judgment of the Supreme Court in *Sansar Chand Atri v. State of Punjab*, 2002 SCC 770, wherein the Supreme Court held that a distinction has to be made between persons who have been released from the defence services on grounds of medical disqualification or on the ground of inefficiency or misconduct. The Supreme Court held that a person in the Army who has earned pension after putting in the requisite period of service before leaving the Army whether on his own request or on being released by his employer or on any ground should be treated as an ex-serviceman who has retired from the army. Such treatment should be meted out to all such persons irrespective of whether the nomenclature used is "relieved", "discharged" or "retired". Placing reliance on the judgment of the Supreme Court, the Division Bench held that a purposive interpretation should be given to the rules to fulfil the object for which they have been framed. In that context the Division Bench held as follows :

"10. These Rules must be given a purposive interpretation to fulfil the object which they are intended to subserve - Rule 2(b) defines released defence services personnel to mean inter alia "other ranks". The expression "released" for the purposes of Rule 2(b) ought not to be regarded as not including a member of the defence service who has been discharged, so long as discharge was after completing a fixed tenure. We should not, however, be understood to have held that a member of a defence service who has been dismissed or removed on the ground of unsuitability or misconduct would be entitled to the benefit of Rule 2(b). Plainly such a person cannot be regarded as released from defence service after completing a fixed tenure. There is, however, no reason why by a process of restrictive interpretation, a person in the position of the petitioner should be denied the benefit of Rule 3(9). Moreover, there is no reason why the expression "released" in Rule 2(b) should be imported the same technical meaning as in Section 23 of the Air Force Act. The expression "released" is not defined by the Rules and must bear its ordinarily grammatical connotation. The petitioner who was discharged from the Air Force on the fulfilment of his regular engagement must be regarded as a person who has been released by the defence services after completing a fixed tenure within the meaning of Rule 2(b)."

6. Adverting to the object and purpose of the rules the Division Bench also held thus ;

"12. The object of the Rules is to ensure that persons who have devoted long years of service in the defence of the nation as members of the armed forces should have the benefit of their service in the armed forces counted on their subsequent re-employment by the State. The object in counting the service in the defence services is to ensure that the long years spent by a member of the services should not be obliterated. That being the object, the Court must adopt a

purposive interpretation that would advance the underlying purpose. The interpretation of the Rules should not be such as would restrict the benefit which is conferred, on a proper construction."

In the present case before the Maharashtra Administrative Tribunal and, before this Court in the reply, two grounds of objections have been raised on behalf of the government. The first is that the petitioner had served in the defence services as an Operator and not as an officer. In our view this defence is ex-facie not maintainable having regard to the provisions of Rule 2(b) which define the expression Released Defence Services Personnel to include other ranks who have been released by the Defence Service after completing a fixed tenure. The expression "other ranks" must obviously mean ranks other than Emergency Commissioned Officers/Short Service Regular Commissioned Officers, set out in the Rule 2(b). Moreover, Rule 10 makes it abundantly clear that the provisions of the Rules shall also apply to the Released Defence Personnel belonging to all other ranks including Released Short Service Regular Commissioned Officers on their appointment to a reserved vacancy in services and post in the State Government. Therefore, the expression "other ranks" cannot only be confined to those officers in the Defence Services. The second ground of objection is that the petitioner had not completed a fixed tenure. In our view the affidavit of the State Government really confuses the issue as to whether a person was appointed for fixed tenure, with the discharge of a member of the Defence Services after completing a fixed tenure. The expression "after completing fixed tenure" should not in our view be construed to apply only to those cases where a person has been appointed to the Defence Services for a period which is fixed in time. Such an interpretation will unnecessarily exclude a large number of deserving persons who had served in the defence services from the beneficial provisions of the Rules. Of course, if that was the plain entailment and consequence of the rules, the Court would have to give literal meaning and effect thereto. However, the expression which has been used in Rule 2(b) is not "other ranks who are appointed on a fixed tenure" but the other ranks who have been released after completing a fixed tenure. Furthermore Rule 10 in any event does not incorporate any restriction to the effect that the appointment should have been on a fixed tenure.

In these circumstances we are of the view that the Maharashtra Administrative Tribunal erred in rejecting the application filed by the petitioner and declining to grant him the benefit of the rules. Setting aside the judgment of the Administrative Tribunal we hold and declare that the petitioner would be entitled to the benefit of the Maharashtra Released Defence Services (Fixation of Pay and Seniority) Rules, 1974. The respondents shall now proceed to give to the petitioner all consequential benefits to which he is legitimately entitled in accordance with the rules. The aforesaid exercise shall be carried out within a period of 3 months. Since the petitioner has retired from service, the aforesaid exercise shall enure to the benefit of the petitioner in the computation and payment of monetary benefits. The petition is allowed in the aforesaid terms.

There shall be no order as to costs.