



**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

TA No.517/2009

[WP (Civil) No.5273/1999 of Delhi High Court]

Swapan Kumar Banerjee

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: None.

For respondents: None.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER  
16.12.2009**

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.

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2. None appears for petitioner and respondents. We have perused the record ourselves.

3. Petitioner was enrolled as a Boy in the Indian Navy on 14.12.1968 and on selection he was administered the Oath of Allegiance to the Constitution of India. Thereafter on 22.01.1970 he joined in the category of Artificers and was provided with four years training as Artificer Apprentice where he continued his service on various promoted posts and lastly he held the post of Chief Electrical Officer (Radio) and discharged on 31.01.1984 by respondents on the expiry of initial engagement.

4. The petitioner was required to be discharged at the end of 15 years of service and he was discharged at the end of 15 years of service so as to earn pension in accordance with Section 11 of the Indian Navy Act, 1957 read with Regulation 269 (I-A) of Navy Service Regulations, 1965 and with Regulation 78 and 79 of the Navy (Pension) Regulations, 1964. However, petitioner's 4 years initial period of service as Artificer Apprentice was not counted for 15 years qualifying service for pension. According to



the petitioner his total qualifying service should have been 15 years, 1 month and 18 days whereas the respondent has only taken the qualifying service of 10 years on 31.01.1984 and denied the petitioner the benefits of 15 years qualifying service. Hence, petitioner approached Hon'ble Delhi High Court by filing present Writ Petition and in that he has referred the decision of the Hon'ble Apex Court given in the case of Anuj Kumar Dey & Another Vs. Union of India & Others (1997) 1 SCC 366. In that case a similar question arose where the appellant joined Indian Navy as Artificer Apprentice and administered statutory oath and undergone training. He has been receiving a pay more than being prescribed in Section 12. Although the pay was received by him during the training was a fixed one and he was advanced to Electrical Artificer Vth Class only after completion of the training, petitioner was a Sailor even during the period of training. In that case their Lordships observed that the qualifying service for such officers starting point like Artificer Apprentice should be taken into consideration for the purpose of computing the pensionable service. Their Lordships after considering the matter held that "*in such circumstances, the starting point for computing the qualifying period of service is the date of enrolment and not the date of*

*period of advancement. Even the Discharge Certificate supported this position and the period of service had been computed accordingly even for awarding him Good Conduct Badges."* After reviewing all the provisions of Naval Act and Rules their Lordships held as under :-

*"All these facts and the various provisions of the Act and the Regulations leave no room for doubt that the appellant even during the period he was working as Artificer Apprentice as Artificer Apprentice was in the service of the Navy, was given Good Conduct Badges for this service and four years' service was counted from the year 1971. The Discharge Certificate which is a statutory document clearly records that he has served in the Indian Navy from 12-8-1971 to 31-1-1988. The respondents after granting all these certificates and badges, cannot be heard to say that the appellant had not put in the qualifying period of service of fifteen years and, therefore, was not entitled to get pension."*

5. The present petition is somewhat identical and fully covered by the decision of the Hon'ble Apex Court. We do not see any reason as to why Navy has not granted the benefits to the petitioner in the light of the aforesaid judgment.



6. Petitioner was taken as a Boy in Indian Navy and he falls in definition of Sailor under Section 3(20) of Navy Act, 1957. This matter was discussed at length along with bunch of writ petitions in Hon'ble Bombay High Court in the case of Nirvair Singh Vs. Union of India and their Lordships has held that after reviewing all the provisions held that there is no difference between Boys Service and the service of the Artificer Apprentice. Their Lordships applying the same decision of Hon'ble Supreme Court in case of Anuj Kumar Dey (supra) directed to count the Boy Service for computation of 15 years qualifying service. Their Lordships has observed that *"therefore, there cannot be any difference between the persons appointed as boys and artificer apprentice for the purposes of Navy Act and the Regulations thereunder. The incumbent is in service of Navy as a sailor i.e. other than an officer as provided under Section 3 (20) of the Navy Act. He is also required to be administered oath and enrolled on entry under the provisions of Sections 12 and 13 of the Navy Act."*

7. Therefore, there is no reason to take different view in the present matter in the light of the decision taken by Hon'ble

Bombay High Court. Accordingly, we allow the petition and direct that petitioner's Boy Service should be counted towards the pensionable service and on the basis of that he completes 15 years, 1 month and 4 days therefore, he is entitled to pension. If the pension is not release to him then all arrears be released with interest @ 12% p.a. within a period three months. Copy of this order be sent to the Chief of Naval Staff for compliance. Petition is accordingly disposed of. No order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 16, 2009**