

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

T.A. No. 451/2009

[W.P. (C) No. 2148/99 of Delhi High Court]

Ex Ld. Raj Pal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: None.

For respondents: Ms.Jagriti Singh, Advocate for Sh.A.K.
Bhardwaj, Advocate with Capt. Alifa Akbar.

CORAM:

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

**ORDER
19.04.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. None appear for the petitioner.

3. Petitioner by this petition has prayed that respondents may be directed to grant him the service pension from the date of discharge i.e. with effect from 19.11.1993 along with arrears of pension after declaration to the effect that he is entitled for grant of his service element of pension and the impugned show cause notice dated 12.10.1993 has no effect on his right for service pension.

4. Brief facts which are necessary for the disposal of present petition are that petitioner was enrolled in the Army on 24.07.1981 and on completion of initial Military training, he was ordered to be posted in the operational unit of Army and at the time of discharge, he was posted in No.64 Cavalry, c/o. Basic Training Regiment, A.C. Centre and School, Ahmednagar. While in service, he was served with show cause notice dated 12.10.1993 for his discharge from Army under Rule 13 item (iii) (v) of Army Rule, 1954 by the Colonel on behalf of Commanding Officer on the ground that he was a habitual offender and was found to be undesirable. He replied the same on 18.10.1993. Thereafter, he was discharged from service on 18.11.1993 on

administrative ground. It is alleged that petitioner had put in 12 years, 3 months and 25 days of service, therefore, he should be given pension on pro-rata basis as per CCS (Pension) Rules, 1972. It is also alleged that as per recommendation of 4th Pay Commission, the Government of India vide their notification dated 18.03.1987 allowed the pensionary benefits to Civil Government Servants including Defence Personnel, hence, he must be given pension because he has served the Army more than 10 years. The relevant part of Rule 2 reads as under:-

“2. Pension

- (i) Existing system of paying lumpsum gratuity for service below 10 years and monthly pension for qualifying service of 10 years and more may continue.”

However, petitioner also mentioned that the Ministry of Defence has issued the instructions for grant of pension to the Defence Personnel vide notification dated 30.10.1987 based on the Government of India notification dated 18.03.1987. Therefore, petitioner submitted that he is entitled to pension on the basis of 10 years qualifying service unless incumbent discharged by court martial and not on account administrative order.

5. In this connection petitioner has relied upon the decision of Division Bench of Hon'ble Delhi High Court in case of Sh.Kuldeep Singh vs. Union of India 1996 (36) DRJ (DB). Therefore, petitioner filed the present writ petition before the Hon'ble Delhi High Court with the prayer that service pension may be released to him as he has put in 10 years of qualifying service. The petition was transferred to this Tribunal on its formation.

6. A reply was filed by the respondents wherein they took the position that order dated 18.03.1987 is not applicable to Army personnel as it has been clarified by the Ministry of Defence order dated 30.10.1987. In this order, it is clearly pointed out that 18.03.1987 order will be of no avail to defence personnel as the qualifying service for pension is 15 years of service. The relevant portion of order dated 30.10.1987 reads as under:-

"I am directed to refer to the Government decision on the recommendations of the 4th Central Pay Commission as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare Resolution no.2/13/87-PIC dated 18th March, 1987 and to convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the commissioned officers (including MNS and Territorial Army Officers) and

personnel below officer rank (including NCs(E) of the three services.

.....

6.2 Personnel Below Officer Rank

(a) The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension will continue to be 15 years (20 years in case of NCs(E)).

(b) Service pension in respect of personnel below officer rank of three services (including) those of the DSC and TA but excluding reservists) for 33 years of qualifying service shall be calculated at 50% of the emoluments reckonable for pension as defined in para 3 above, and for lesser period of qualifying service (as defined in para 5 above) it shall be reduced proportionately; the amount of service pension finally arrived at shall be subject to a minimum of Rs.375/- per month.

7. Therefore, it is said by respondents that since the petitioner is an Army Personnel, he will not be governed by CCS Pension Rules, 1972 and he is governed by the direction issued by the Government of India, Ministry of Defence in pursuance of the Fourth Pay Commission recommendations vide order dated order dated 30.10.1987. In this order it is clarified that qualifying service for pension is 15 years and not 10 years as contended by the petitioner as per CCS Pension Rules, 1972.

8. In this connection, our attention was invited to Rule 132 of the Pension Regulations for Army which also contemplates

the period of qualifying service as 15 years and same is read as under :-

“The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years.”

9. Therefore, it is submitted by learned counsel for respondents that in view of the aforesaid order as well as Rule 132 of the Pension Regulations for Army, the minimum qualifying service for Armed Forces Personnel is 15 years and not 10 years as contended by the petitioner.

10. Our attention was also invited to decision of the Division Bench of Hon'ble Delhi High Court in the case of Sh.Kuldeep Singh (supra) with regard to BSF. We do not know what were the provisions of the BSF. But so far as the provisions with regard to Army personnel is concerned, matter is very clear that in view of the letter dated 30th October, 1987 and Rule 132 of the Pension Regulations for Army, the qualifying service for pension continues to be 15 years and not 10 years as contended by the petitioner. Therefore, we are of the opinion that petitioner's

contention cannot be sustained as order dated 18.03.1987 is not applicable to the petitioner and he is governed by the order dated 30.10.1987 which was issued by the Ministry of Defence on the recommendation of 4th Pay Commission and the Rule 132 of the Pension Regulations for Army clearly contemplates that minimum qualifying service for pension is 15 years.

11. Hence, we do not find any merit in the petition. Same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 19, 2010.