

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
30.
O. A. No. 140 of 2010

Maj. Amarjit Singh (Retd.)

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. R. Kalkal, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

22.3.2011

1. The petitioner, by this petition has prayed to declare the Government of India, Ministry of Defence letter dated 14.8.2001 and letter dated 27.3.2002 as discriminatory under the provisions of Article 14 of the Constitution of India and the same may be quashed and has further prayed that service pension may be released to him.

2. The petitioner joined Indian Military Academy after having been selected for permanent commission and thereafter called at IMA, Dehradun on 7.7.1968 as a Gentleman Cadet. He underwent training for two years and was granted regular commission on 14.6.1970 as second Lieutenant. The petitioner performed his duty to the best of his ability but because of compelling reasons i. e. his both the in-laws died in air crash Kaniska, his wife went into deep depression and, therefore, the petitioner was not in a position to serve any more and asked for pre-mature retirement w.e f. 28.11.1987. The petitioner was granted pre-mature retirement but was kept in the regular reserve for 10 years and was liable to be recalled for the Army service up to 30th September, 1998. After completion of 17 years and 167

days of commission service in addition to two years of training at IMA Dehradun, the petitioner had put in almost 17½ years of service and if 2 years of training period is taken into consideration, that makes 19½ years and condonation of 6 months, that will make qualifying pensionable service i. e. 20 years. The petitioner has submitted that in view of the decision given in the case of 'Anuj Kumar Dey Vs. UOI & Ors. JT 1999(6) SC 679', wherein it has been held that the apprentice service is to be counted. On the same lines, if two years' service of the petitioner as a Gentleman cadet at IMA Dehradun is taken into consideration, that will make it almost 19½ years of service and with the power of condoning make it a full 20 years' of pensionable service. In addition to that learned counsel has invited our attention to Regulations 29 and 30 of Pension Regulations for Army, 1961 Part I and submitted that even if 2 years' of period of a Gentleman Cadet is not taken into consideration, even then he is entitled to benefit of pro rata pension. He submitted that according to Regulation 30 of Pension Regulations for Army, 1961 Part I, service for rank can be reduced proportionately to the reduction in his qualifying service and then pension can be granted to the petitioner on the basis of actual service put in by him. In that connection, learned counsel has also invited our attention to various provisions and tried to support his contention that even if 17 years' service is taken into consideration less than the qualifying service period then the pension can be proportionately reduced as given in Regulation 30.

3. Learned counsel for the respondents has opposed the petition and submitted that in an almost identical situation, Hon'ble Supreme Court has not acceded to this contention in the case of 'S. S. Beniwal Vs. Union of India & Ors. (Special Leave to Appeal (Civil) No. 16341/2008 dated 26.10.2009) in view of the provisions of the

Navy Regulations 1 and 23 were taken into consideration which are almost per materia with the Regulations 29 and 30 and in that case, their Lordships have negatived the contentions.

4. We have bestowed our consideration to the rival submissions made on behalf of both parties. We are of the view that so far as 20 years of qualifying service is concerned as mentioned in Regulation 25, there is no go i. e. the period one has to put in order to qualify for the service pension. Regulations 25, 29 and 30 are to be read together and what emerges is that as per Regulation 25 which says that qualifying service for pension is 20 years, therefore, one has to put in standard service period for pension. Even in the case of standard service pension if it exceeds more than 20 years then the amount of pension is proportionately increased but there is no provision for reduction of the standard service period so as to reduce the minimum qualifying pension. We have read all the provisions i. e. Regulations 25, 29 and 30 together then that makes it that there is no reduction of the standard service period of 20 years.

5. In this view of the matter, we do not find any merit in the petition. The petition is accordingly dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 22, 2011