

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

16.

O.A. No. 328 of 2011

Ex. Nk. Shri Bhagwan

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

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

For respondents: Mr. Akash Pratap, Advocate.

CORAM:

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

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

ORDER

04.07.2012

1. Petitioner vide this petition has prayed that order dated 05.03.2011 be set aside and respondents be directed to pay the pay and allowances for the period 02.05.2008 to 22.02.2010 along with interest. It is also prayed that direction be issued to the respondents to release the service pension in favour of the petitioner w.e.f. 01.08.2010 along with interest.
2. Petitioner was enrolled in the regular Army as Combatant Soldier on 11.07.1988 and based on his performance, he was posted to Rashtriya Rifles. While posted at 26 RR located at Kupuware District of J & K, petitioner started taking alcohol during non duty period for which he was repeatedly awarded severe reprimand three times within a period of six months. He was sent back to his parent unit 18 Kumaon Regiment where he was promoted to the rank of Naik. He was again awarded severe reprimand under Section 48 of Army Act, 1950 for intoxication. He was discharged on 08.04.2002 from service as per the policy of Army Headquarters dated 28.12.1988 for being awarded four red ink entries.

3. Petitioner filed Writ Petition (Civil) No. 1930 of 2003 before Hon'ble Delhi High Court against his discharge. The Hon'ble Delhi High Court vide judgment dated 02.05.2008 allowed the writ petition. However, he was not allowed to rejoin duty despite order of Hon'ble Delhi High Court, therefore, he filed a Contempt Petition no. 425 of 2009 before Hon'ble Delhi High Court. The respondent authorities requested for extension of time for implementing the court order, therefore, the said contempt petition was withdrawn vide order of Hon'ble Delhi High Court dated 11.05.2009. Meantime, respondents instead of implementing the order of Hon'ble Delhi High Court filed the Special Leave Petition before the Hon'ble Supreme Court which was also dismissed. Petitioner again filed a Contempt Petition No. 728 of 2009 before the Hon'ble Delhi High Court and finally petitioner was allowed to rejoin duty on 23.02.2010.

4. He has been discharged from service on completion of terms of engagement on 31.07.2010 vide discharge order dated 05.04.2010. Hon'ble Delhi High Court while allowing the writ petition moved by the petitioner observed that the intervening period from the date of discharge i.e. 08.04.2002 to 02.05.2008 was not to be considered for the benefit of pay and allowances and pensionary benefits. Learned counsel for the petitioner argued that the period from the date of judgment i.e. 02.05.2008 till 23.02.2010 when petitioner was actually allowed to rejoin duty should be computed for the purpose of pay and allowances and retirement benefits. However, respondent authorities did not accept his plea and vide their letter dated 05.03.2011 rejected the appeal of the petitioner for grant of pension. It was also submitted that as per Government of India, Ministry of Defence letter dated 14.08.2011, there is provision for condonation of deficiency of service

upto one year. Hence, petitioner approached this Tribunal by filing the present petition seeking aforesaid reliefs.

5. Learned counsel for the petitioner argued that despite the judgment of Hon'ble Delhi High Court dated 02.05.2008, petitioner was not allowed to rejoin duty which led to filing of two contempt petitions. Ultimately, petitioner was allowed to rejoin duty w.e.f. 23.02.2010. Therefore, petitioner should be treated notionally in service from the date of decision of Hon'ble Delhi High Court i.e. 02.05.2008 till he was allowed to rejoin duty by the respondents i.e. 23.02.2010 as petitioner was ready and willing to rejoin duty after the decision of Hon'ble Delhi High Court, however it was the respondents who did not comply with the directions of Hon'ble Delhi High Court and did not allow the petitioner to rejoin duty. He further submitted that if this period from 02.05.2008 to 23.02.2010 which comes to almost 1 year and 10 months is computed to the account of petitioner then his total service will come to about 16 years and petitioner will be entitled for pensionary benefits.

6. A reply has been filed by the respondents and they have contested the position. By and large, respondents have admitted what was stated by the petitioner. However, it is pointed out that petitioner has physically rendered 14 years, 02 months and 02 days of qualifying service for pension whereas as per Para 132 of Pension Regulations for the Army 1961, a minimum of 15 years of qualifying service is required to earn service pension. Therefore, petitioner is falling short of 09 months and 29 days of qualifying service for grant of minimum service pension. Learned counsel for the respondents strenuously urged before us that period from 02.05.2008 to 23.02.2010 cannot be counted as the petitioner did not physically serve during this period.

7. We have heard both the parties and gone through the record. It is true that petitioner has not physically served from 02.05.2008 to 23.02.2010 but the fact remains that petitioner was ready and willing to rejoin his duty after the decision of Hon'ble Delhi High Court dated 02.05.2008. However it was the respondents who did not allow him to rejoin and showed defiance of the order of Hon'ble Delhi High Court which led to filing of two contempt petitions by the petitioner before the Hon'ble Delhi High Court. Respondents also approached Hon'ble Supreme Court by filing SLP against the order of Hon'ble Delhi High Court which was also dismissed. Ultimately, petitioner was allowed to rejoin his duty on 23.02.2010. Therefore petitioner is to be notionally treated in service for the period from the date of decision of Hon'ble Delhi High Court i.e. 02.05.2008 till he was allowed to rejoin duty by the respondents i.e. 23.02.2010. According to the admitted position, petitioner has rendered total qualifying service of 14 years and 02 months and if this period from 02.05.2008 to 23.02.2010 that comes to almost 1 year 10 months is computed then the total qualifying service will come to almost 16 years and would entitle him to pensionary benefits.

8. More so, as per Government of India, Ministry of Defence letter dated 14.08.2011, there is provision for condonation of deficiency of service up to one year for pensionary benefits. Be that as it may, in view of above, we are of the opinion that petitioner has rendered more than 15 years of qualifying service to earn service pension. Hence, we set aside the impugned order dated 05.03.2011 and direct the respondents to release all the pensionary benefits to the petitioner from the date of discharge i.e. 31.07.2010 and all the arrears may be worked out and paid to the petitioner along with interest at the rate of 12% per annum. Respondents are further directed to release pay and

allowance for the period from 02.05.2008 to 23.02.2010 along with interest at the rate of 12% per annum, if not paid earlier.

9. The petition is accordingly allowed. No order as to costs. Copy of order be given dasti as prayed.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 04, 2012
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