

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

TA No.22 of 2011
WP (C)4706/03)

Mrs. Olive Balraj ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner : Mr. S.S. Pandey, Advocate

For the Respondents: Mr. Anil Gautam, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

JUDGMENT

20.01.2012

BY CHAIRPERSON:

1. Petitioner by this petition has prayed that respondent may be directed to pay the arrears of the pension to which her husband Late Wing Cdr. John Albert Ratnam Balraj, VM, VSM was entitled to from the date of his retirement i.e. 09.06.1975 to 01.02.2002 (date of death of husband of petitioner) and respondent may also be directed

to pay family pension to the petitioner from 01.02.2002 onwards, as per entitlement.

2. Petitioner is working in Montessori School, 2, East Singarayar Colony, Madurai-2. Petitioner's husband expired on 01.02.2002 due to heart attack although a bye pass surgery was undertaken but without any result. The petitioner's husband joined Indian Air Force as an Airman and thereafter due to his hard work he was commissioned as a Pilot Officer in the Flying Branch and he rose to the rank of Wing Commander.
3. It is alleged that in 1973, when the petitioner's husband was working as Commanding Officer of 4 FBSU, Air Force C/o 56 A.P.O., he terminated a work contract of a Private Contractor who was not carrying out the assigned work satisfactorily. This conduct of Late Wing Cdr. Balraj (petitioner's husband) was not taken favourably by other senior officers. After this incident, a court of

enquiry was conducted against him on 13.09.1973 on the basis of trivial allegations though no formal chargesheet was served upon him before the court of enquiry and he was not afforded an opportunity to reply. During the period 1972-73, the petitioner's husband was disturbed as four of his pupil fighter pilots had died during the Indo-Pak War, as well as on account of family circumstances, whereby he could not properly attend to the court of enquiry. On account of these setbacks, on 19-09-1973 petitioner's husband wrote a letter to the AOC-in-C, through his Station Commander, that he accepts all responsibility for which he was charged and pleaded guilty to the charges levelled against him during the court of enquiry and accepted all the faults. He also submitted that alternatively he may be allowed to leave the services on premature retirement, or his resignation may be accepted. No action seems to have been taken

on this. However, a reply was received on 15.01.1974 that no action could be taken on his letter since disciplinary proceedings are pending against him.

4. Petitioner's husband received a show cause notice on 28.03.1974 and he acknowledged the show cause notice but no formal reply was given by him. However, petitioner's husband was punished with severe displeasure of CAS for a period of three years w.e.f. 03.09.1974. Thereafter, on 28.04.1975 petitioner's husband received an office order from Air Force Central Accounts Office, New Delhi whereby he was informed that her husband's resignation has been accepted without non-effective benefits. This letter has been placed on record as Annex. P/11) of the writ petition.
5. Petitioner's husband was discharged from service on 09.06.1975 by which time he had put in more than 20 years service in the Indian Air Force,

thereby entitling him for pension and other service benefits after retirement/discharge from service.

6. In this connection, the petitioner has invoked Para-6 of Pension Regulations for Defence Service Officer Section I General which reads as under:

a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension (20 years) is Cashiered or dismissed or removed from the service his pension may at the discretion of the President be either forfeited or be granted at a rate not exceeding that which he would have otherwise qualified has he retired on the same date.

b) When an officer who has to his credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign or in the event of his is retired from or Gezzetted out of service he may be granted a pension not exceeding that for which he would have otherwise qualified.

7. Petitioner's husband tried to seek an interview with the senior officers and inform them that he has not asked for acceptance of resignation without non-effective benefits. He also filed an appeal on 09.05.1975 against the order of 28.04.1975, in which he explained all the circumstances leading to his filing of request for resignation and premature retirement. The same was rejected. Petitioner's husband was deeply hurt by the treatment meted

out to him and he was hospitalised and expired in Apollo Hospital on 01.02.2002. Thereafter, the petitioner on 08.03.2002 made an appeal to Air Marshal Arjan Singh and requested him to intervene but the same was also rejected. Therefore, petitioner filed the present writ petition challenging the aforesaid order before the Hon'ble Delhi High Court which has been transferred to this tribunal on its formation.

8. A reply was filed by the respondent and respondent in their reply pointed out that it is true that a departmental enquiry was held against the petitioner and his request for premature retirement or resignation could not be accepted as departmental enquiry was pending against him. But after conclusion of the departmental enquiry, Ministry of Defence accepted his resignation without non-effective benefits by the order dated 28.04.1975 and he was finally discharged from service on 09.06.1975. It was also pointed out that

resignation entails relinquishment of all retiral benefits. It was also mentioned that he was awarded the CAS severe displeasure for 3 years.

9. Learned Counsel for the petitioner submitted that the letter of resignation which was given by the petitioner's husband was revoked by him on 12.05.1975 i.e. before petitioner's husband was communicated the decision of the respondent to accept his letter of resignation. The letter of accepting of the resignation of the petitioner's husband was communicated and received by him on 09.05.1975 and he revoked it on 12.05.1975 & infact petitioner was released from service on 09.06.1975 and till then he was drawing his salary for the post. Therefore, learned counsel submitted that since the communication which was acted upon by the respondents had been withdrawn by the petitioner's husband, therefore, the respondent could not have acted upon that letter of premature retirement or resignation. In this connection,

learned counsel for the petitioner has invited our attention to decisions of the Supreme Court in the cases of ***Balram Gupta Vs. Union of India (1987 AIR 2354)*** and ***Union of India Vs. Wg Cdr. T Parthasarthy (Mil LJ 2001 SC 1)***.

Learned counsel has also invited our attention to the decisions given by the Armed Forces Tribunal (PB) in the cases of ***Maj.(Retd.) Parminder Singh Vs. UOI (TA 288 of 2010)*** and in the case of ***L/Nk. Sanjeev Kumar Vs. UOI & Ors.(TA 413 of 2010)***.

10. So far as principal of law is concerned, there are no two opinions that a letter of resignation can be revoked any time if future date of premature retirement is given. But in the present case petitioner's husband has not given any date, he has given a blanket letter requesting for acceptance of resignation or premature retirement. This request was accepted and the decision communicated to him after which he wanted to

wriggle out from its consequences and that cannot be accepted. Therefore, in the present case, this argument of learned counsel cannot be accepted that petitioner's husband wanted to revoke the matter of resignation or premature retirement prior to its acceptance. Once it has been accepted that means that the Government has already taken a decision and same was communicated to him and after communication he tried to revoke it then in that case that act on the part of the petitioner's husband cannot amount to revocation prior to acceptance of the letter of resignation. The cases cited by learned counsel for the petitioner are distinguishable on their peculiar facts.

11. Learned counsel for the petitioner next submitted that the petitioner's husband had given option for premature retirement or resignation and authorities has invoked the option of petitioner of resigning from service. But it is also admitted that before petitioner's resignation was accepted, he

has already put in the requisite service entitling him to full pension in accordance with law. In that connection, learned counsel has invited our attention to the decision of the Supreme Court given in the case of **UOI & Ors Versus Lt.Col. P.S. Bhargava (1997 2 SCC 28)**. This was a case which is almost identical to the facts of the present case. The question before the Hon'ble Supreme Court in the identical situation arose with regard to Lt.Col. PS Bhargava who had resigned from service and the respondent denied him the benefit of pension though he had the requisite qualifying service. In that connection, the Hon'ble Apex Court attention was invited to a letter of Army HQ of 25.04.1981 that in the cases where a person resigns then he loses his pensionary benefits. Their Lordship's after referring to the necessary provisions of the Army which are paramaterial to that of the regulations of the Air Force held that a person who resigns from service,

but if otherwise entitled to pensionary benefits, the same cannot be denied to him. Though in that case the letter of Army HQ was invoked, their Lordships have negated it. In this connection the Hon'ble Supreme Court after referring to the provisions of the pension regulations bearing on the subject referred to some regulations which are set to be paramaterial to that of the Air Force interpreted the Regulations 16 (a) and 16 (b) which are reproduced as under:

16(a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his/her pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date.

16(b) When an officer who has to his/her credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign or in the even of his/her refusing to do so is retired from or gazetted out of the service, he/she may at the discretion of the President be granted a pension at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date in the normal manner."

12. Their lordships held that "Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who

has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulations intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this was not done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16." The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits."

13. Then a letter dated 25.04.1981 issued by the Army HQs was brought to their notice and their lordships observed:

"The letter of 25-4-1981 issued by the Army Headquarters does state that pensionary benefits will be lost if any officer resigns from service, but it has not been shown to us that this letter, in any way, supersedes or purports to amend or modify the aforesaid regulations. In view of the specific right of pensionary benefits having granted by the said Regulations no effect need be given to the letter dated 25-4-1981."

14. Though we have not been shown any such letter issued by the Air Force but so far as pensionary regulations are concerned they are almost paramaterial to that of the Air Force. The general principle which has been evolved by the Apex Court is that once a person is entitled to a pension on completion of requisite tenure of service and simply because he has voluntarily resigned from service, will not disentitle him for the pension. Both the contingencies which have been referred to at 16(a) and (b) does not cover the cases of voluntary resignation. Therefore, their lordships after considering the scope of both the provisions

have held that these two contingencies which had been mentioned do not cover the case of voluntary resignation. In the present case, the petitioner's husband has given both the options, either to permit him premature retirement or to accept his resignation. The respondent has chosen the latter option i.e. resignation which has been accepted by the authorities with non-effective benefits. That is the main grievance of the petitioner. Though this petition had been filed in 2003, the petitioner was prematurely retired and released on 09.05.1975. Therefore, the order whereby petitioner's husband has been denied the pensionary benefits by order dated 28.04.1975 has to be set aside. But the petitioner's husband after his release on 09.05.1975 has not challenged that order for such a long time. It is only in 2003, after the death of the petitioner's husband in 2002 tht the petitioner filed a writ petition before the Hon'ble Delhi High Court seeking the benefit of family pension. Since

the order dated 28.04.1975 is being quashed for denying him the pensionary benefits, no arrears can be permitted at this distant point of time. However, she will be entitled to benefits of arrears to three years preceding the date of filing the petition. That may be worked out and she will be entitled to a family pension as her husband has put in the requisite qualifying service for pension. It may be worked out from the date of her husband's death & arrears may be paid to her. All this exercise may be undertaken within three months.

15. As a result of above discussion, the petition is accordingly allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
20th January, 2012