

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 819/2016

Capt V. P. Sharma (Retd) Applicant
(deceased through LR Shiva Sharma)
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Avdhesh Kr. Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Aggrieved with the non grant of his claim for payment of gratuity, this OA under Section 14 of the Armed Forces Tribunal Act, 2007, had been filed by the applicant, i.e., IC-29751K Capt V.P. Sharma (Retd). The reliefs prayed for by the applicant (since deceased) vide the OA read as follows:

- “(a) To call for records on the basis of which the respondents have not paid gratuity to the applicant.*
- “(b) To further direct the respondents to grant gratuity as per his entitlement of serving the Indian Army of more than 10 years.*
- “(c) Pass such and other orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. During the pendency of this OA, the original applicant Capt V.P. Sharma died on 11th October, 2020 and his wife Mrs. Shiva Sharma has been brought on record as his legal representative vide order dated 19th February, 2021 and the OA is now being contested by her.

3. The factual details giving rise to the filing of this OA are within a narrow canvas and the following facts would suffice to arrive at a conclusion as to whether the applicant (since deceased) now represented by his wife, is entitled to the reliefs claimed.

4. The applicant (since deceased) was granted Short Service Commission (SSC) in the Indian Army on 15th March, 1970 and was later granted Permanent Commission (PC) on 15th March, 1975. In all, the applicant completed ten years and nine months of service in the Indian Army whereafter he sought voluntary retirement from service, granted w.e.f. 26th October, 1980.

5. The respondents have filed their counter affidavit and the only ground taken in the counter affidavit denying payment of gratuity to the applicant (since deceased) is that even though he had completed ten years and nine months of continuous service, *which, in normal course, entitles an Army personnel to claim gratuity*, but as the applicant (since deceased) sought voluntary discharge, he is not entitled to the same in terms of para 11 of the Policy Letter No.04588/MS-Policy dated 25th February, 2009 as stated in the letter No.G-1/M/Misc/VIII dated 4th January, 2015 sent to the late applicant.

6. In support of his claim the applicant has relied on the judgment of the Hon^{ble} Supreme Court in Union of India and Ors. Vs. Lt Col P.S. Bhargava [(1997) 2 SCC 28] in

Mohd. Zameeruddin Siddiqui Vs. Executive Council, AMU, and Anr. [(2000) 9 SSC 48] and on the order of this Tribunal in the case of Maj (Retd) Parminder Singh Vs. Union of India and Ors. TA No.288/2010 [Writ Petition (Civil) No.1470/2007 of the Delhi High Court] decided on 4th August, 2010 wherein an identical question as raised in this OA was decided.

7. From the pleadings and the arguments put forth by learned counsel for the parties, the only question that needs to be answered to decide the present OA is:

“Could the applicant (since deceased) have been denied payment of gratuity on the ground of his having taken voluntary discharge from service?”

ANALYSIS

8. Grant of pension and other benefits to Army personnel is governed by “Pension Regulations for the Army 1961” and Regulation 25(b) of the same, which is relevant for the purpose of deciding the issue before us, reads as under:

“25 (b) The minimum period of qualifying service for a retiring gratuity shall be 10 years.”

9. The relevant provision dealing with payment of pension, gratuity etc. on taking premature retirement and resignation, as contained in Para 10 (a) of the Policy Letter dated 22nd November, 2001, reads thus:

*“10. Entitlements
.....Officers with less than 20 years but more than 10 year service are not entitled to any pension but unless otherwise withheld/forfeited under the orders of the*

Govt. they shall be granted retiring gratuity at the prescribed rates. (emphasis supplied)

10. Section 4 of the Payment of Gratuity Act 1972 also deals with payment of gratuity and reads as under:

“Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years-

- (a) On his superannuation, or
- (b) On his retirement, or resignation
- (c) xx xx .”

11. Having heard learned counsel on both sides and having gone through the ibid policy letters, provisions dealing with payment of gratuity referred to hereinabove and also the judgments relied upon on behalf of the applicant, it is brought forth that the case of the applicant, who took voluntary premature retirement, is distinct from a term '*resignation*' as pleaded by the respondents. As per the definition given in para 11 of the Policy letter dated 22nd November, 2001, which reads as under:

“ Resignation
11. *Definition: Resignation is applicable to an officer leaving the Army before he becomes eligible for pension/gratuity or when an officer seeks to resign voluntarily irrespective of the length of service by forfeiting the gratuity/pension;”*

the term '*resignation*' is applicable to an officer leaving the Army before he becomes eligible for grant of pension/gratuity or when an officer seeks to resign voluntarily irrespective of length of service by forfeiting the gratuity/pension. The case of the applicant (since deceased)

is covered under Para 10 of ibid policy which is adverted to in para 9 above.

12. We do not find any document on the record whereby the applicant (since deceased) had sought to resign voluntarily by forfeiting the gratuity/pension nor there is any Government Order/Policy withholding or forfeiting the right of the said applicant to deny him payment of gratuity.

The applicant (since deceased) had put in ten years and nine months of service in the Indian Army prior to seeking voluntary retirement which entitled him to payment of retiring gratuity at the prescribed rates which is as sought in the present OA.

CONCLUSION

13. In view of the facts and circumstances of the case and in the light of the fact that the applicant (since deceased) had completed more than ten years of coloured service, he was entitled to payment of gratuity at the prescribed rates.

14. The OA No. 819/2016 is accordingly allowed and the respondents are directed to make the payment of gratuity to which the applicant (since deceased) was entitled to, to his wife in accordance with law with interest at the rate of eight per cent per annum. The interest shall, however, be calculated from 6th September, 2011, the day when the deceased applicant first made a representation for payment of gratuity after voluntary retirement from service, granted on 26th October, 1980.

15. There will, however, be no order as to costs.

Pronounced in open Court on this 2 day of November, 2024.

~~(RASIKA CHAUBE)~~
~~MEMBER (A)~~

(ANU MALHOTRA)
MEMBER (J)

/vks/