

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

OA 1914/2018

Maj K Charanjit Singh (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. S S Pandey, Advocate with
Mr. Adarsh Pandey, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC with
Maj Satvik Grover, OIC, Legal Cell

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant no. IC-15749 Maj K Charanjit Singh

(Retd) vide the present OA makes the following prayers:-

"(a) Call for the records based on which the Respondents have issued the order dated 28.06.2018 by not reflecting the correct service particulars of the Applicant and thereafter quash the same.

(b) Direct the Respondents to issue a proper certificate reflecting the combined service of the Applicant as Sepoy as well as Officer with clear endorsement of qualifying service rendered by the Applicant and grant him pension by either giving him the benefit of instructions for condonation of delay or on the basis rendering

more than 12 years of combined service as granted to SS Officers.

(c) Grant the Applicant service pension along with arrears due w.e.f 29.06.1978 and interest @12% on such arrears from the date of due till its final realization.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."

FACTS AS PER RECORD

2. The applicant was enrolled as a recruit in the DOGRA Regiment of Indian Army on 09.07.1959 and on completion of the essential training was posted to different units and served as a Sepoy till 31.03.1962. From 01.04.1962 to 26.07.1963 as averred in the counter affidavit dated 05.03.2019 of the respondents, the applicant was sent to IMA for training. He was commissioned as an Officer on 27.09.1963 and served as such till 29.06.1978. The applicant thus served as a Sepoy with training at the IMA for 04 years 02 months and 14 days and served the Indian Army as an Officer for 14 years 09 months and 02 days.

CONTENTIONS RAISED

3. Vide the counter affidavit dated 05.03.2019, the respondents have averred that for the purpose of pension, for this period of 04 years 02 months and 14 days, only 2/3rd of the period is counted i.e. 02 years 08 months and 26 days and thus submit that the applicant has only 17 years 05 months and 28 days of service. The respondents further submit that as per Regulation 25 of PRA (Part-1) 1961, 20 years of service is required for grant of pension to an officer and as the officer had less than 20 years of qualifying service, he was granted only gratuity.

4. The applicant has thus sought the grant of pension by condonation of shortfall of service in the rank of an Officer and has sought for issuance of the first certificate reflecting his combined service as a Sepoy and as an Officer for grant of pensionary benefits.

5. The respondents submit vide para 6 of their counter affidavit that these prayers cannot be accepted on the following grounds:-

“(i) That there is no provision for condonation of shortfall of service in r/o

officer. The provision is applicable only in r/o of PBORs.

(ii) That there is a shortfall of 2 years 06 months and 02 days and not one year.

(iii) That Regn 25 stipulates, grant of pension only after 20 years of service.

(iv) That the condition of 12 years of service for grant of pension is applicable to only those PBOR who have been granted EC/SSC."

6. The respondents submit that as the applicant as an Officer was compulsory retired from service on 29.06.1978 on the grounds of inefficiency and as he had not completed 20 years of qualifying service for grant of pension, he cannot be granted any pensionary benefits. The respondents further submit that the applicant was not an EC/SSC Officer and thus the provision of SAI 6/S/65 which allows the grant of pension after 12 years to those PBOR who are granted EC does not apply to the applicant. The respondents further submit that the applicant neither has 15 years of service as a PBOR nor does he have 20 years of service as an Officer and thus is not entitled to any pension under any Rule/Regulation of Pensions.

ANALYSIS

7. In view of the facts in the instant case which are thus un-refuted to the extent that:-

- the applicant has served the Indian Army for 17 years 05 months and 28 days of service,
- he has not completed 20 years of service as an Officer having served as an Officer only for 14 years 09 months and 02 days,

apparently, thus the condonation of shortfall of deficiency of qualifying service in the category of an Officer as claimed by the applicant cannot be granted, due to the length of condonation of shortfall of service sought.

8. However, it cannot be overlooked that the non grant of any pensionary benefits to the applicant who has served the nation for 17 years 05 months and 28 days of service is wholly harsh and iniquitous.

9. Reliance was placed on behalf of the applicant on the order dated 05.09.2019 of the AFT (PB) New Delhi in OA 264/2014 in the case of **Ex R L Yadav and another vs Union of India and others**, the appeal against which

bearing no CA filed vide diary no 10469/2022 was dismissed by the Hon'ble Supreme Court as under:-

"1. Leave to appeal under Section 31(1) of the Armed Forces Tribunal Act 2007 granted.

2. Delay condoned.

3. In the facts and circumstances of the present case and without this Court adjudicating upon the question of law which is raised, we are of the view that the impugned order of the Armed Forces Tribunal is a possible view and is eminently fair in the circumstances. Hence, this appeal is dismissed.

4. Pending application, if any, stands disposed of." ,—

to contend to the effect that similar relief as granted in that case may be granted to the applicant hereby grant of pension in the highest category of a Sepoy i.e. Sub Maj for in any event the applicant had undoubtedly completed the period of 15 years in the Indian Army.

10. It is essential to observe that in **Ex R L Yadav and another vs Union of India and others**, (supra), the applicants thereof Ex Lt R. L. Yadav and Ex Lt R. P. Yadav had been enrolled in the Indian Navy as Sailors and were subsequently selected for commissioning as Officers, had combined service as Sailors and Officers of more than 15

years, but less than 20 years at the time of discharge from service in the rank of Lieutenant. They had prayed vide OA 264/2014 that they be granted pension in the rank of Master Chief Petty Officer-I and Master Chief Electrical Artificier-I respectively in terms of Regulation 156(a) and (b) of the Regulations for the Navy (Part III Statutory) read with Section 3 (5) (16) of the Navy Act, 1957 and the relevant decisions of the Hon'ble Supreme Court and the Delhi High Court, and also that they be granted honorary rank of Lieutenant.

11. Reference was made in the order dated 05.09.2019 by this Tribunal in OA 264/2014, The operative portions of the order dated 03.04.2008 of the Hon'ble High Court of Delhi in WP (C) 1441/2007 and WP (C) 19677/2004 which reproduced in the order dated 05.09.2019 read as under:-

“WP (C) No. 1441/2007:

14. In view of this discussion it emerges that there is no legal impediment in clubbing/tagging the employment as artificer apprentice in Navy, its training period, or working as boy and period he worked as Sailor or an officer. It is thus clear that Lt Cdr. Anup Kumar Mehrotra has completed the service more than 20 years and Lt Cdr. Azad Singh and Ex Lt R.L. Yadav have completed the service more than 15 years. Their cases are covered within Regulations 19 and 78 of Navy (Pension Regulations) 1964.

WP (C) No. 19677/2014:

17. A bare perusal of letter dated 3rd September 2004 passed by Shri K.M. Bhagat Commodore Principal Director Pay and Allowance reveals that the claim of the petitioner was rejected on extraneous grounds and ignoring the Apex court's judgment in Anuj Kumar Dey and Another vs Union of India (supra). The provisions of Section 15(2)(a) of Navy Act, 1957 and Regulation 216(6) of Navy Part II (Statutory) were never discussed. In the result, we direct the respondents to reconsider his application/prayer, give the petitioner a personal hearing and decide his application within a period of three months in the light of Section 15(2)(a) of the Navy Act, 1957 and Regulation 216(6) of the Navy Part II (Statutory) quoted above. The liberty is given to the petitioner to challenge the order of the respondents and get the instant writ petition revived."

12. Reference was made in the order dated 05.09.2019 of the AFT (PB) New Delhi in OA 264/2014 in the case of **Ex R L Yadav and another** (supra), to observations in para 18 of the order dated 11.02.2011 in the contempt applications filed against the respondents for non-compliance of directions in WP (C) 1441/2007 and WP (C) 19677/2004 and para 18 of the said order reads to the effect:-

"18. In both the cases (CONT. CAS (C) 896/2009 & CONT. CAS (C) 440/2008) more than six years service has been rendered by the petitioners as officer (the second promotion) and petitioners also attained promotion as officer. While the respondents are fully justified in not computing pension at the rank of officer for the petitioners, prima facie I am of the view that there is no justification in not granting pension to the petitioners of the highest rank as sailor, as they cleared the departmental examination

held by the department and were promoted as officers. The respondents themselves found the petitioners fit and capable of holding the rank of officer, would show that at the time of discharging the petitioners, they had certainly crossed the rank of Sea-I held by them and clearing the departmental examination cannot be considered as a disadvantage for the petitioners. The order of the Division Bench is to be read harmoniously keeping in view the grounds taken by the petitioners in the writ petition."

13. Vide paragraphs 14 to 19 of the said order dated 05.09.2019 it was observed and directed in OA 264/2014 of this Tribunal to the effect:-

"Consideration:

14. We have given careful consideration to the arguments made by learned counsel appearing for both the sides and find that the primary issue before us is, whether the applicants, who were enrolled as Sailors and subsequently promoted to Officer rank after passing departmental exams, who did not complete 20 years of minimum qualifying pensionable service as officers, but had completed over 15 years of service, the minimum qualifying pensionable service as Sailors, after clubbing their service as Sailors and Officers, should be granted pension in the highest rank they could have attained in the Sailor category viz. MCPO-I or equivalent, as claimed by the applicants, or whether they should be paid pension in the rank of Seaman-I and Electrical Artificer (Radio)-III, the ranks as Sailors they had held at the time of direct promotion to officer rank, as has been implemented by the respondents.

15. It is undisputed by both the sides that the applicants had passed the departmental exams of the Navy for qualifying for selection as officers, and they had held ranks as Acting Sub Lieutenant (Lt), Sub Lt and Lt during their service as officers in the Indian Navy viz. Eight

years in the case of ex Lt R.L. Yadav (first applicant) and six years in the case of ex Lt R.P. Yadav (second applicant).

16. Further, in keeping with various judgments rendered in case of the applicants (as well as other petitioners) and in other cases of similarly placed petitioners, more specifically, the order dated 28.10.1980 of the Hon'ble Delhi High Court in R.C. Jain v. Union of India and others (W.P (C) No. 118 of 1978) and the judgment on appeal dated 08.12.1983 of the Hon'ble Apex Court in the matter of Anuj Kumar Dey and another v. Union of India and others (1996 (10) SCC 679), as referred to/reiterated in the judgment dated 03.04.2008 of the Hon'ble Delhi High Court in W.P (C) Nos. 1441 of 2007 (Ex Lt R.L. Yadav) and 10677 of 2004 (Ex Lt R.P. Yadav) as also in the judgment dated 27.02.2009 in related Review Petitions (R.P No. 306 of 2008 and C.M No. 11650 of 2008 and C.M No. 14653 of 2008), it has been clearly articulated that the qualifying pensionable service as Sailors and the qualifying pensionable service as officers will be clubbed together to determine entitlement of pension in cases where an individual served both as a sailor and as an officer. Further, if the individual has completed less than 20 years but more than 15 years of qualifying pensionable service, including training period as an artificer apprentice and service in various ranks as sailor and officer, the officer on discharge, in cases other than dismissal from service, should be granted pension as applicable as a sailor. However, it is in this context that it has been brought up for adjudication before this Tribunal in the instant case whether the individual, in such cases, should be entitled to pension in viz. the rank he held in the sailor category at the time of his direct promotion to officer category Artificer Sailor (Sea-I equivalent) in respect of Ex Lt R.L. Yadav and Electrical Artificer Radio-III (CPO equivalent) in respect of Ex Lt R.P. Yadav, or whether he should be entitled to pension in the highest rank in the sailor category i.e. MCPO-I or equivalent, as claimed by the applicants.

17. In our opinion, the applicants had gone beyond the sailor category when they successfully qualified, as a consequence of departmental exams, to become officers. Further, they had been promoted to the rank of Lt after rendering a number of years of service as officers (over six years). Therefore, it would be unfair to bring them back to lower ranks in the sailor category, which they had held prior to their selection for officer category viz. Sea-I or CPO, when pegging them for entitlement for pension in the sailor category. Clearly, the fact that they did not pass departmental promotion exams in various ranks as sailors cannot come in their way of consideration of entitlement of pension in the senior most rank in the sailor category in a situation where the applicants are being denied pension as officers only because they did not complete the minimum combined service of 20 years for qualifying for pension.

18. It being an undisputed fact that the respondents themselves found the applicants fit and capable of holding the rank of an officer, and the applicants having held such rank for over six years in each case, and the only reason they are being denied pension as officers is that they did not complete 20 years of combined (clubbed) service, it would be only fair and just that they are paid pension in the highest rank in the sailor category viz. MCPO-I or equivalent. However, we do not find merit in their claim for pension in the rank of Honorary Lt as honorary ranks are not earned automatically on reaching the senior ranks in the sailor category, but are awarded to a few based on individual achievements during service rendered by each in the sailor category.

Ordered accordingly.

19. Resultantly, the O.A is partly allowed. The applicants are granted pension in the rank of MCPO-I from the date of discharge from service. Arrears to be paid to the applicants within a period of four months from the date of receipt of a copy of this order, otherwise it will attract interest @ 8% per annum."

14. The facts of the instant case are in *pari materia* with the facts of the case in OA 264/2014 in **Ex Lt R L Yadav** (supra), disposed of vide order dated 05.09.2019 of this Tribunal, the appeal against which has been dismissed by the Hon'ble Supreme Court vide order dated 01.08.2022, observing to the effect that, that the impugned Order of the Armed Forces Tribunal was a possible view and was eminently fair in the circumstances.

CONCLUSION

15. In the facts of the instant case where the applicant has admittedly served as a Sepoy from 09.07.1959 to 26.09.1963 and was commissioned as an Officer from 27.09.1963 to 29.06.1978 till he was compulsorily retired on 29.06.1978 with the applicant having a qualifying length of service of 17 years 05 months and 28 days in the Indian Army has essentially to be held entitled to the rank of Sub Maj, the highest rank that a sepoy can reach in the Indian Army, even though he may not be entitled to the grant of the condonation of shortfall of the qualifying length of service exceeding a year as an officer for completion of 20 years as a commissioned Officer in the Indian Army.

16. Thus, the OA 1914/2018 is **partly allowed**, and the applicant is thus directed to be granted pension in the rank of "**Sub Maj**" from the date of discharge from service i.e. 29.06.1978. However, the arrears of the grant of pension shall commence to run from a period of three years prior to the institution of the OA which was instituted on 14.11.2018.

17. The Corrigendum PPO be accordingly issued and arrears be paid within three months from the date of receipt of this order failing which, interest @ 8% would be liable to be paid by the respondents to the applicant on all arrears till the date of payment.

Pronounced in the open Court on 6 day of February, 2025.


[REAR ADMIRAL/DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

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