

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6627 of 2018

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Prem Babu Mathur, son of Late Bajrangi Mathur, Ex- Sainik No. 104551 10, Assam Rifles, resident of Village Chainpur, P.O. Chainpur, District Siwan, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through Ministry of Home Affairs, Government of India, New Delhi.
2. The Director General, Assam Rifles, Mahanideshalaya, Assam Rifles U P A O Branch (NE III) Shillong-11.
3. The District Lt. Colonel, 80-1 (Pen/NE) Mahanideshalaya, Assam Rifles U P A O Branch (NE III) Shillong-11.
4. Record Officer for SO-1 (Pen/NE) Mahanideshalaya, Assam Rifles U P A O Branch (NE III) Shillong-11.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh
For the Respondent/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

7 02-09-2020 The petitioner in this writ petition seeks directions to sanction, grant and pay pension and other retiral benefits to the petitioner after quashing the order dated 20.08.2015 and 26.02.2016 by which the Directorate, Assam Rifles rejected the request of the petitioner for grant of pension and allowing him to resume his duty.

The factual matrix of the case and the admitted facts are that the petitioner was appointed as Sainik in 10, Assam Rifles being Sainik No.104551 rank Rifle Man/GD and posted in D Company, 10 Platoon and the petitioner being appointed as



Rifle Man in Assam Rifles joined on 15.11.1988., but the petitioner himself filed petition for his discharge although the petitioner claimed that he filed petition for voluntary retirement. On such application, the Director, Assam Rifles vide Order No.31022/10/99/Adm-III/82 dated 21.01.1999 allowed the petitioner to leave the post and accordingly discharge certificate was issued to the petitioner on 13.03.1999. The petitioner was relieved from service on 30.04.1999.

Learned counsel for the petitioner submits that the petitioner filed petition for his voluntary retirement after putting 10 years 4 months and 15 days service as Rifle Man in Assam Rifles but after discharge from his service on 30.04.1999 on compassionate ground on his request to retire, the authority did not grant pension or any other pensionary benefits to the petitioner although the petitioner is entitled to get pension and pensionary benefits. The petitioner filed representation before the Home Minister but the Directorate, Assam Rifles rejected the petition of the petitioner for grant of pension according to Rule 26 of C.C.S. Pension Rules, 1972 on the ground that once a servant who has resigned is not entitled to pension vide order dated 20.08.2015 (Annexure-2). The petitioner again represented before the Home Minister to either grant pension or



allow him to join the service but the request of the petitioner again met with the same fate and the same was rejected vide order dated 26.02.2016. Learned counsel for the petitioner further submits in reply to the counter affidavit filed on behalf of the respondents that the petitioner rendered 10 years 4 months 15 days service and the effective qualifying service of the petitioner is 9 years 2 months and 11 days. As per Section 21 of Central Civil (Pension) Rules, 1972, extraordinary leave granted on medical certificate shall be counted as qualifying service provided that in case of extraordinary leave other than granted on medical certificate, the appointment authority may at the time of granting such leave, allow the period of that leave to count for the purpose of qualifying service due to inability of a government servant to join or rejoin duty on account of civil commotion or for prosecuting higher scientific and technical studies. It is further submitted that the petitioner was never informed that his extraordinary leave is non-qualifying service nor petitioner was ever informed that there is entry made in his service book to that effect. The petitioner referred a Government of India decision contained in Government of India OM No.F11 (3)-E V (A)/76, dated 28.02.1976 that all spells of extraordinary leave not covered by such specific entries will be deemed to be



qualifying service. It is further submitted that in view of Section 49(1) of CCS (Pension) Rules, a government servant retiring in accordance with the provisions of these rules before qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. It is submitted that Section 26 of the CCS (Pension) Rules, 1972 does not apply in the case of the petitioner as the petitioner did not resign.

The answering respondents filed counter affidavit and contested the claim of the petitioner that the petitioner was enrolled in Assam Rifles on 15.11.1988. He was posted to 10 Assam Rifles after completion of his basic military training but he had applied for discharge from his service at his own request on compassionate ground vide his application showing unwillingness to continue in service due to domestic problems on 30th October, 1997, (Annexure-R2-4/1) of the counter affidavit. It is submitted that from bare perusal of the request letter of the petitioner, it would appear that the petitioner did not seek any voluntary retirement from service rather he requested for discharge from his service on the ground of family conditions. The petitioner stated in his petition that he put him



only 9 years of service and he has got no good record. He has already been punished thrice and if he was convicted for the fourth time on account of dereliction of duty, he would be dismissed from service and on such he sought resignation/discharge from his service. The application of the petitioner was considered on its own merit and finding his request as genuine, he was discharged from service on 30.04.1999. Till then he had completed 10 years 5 months and 15 days service but qualifying service is 9 years 2 months and 11 days in Assam Rifles and, therefore, he is not entitled to get any pension or pensionary benefit. It is further submitted that although the Commandant received the application of the petitioner on 30.10.1997 for his resignation/discharge from service but it took sometime as the Commandant made enquiry with regard to genuineness of the family condition of the petitioner and when it was found genuine, his request for resignation/discharge was accepted.

Learned counsel for the respondents further submits that the petitioner was discharged from service on 30.04.1999, but he made application only in the year 2015 that too before the Home Minister and when his request was refused, the petitioner again filed another representation before the Home Minister



either to grant pension or to allow him to rejoin his service. The authority examined the case and found that both the requests of the petitioner is not acceptable and cannot be acceded in view of Rule 26 of Central Civil Service (Pension) Rules, 1972. Learned counsel for the respondents annexed number of judgments, Annexure-R2-4/7 to R2-4/9, in order to canvass that the petitioner had already resigned from the service before completing qualifying service and in view of the Central Civil Service (Pension) Rules, 1972, the petitioner is not entitled to get pension or retiral dues. It is further submitted that the petitioner moved this Court after 16 years from the date of his discharge at Assam and filed the present writ petition only after 20 years in Patna High Court whereas no part of action arose in the jurisdiction of Patna High Court. On the ground of limitation also, the writ petition is not maintainable.

On the basis of the submissions of both sides, I am of the view that the first question arises for consideration is whether the petitioner applied for voluntary retirement or tendered his resignation or discharge from his service on the ground of inability to continue in Assam Rifles? On this question, the claim of the petitioner is based. The petitioner filed petition to Director General, Assam Rifles on 30.10.1997 for his



discharge from service. The subject of the letter of the petition is सेवा निवृत्त हेतु प्रार्थना पत्र. In the contents of the application, it appears that the petitioner himself wrote that his father died in the year 1993. His mother is mentally ill and his wife could not pull on well with his mother. His wife is living separately and she fell ill. For such reasons he sought relieving from the service after completing 9 years of service in Assam Rifles. He further disclosed that during 9 years of service, his record is poor and he was convicted thrice according to rule. If he is convicted fourth time, he would automatically be dismissed from service and he requested for discharge from service. From perusal of Annexure-R2-4/2, it appears that the petitioner also gave undertaking that in the event of his discharge at his own request on extreme compassionate ground being sanctioned, he shall not be entitled to any pensionary benefits, i.e., pension and gratuity for his service rendered in Assam Rifles. Only thereafter the authority sent his application to the District Magistrate, Siwan for verification of the grounds mentioned in the application of the petitioner. When the District Magistrate, Siwan found the condition of the family of the petitioner true, he sent the report and thereafter the petitioner was discharged from service.

From perusal of Annexure-R2-4/2, the undertaking



given by the petitioner, it appears that the petitioner himself gave undertaking that in the event of his discharge at his request on compassionate ground, he would not be entitled to get any pensionary benefit and on such condition the authority processed his request for discharge from service and accordingly, the petitioner was discharged from service on 30.04.1999. Consequently discharge certificate was also issued. The petitioner kept silent for more than 16 years and did not dispute this fact that the petitioner did not file any petition for his discharge or resignation from his service rather he made request for his voluntary retirement from service and silence of the petitioner for more than 16 years from the date of his discharge and the fact that the petitioner did not raise any objection that he did not seek discharge or resignation from service rather he sought voluntary retirement cannot be accepted at this belated stage. The undertaking of the petitioner itself made it amply clear that the petitioner prayed for his discharge/resignation from service.

Rule 26 of Central Civil Service (Pension) Rules, 1972 reads as follows:

“26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past



service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to



taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.”

Sub-rule (1) of Rule 26 of Central Civil Service (Pension) Rules, 1972 clearly stipulates that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. Sub-rule (4) deals with regard to withdrawing the resignation in the public interest and it stipulates that from the date of resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days and, therefore, the second petition of the petitioner for allowing him to resume the duty is hopelessly beyond the period allowed for withdrawing the resignation, therefore, I find that the petitioner voluntarily sought discharge from his service and he was knowing fully well about the facts that on his request he was discharged from his service on 30.04.1999, therefore, he kept mum for more than 16 years and only thereafter the petitioner filed the petition for grant of pensionary benefits disputing the



fact that he filed petition for voluntary retirement not the petition for discharge or resignation and which have in my view rightly been rejected.

So far as the second contention that the petition is hopelessly barred by limitation, there is no period prescribed under Article 226 of the Constitution of India but the petition under Article 226 of the Constitution of India must be entertained within a reasonable time. No cogent reason has been disclosed for delay of 16 years before filing the petition for grant of pension that too on the ground that he filed petition for voluntary retirement or against the fact that the petitioner himself undertook that if he is discharged from service, he would not be entitled to get any pensionary benefits, and, therefore, the writ court does not ordinarily exercise its extraordinary discretionary jurisdiction when there is a gross delay on the part of litigants and belated interference would unsettle the settled matters and thus, I find on this ground that there is no ground to interfere with the orders rejecting the request of the petitioner.

On the ground of lack of territorial jurisdiction of this Court raised by the learned counsel for the respondents, it appears that this Court by order dated 03.12.2018 held that in



view of the decision rendered in the case of Saryu Singh vs. Union of India, reported in 2015 (2) PLJR 256, since the petitioner is claiming retiral benefits and the petitioner is resident of village Chainpur, District Siwan, the writ petition is maintainable and against this order the respondents did not file any petition before the appropriate court. Hence, the objection of the respondents is not tenable.

In view of the discussions made above, I find no merit in the writ petition. Accordingly, the writ petition is dismissed.

(Prabhat Kumar Jha, J)

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