



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1981 OF 2023

Lt Nitin s/o Jagdishchandra Pande, Officer-in-Charge, ECHS Polyclinic, Nagpur

-VS-

Managing Director, Central Organisation, ECHS AG Br. Delhi Cantt and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Nitin J. Pande, petitioner in person.

Shri N. S. Deshpande, Deputy Solicitor General of India for respondent No.3.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : 26th July, 2023

ORDER IS PRONOUNCED ON : 5th September, 2023

P. C.

The petitioner served as a Commissioned Officer in the Indian Navy from 16/08/1982 to 31/07/1990. On the basis of the service rendered, the petitioner received terminal gratuity. Thereafter for the period from 18/03/2008 to 29/02/2020 the petitioner served as Zilla Sainik Welfare Officer. Being an ex-serviceman (ESM), the petitioner was appointed as Officer-in-charge (OIC) ECHS Polyclinic, Nagpur from 03/04/2021. By the communication dated 15/12/2021 in the matter of eligibility for appointment of OIC ECHS Polyclinic, only retired Service Officers from the Indian Navy, Army and Indian Air Force were considered eligible subject to they drawing pension from Defence Estimates through Controller of Defence Accounts (CDA). The petitioner sought clarification in the matter vide communication dated 03/10/2022. According to the petitioner, the amount of gratuity

received by a retired Officer was also part of pension. The Head Quarters, Maintenance Command sought clarification in the said matter on 21/12/2022 as to whether ESMs who had got their amount of gratuity from Defence estimates through CDA were also eligible for appointment as OIC since gratuity was also considered as pension. In view of Notification dated 20/12/2021 by virtue of which the Central Civil Services (Pension) Rules, 2021 (for short, the Rules of 2021) came to be published, the same indicated that the term “pension” was defined by Rule 3(t) as under :

3(t) “Pension” includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief.”

Since the candidature of the petitioner for appointment as OIC was not considered eligible as the petitioner was not drawing pension from Defence estimates through CDA, the petitioner has filed the present writ petition seeking a direction that the existing provision in the matter be amended so as to include gratuity in the definition of pension so as to enable the petitioner to be treated as eligible for appointment as OIC. Since an advertisement was issued on 03/06/2023 during pendency of the present proceedings, the writ petition has been amended and a challenge to the same has also been raised on that count.

2. The petitioner in person submits that having received the amount of gratuity pursuant to the service rendered as Commissioned Officer and as the term 'Pension' includes gratuity except when such term is viewed in contradistinction to gratuity, it ought to be held that the petitioner is eligible to seek appointment on the post of OIC. In the employment notice for the appointment of OIC Polyclinic, minimum qualification prescribed was therefore satisfied by the petitioner since he was a retired Service Officer from the Indian Navy and had received gratuity which was otherwise considered as pension from Defence estimates. It was submitted that the requirement prescribed by the employment notice that only those Service Officers who were drawing pension from Defence estimates through CDA were eligible was violative of Article 14 of the Constitution of India. It was thus submitted that the respondents were not justified in restricting the eligibility criteria only to those Service Officers who had retired and were drawing pension from Defence estimates through CDA. The petitioner also was liable to be treated as eligible in that regard.

3. The learned Deputy Solicitor General of India for the respondents opposed aforesaid submission. According to him in view of the service rendered by the petitioner, he was granted terminal gratuity. To be eligible to receive pensionary benefits, the service to be rendered was for 20 years. As the petitioner did not render such service, he was not entitled to receive pension. In this regard attention was invited to

the Navy (Pension) Regulations, 1964 (for short, Regulations of 1964) wherein it was stated that the minimum service required for qualifying for pension was 15 years in case of late entrants and 20 years in other cases. The total service rendered by the petitioner as a Commissioned Officer was 7 years 11 months and 15 days. It was further pointed out that the Pension Payment Order of the petitioner was drawn by the office of the Accountant General (A & C)-II Maharashtra in the capacity as District Sainik Welfare Officer. For this reason it could not be said that the petitioner was drawing pension from Defence estimates through CDA. The eligibility of the petitioner had been duly considered and it was found that since the petitioner was not drawing pension from Defence estimates, he was not eligible for being appointed on the post of OIC Polyclinic.

4. We have heard the petitioner in person as well as the learned Deputy Solicitor General of India for the respondents and we have perused the documents placed on record. The eligibility criteria prescribed for appointment as OIC Polyclinic vide Paragraph 4(a) of the communication dated 15/12/2021 reads as under :

Para 4(a) “ Only retired Service officers from Indian Army, Indian Navy and Indian Air Force and should be drawing pension from Defence estimates through CDA.”

5. It is not in dispute that the petitioner was granted terminal

gratuity for the service rendered by him as a Commissioned Officer which was for the duration of 7 years 11 months and 15 days. The Pension Payment Order of the petitioner indicates that he is receiving pension and other retirement benefits through the office of the Accountant General (A & C) II Maharashtra. In other words, the petitioner has not received or is not receiving pension from Defence estimates through CDA. This is for the reason that under the Navy Regulations of 1964, the qualifying service for receiving pension is 15 years in case of late entrants and 20 years in other cases. It is on this basis that the petitioner seeks to rely upon Rule 3(t) of the Rules of 2021 to urge that since the expression "Pension" is stated to include gratuity, the petitioner is liable to be held eligible since he has received the amount of gratuity. We find that the expression "gratuity" has been separately defined by Rule 3(o) of the Rules of 2021. Under Rule 3(t) though pension includes gratuity, it has been clarified that this is so only when the term pension is used in contradistinction to gratuity. Paragraph 4(a) which prescribes the eligibility for appointment of OIC Polyclinic specifically requires a retired Service Officer to be drawing pension from Defence estimates through CDA. When this requirement has been clearly indicated that pension should be drawn from Defence estimates through CDA, that requirement cannot be diluted by holding that since Rule 3(t) refers to pension being inclusive of gratuity, those Service Officers who have received gratuity but have not received pension from Defence estimates should also be held eligible. It is found

that the requirement as prescribed by Paragraph 4(a) is specific and the term 'pension' reads therein is in contradistinction to gratuity. In other words, the emphasis is specifically on drawing pension from Defence estimates through CDA. Said requirement being specific, the intention is clear and a Service Officer not drawing such pension from Defence estimates through CDA would not be eligible for the post of OIC Polyclinic. The response given by the Headquarters Maintenance Command in that regard is clear and the petitioner cannot be held to be eligible to be considered for appointment as OIC Polyclinic.

6. It may be noted that though the petitioner was appointed as OIC Polyclinic, Nagpur on 01/04/2021, the issue with regard to eligibility arose in view of the modification in Paragraph 4(a) vide communication dated 15/12/2021. The petitioner was granted an extension of his engagement for another year from 01/04/2022 to 31/03/2023. However, since the petitioner was so engaged on the basis of earlier Qualitative Requirement and as a short period of 7 months was left for his tenure to end, his engagement was continued till 31/03/2023. It is thereafter that a fresh employment notice came to be issued by the respondents. It is thus clear that the eligibility of the petitioner has been decided in accordance with Paragraph 4(a) and Rule 3(t) of the Rules of 2021 cannot be interpreted to mean that terminal gratuity received by the petitioner for his service of 7 years 11 months and 15 days would entitle him to claim that he was eligible to seek

appointment on the post of OIC Polyclinic since the term 'pension' includes gratuity.

In view of aforesaid discussion, we do not find that any relief can be granted to the petitioner. The Writ Petition is thus dismissed with no order as to costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)