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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th April, 2023

+ **W.P.(C) 3906/2022 & CM APPL. 11617/2022**

GAYA PRASAD MISHRA

..... Petitioner

Through: Ms. Mamta Sharma, Advocate (M:
9971002686).

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. J.K. Tripathi, SPC for UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - Mr. Gaya Prasad Mishra had joined the Indian Army on 22nd November, 1961 as Sepoy No. 2950232. He was posted in War-Zone between 29th November, 1962 to 20th July, 1963. Unfortunately, due to his medical condition, he was discharged from the services on 17th March, 1965 with a `very good` track record.
3. The present petition relates to canteen facilities provided by the Respondent No.1 - Union of India/Canteen Stores Department, to the Petitioner in the year 2010, in terms of the notification dated 10th March, 2005 read with notification dated 8th May, 2007. The said two notifications are set out herein below:

***“CSD FACILITY : LIST OF ENTITLED
PERSONNEL***

1. *Reference your OM NO. 5(1) / QB-03 dated
08 Feb 2005.*

2. As desired, a consolidated list of entitled categories of personnel for canteen facilities is forwarded herewith.

Xxxxx

S. No.	Category	Authorised when
1.	Ex-Servicemen	i) Retires at own request (should have minimum 5 year of Services) ii) Released from service honourably as a result of reduction in establishment or after completion of specific period of engagement or on medical ground attributable to Military service.

Xxxx

Notification dated 8th May, 2007

CANTEEN FACILITIES TO EX-SERVICEMEN

1. A large number of cases are being received by this Directorate pertaining to Ex-Servicemen, who have not completed minimum five years of service honorably before being discharged. As per the policy in vogue, Ex-Servicemen should have served for minimum five years to be eligible for canteen facilities. Policy also states that canteen facilities are authorized to individuals discharged on medical grounds attributable to military service with no stipulation of length of service rendered.

2. Most of these representations are veterans who were being given these facilities so far. However, since the introduction of Smart Card, they have been denied these facilities. This includes EC officers who were released prior to completion of five years service and some Jawans who were released on Govt orders.

3. The matter has been examined and it has been decided to extend CSD facilities including liquor to the following:

a) Officers/PBOR who have been released under Govt. orders (e.g. EC Offr, Soldiers of WW II).

b) EC Officers who had been absorbed into other Govt. Departments as part of rehabilitation package.

4. The categories mentioned at Para 3(a) and (b) should forward their application along with their discharge papers duly recommended by the Station HQ of canteen on which they wish to be dependent, directly to the office of the DDGCS.

5. Any other deserving case not covered at Para 3 above can also be similarly forwarded after recommendation of Station HQ for sanction.

6. This has the approval of QMG. Our letter No.96003/Q/DDGCS dated 07 Feb. 2007 may please be cancelled."

4. The Petitioner was awarded canteen services along with liquor services on 3rd July, 2010 for a period of 10 years. A Smart Card was also issued to the Petitioner in 2010. However, he made a renewal application dated 8th April, 2021, which was rejected vide letter dated 6th September 2021. The said letter dated 6th September 2021 is set out herein below:

**“FWD APPLICATION OF CANTEEN SMART
CARD R/O NO 2950232 EX SEP GAYA
PRASAD MISHRA**

1. Ref. your letter no. 332/DSWO/Wel/Canteen/2021/313 dt 27 Aug 2021

2. As per Para 2 a (i) and (ii) of CS Dte Letter No. 95350/Q/DDGCS/Policy/2018 dated 23 Mar 2018 (copy enclosed), Armed Forces personnel who have put in minimum five years of physical service and have been honourably discharged/resigned from service or are getting pension/disability pension from Defence Services Estimate are entitled for canteen facilities.

3. As per mention above Para (2), indls have neither completed five years of minimum service nor are they a pensioner. Hence, indls are not entitled for canteen facilities.”

5. The same was again reiterated by Respondent No.2- Canteen Services Directorate vide letter dated 17th December, 2021. Ld. counsel for the Petitioner relies upon the judgment of the Kerala High Court in ***Union of India v. All Kerala Ex-GREF and Family Welfare Association District Committee*** [1998 (3) L.L.N 625] to submit that once canteen service is made available to army personnel, the same ought not to be withdrawn.

6. Ld. counsel for the Respondents, on the other hand, submits that in terms of the notification dated 10th March, 2005, it is only if the ex-serviceman has a minimum of 5 years’ service, that they are entitled for canteen facilities. The relevant portion of the counter affidavit is set out herein below:

“4. That the Petitioner is not entitled to the relief claimed as the relief does not fall under the policy made by the respondents/department. As per

policy i.e. CS DTE letter no 96003/Q/DDGCS dt. 10/03/2005, the following personnel are entitled to canteen facilities.

(a) Ex-servicemen retire at their request (should have a minimum of 5 years of service).

(b) Released from service 17/03 1965. As the Petitioner was discharged at this request and did not complete/rendered a minimum of 5 years of service, hence he is not entitled to canteen facilities.

5. That the Petitioner has joined/enrolled with the Indian Army as Ex Sepoy no2950232 on 22/11/1961 and discharged on extreme compassionate grounds on 17/03/1965. Thus, the total service rendered by the personnel was 3 years and 145 days only. In that manner, the Petitioner does not fulfill the criteria settled by the department.”

7. Heard. A perusal of the petition in the present case would show that the facts in respect of the Petitioner's service are not in dispute. In fact, in the writ petition in paragraph 4, a specific stand has been taken to the following effect.

“4.1 That Petitioner joined Indian Army on 22.11.1961 as Sepoy, No. 2950232.

4.2 That Petitioner was posted at war zone between 29.11.1962 –20.07.1963.

4.3 That Petitioner was discharged from service dated 17.03.1965 with a “Very Good” track record remark under Section 13 (3) (iv) on extreme compassionate grounds due to medical conditions of the petitioner.

A Copy of Petitioner's Certificate of Service is annexed herewith as Annexure P-3."

8. In response to this, the counter affidavit states as under:

"4.1 & 4.2 That the contents of para no 4.1 & 4.2, need no comment being personal averments.

4.3 In reply to para no.4.3, it is submitted that the petitioner was enrolled in the Indian army on 22/11/1961 & was discharged from services on 17/03/1965 under extreme compassionate grounds & he had rendered the services with the Indian army for 3 years & 145 days."

9. A perusal of the above would show that it was only on extreme compassionate grounds that the Petitioner had to be discharged due to medical conditions, after having served in a War-Zone. It was due to this reason, that the Petitioner could not complete the minimum requirement of five years of service.

10. Considering the fact that the Petitioner had served in the war zone in the year 1962-1963 and in terms paragraphs 3 and 5 of the notification dated 8th May, 2007, reproduced above, in the opinion of this Court, the present is a deserving case, where the canteen services of the Petitioner ought not to be discontinued.

11. Moreover, the Petitioner is 81 years of age and has enjoyed the said canteen services for the last several years. Under such circumstances, discontinuation of services would not be justified considering the seniority of the Petitioner and fact that he had served in the war zone. Under these circumstances, as an exceptional and deserving case, the Petitioner's canteen services are directed to be reinstated.

12. Let the renewal of smart card and other formalities be completed by Respondent No. 1- Union of India and Respondent No. 2-Canteen Stores Directorate within 4 weeks.

13. The petition, along with all pending applications, is allowed in the above terms.

**PRATHIBA M. SINGH
JUDGE**

APRIL 6, 2023/dk/dn

