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W.P. No.1896 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.11.2024

DELIVERED ON: 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.1896 of 2024

Ex Hony Nb Sub M Chelladurai
(S.No.10452492-K)

.. Petitioner

Vs

1.Union of India Represented by its
Secretary to Government of India,
Ministry of Defence, South Block,
New Delhi - 110 011.

2.Chief of Army Staff,
Army Head Quarters (AHQ),
Defence Head Quarters (DHQ),
Integrated Head Quarters (IHQ),
New Delhi – 110 011.

3.Principal Controller Defence Accounts (Pension),
Droupatighat, Allahabad, U.P. PIN – 211 014.

4.The Officer i/c Records, Brigade of The Guards
Pin -900 746, C/O 56 APO

..Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the passing of the order in O.A. No.267 of 2018 dated 01.11.2022 by the learned referred third Member (J) of the Armed Forces Tribunal Principal Bench, New Delhi confirming the order in O.A. No.267 of 2018 dated 28.02.2019 by the learned Member (A) of the Armed Forces Tribunal Regional Bench Chennai on the file of the Armed Forces Tribunal Regional Bench Chennai and quash the same consequently, allow the O.A. as prayed for.

For Petitioner : Mr.M.Selvaraj

For Respondents : Mr.K.Ramanamoorthy

ORDER

(Order of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The writ petitioner challenges the order passed by the Armed Forces Tribunal in O.A.No. 267 of 2018 dated 01.11.2022.

2. We have heard Mr.M.Selvaraj, learned counsel for the writ petitioner and Mr. K.Ramanamoorthy, learned counsel for the respondents.



3. The learned counsel for the writ petitioner would submit that the OA was originally filed before Armed Forces Tribunal Regional Bench Chennai and the Judicial Member taking a considerate view directed payment of service pension to the writ petitioner within a period of 3 months. However, the Administrative Member differed with the Member Judicial and passed a separate order holding that the petitioner does not qualify for treating his reckonable service as 14 years and therefore found that he is ineligible for pension.

4. According to the learned counsel for the petitioner, the matter was referred to the Armed Forces Tribunal, Principal Bench Delhi, and the impugned order came to be passed accepting the view of the Administrative Member that since the appellant had put in service of only 13 years 7 months and 13 days, he was not entitled to even rounding of to 14 years and consequently, he was not entitled to be treated as having put in reckonable embodied service as 15 years to entitle him to pension.

5. The learned counsel for the petitioner would further submit that the



petitioner had rendered 13 years and 225 days of embodied service in the Territorial Army and for the purposes of pension of a Territorial Army person, it is only the Army Pension Regulations of 1961 which would have to be followed. Therefore, the learned counsel for the writ petitioner would pray for the writ petition being allowed, accepting the original order passed by the Judicial Member of the Armed Forces Tribunal, Regional Bench, Chennai that on compassionate grounds and principles of natural justice, the shortfall of 1 year and 140 days would have to be condoned and rounded off.

6. Per contra, the learned counsel for the respondents would submit that the writ petitioner was originally enrolled in the Territorial Army on 28.03.1988 and thereafter, he was transferred to the pension establishment on 31.03.2008 and in terms of the engagement, he had completed only 13 years and 225 days of embodied service. According to the learned counsel for the respondents, unless the petitioner has completed the 15 years of embodied service, he would not become entitled to pension.

7. The learned counsel would also place reliance on the decision of the



Hon'ble Supreme Court in *Union of India and Another vs Surendar Singh*

Parmar, reported in (2015) 3 SCC 404, where the Hon'ble Supreme Court

held that in calculating length of service, fraction of a year equal to 3 months and above but less than 6 month shall be treated as completed one half year for reckoning qualifying service. In the said case before the Hon'ble Supreme Court, the person concerned was in the Indian Navy and he had rendered 13 years 10 months and 13 days service. He would also place reliance on the Pension Regulations of the Army 2008, Part I, Annexure IV & V, according to which "all Territorial Army Personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15 years in the case of Personnel Below Officer Rank, shall be eligible for Service pension" and as per Para 44 (i) of Pension Regulations for the Army 2008 (Part I) (Annexure V) "The deficiency in service for eligibility to pension/ gratuity may be condoned upto 12 months in each case by competent authority, except in the case of an individual who is discharged at his own request".

8. The learned counsel for the respondents, relying on these Regulations, would submit that the petitioner had a shortfall of 1 year and



140 days of embodied service and therefore, he was not entitled to service pension.

9. We have considered the rival submissions advanced by the learned counsel on either side. We have also perused the materials available on record.

10. The petitioner had put in a service of 20 years and 3 days in all. However, out of it, only 13 years and 225 days was in the embodied service and the remaining period of 6 years and 147 days was in the unembodied service. The only question that remains to be answered is as to whether the Pension Regulation for Army, 1961 makes a distinction between “embodied service and unembodied service” according to the Pension Regulation for Army, 1961. According to the petitioner, the Pension Regulations do not make any such distinction and therefore, whether the petitioner served in the Territorial Army or not he would be entitled to pension. If this argument is accepted, the shortfall for 15 years pensionable service would only be 50 days, after factoring the permissible 12 months.



11. Per contra, it is the case of the respondents that the 15 years service is contemplated to be eligible for pension should be only in the embodied service and that being the case, the shortfall is 1 year and 140 days. On a perusal of the Pension Regulations, it is clear that for all Territorial Army Personnel, below the rank of Personnel Officer are required to have a minimum qualifying embodied service of 15 years to be eligible for service pension and in terms of para 44 (i) of the Pension Regulations of the Army 2008 Part I, Annexure V, any deficiency in service for eligibility for pension/gratuity may be condoned up to 12 months by the competent authority, except in the case of an individual who is discharged at his own request.

12. It is seen from the records that the petitioner was discharged from service on 31.03.2008 after rendering a total 20 years and 3 days service which included only 13 years and 225 days of embodied service. Therefore, the shortfall is clearly 1 year and 140 days and the power to condone being a maximum of 12 months, the petitioner is not entitled to the benefit of condonation available in para 44 (i) of Pension Regulations as well.



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13. The said aspect has been thoroughly gone into by the Armed Forces Tribunal, Principal Bench of Delhi to whom the matter was referred in view of divergent views by the Judicial and Administrative Member of the Army Tribunal at Chennai and the Principal Bench of the Armed Forces Tribunal has rightly applied the dictatum of the Hon'ble Supreme Court in *Surendar Singh Parmar's case* (referred herein supra) and held that the applicant had rendered only 13 years, 7 months and 13 days and therefore, he did not even qualify for treating his reckonable service as 14 years which alone would have further qualified him for condonation of one year period as contemplated under the Regulations.

14. We do not see any error or infirmity in the findings arrived at by Armed Forces Tribunal Principal Bench, New Delhi which has rightly applied the statutory provisions to the facts on hand and also the ratio of Hon'ble Supreme Court in *Surendar Singh Parmar's case* (referred herein supra).

15. In view of the above, we are unable to accept the contentions of the writ petitioner that the sympathetic view taken by the Judicial Member of



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the Armed Forces Tribunal Regional Bench, Chennai should prevail over the dissenting opinion of the Administrative Member which was upheld by the Armed Forces Tribunal, Principal Bench, New Delhi.

16. In fine, the Writ Petition is dismissed. No costs.

(D.K.K.J.,) (P.B.B.J.,)

20.11.2024

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order
rkp

To

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2.Chief of Army Staff,
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Pre-delivery Order in

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