



CWP-29773-2024

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-29773-2024
Reserved on: 18.11.2024
Pronounced on: 13.12.2024

UNION OF INDIA AND ORS.Petitioners
Versus

NO. 14472219 EX. HAV ASHOK KUMAR AND ANR.
.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ashish Chaudhary, Sr. Panel Counsel
for the petitioners/UOI.

Mr. Ravi Badyal, Advocate for respondent No.1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner(s)-Union of India, prays for the setting aside of the order dated 05.02.2019 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned (hereinafter for short called as the 'Tribunal'), whereby the claim of respondent No.1 for the grant of the service element of the disability pension was allowed.

Factual Background

2. Respondent No.1 was initially enrolled in the Army (Artillery Regiment) on 28.01.1981 and discharged therefrom on 28.02.1997 after rendering 15 years, 01 month and 04 days of qualifying service, for which, he was granted service pension for life. Thereafter, respondent No.1 enrolled into Defence Security Corps (DSC) on 29.04.1999 for a term of 10 years. At the time of his re-enrolment, he did not opt to count his former service towards DSC



CWP-29773-2024

[2]

diagnosis of “Primary Hypertension”, he was not granted further extension of service and was discharged therefrom on 30.04.2009 after rendering 10 years and 02 days of service. The respondent was entitled to disability pension consisting of service element and disability element @50% against 30% disability w.e.f. 01.05.2009. However, he was granted disability element @30% which has been rounded off to 50% for life vide order dated 11.03.2017 passed by the Armed Forces Tribunal concerned.

3. Feeling aggrieved, respondent No. 1 filed O.A., before the Armed Forces Tribunal concerned, for grant of service element of disability pension. The said O.A., became allowed vide order dated 05.02.2019. The operative part of the said order is extracted hereinafter.

“.....The mere fact that the applicant was in receipt of pension of the first spell of the Army service cannot be a ground to refuse him the disability pension for the second spell in the DSC service. Our views find support from the judgment of this Tribunal rendered in O.A. No.146 of 2010 titled as Parbu Ram Vs. U.O.I. and others decided on 23.04.2010.....”

4. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner(s)-Union of India has filed thereagainst the instant writ petition before this Court.

Arguments of the learned counsel for the petitioner.

5. The learned counsel for the petitioners submit that the learned Tribunal has failed to harmoniously interpret the relevant pension regulations, as the same are only applicable to calculate pension in case of personnel who are invalided out and not to those



CWP-29773-2024

[3]

who are discharged on completion of terms of engagement or on some other grounds. The said Regulations do not mandate payment of both disability element and service element, as both are independent of each other and are separately granted on completion of respective conditions necessary to earn the same.

The relevant pension regulations are extracted hereinafter:-

“Pension Regulations for Army, 1961

132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years.”

266. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where they are inconsistent with the provisions of the regulations in this Chapter.”

“Pension Regulations for Army, 2008

47. Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.”

173. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same Regulations as are applicable to Personnel below Officer Rank of the Army, except where they are inconsistent with the provisions of the Regulations in this Chapter.”

6. The learned Counsel for the petitioners submit that the Tribunal while allowing the O.A. (supra) had wrongly interpreted the provisions (supra) by taking Regulation 179 of the Pension Regulations



CWP-29773-2024

[4]

for the Army, 1961 in isolation. The said regulation 179 is extracted hereinafter:-

“179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 percent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

Inferences of this Court.

7. In the said regard, it is relevant to refer to a verdict rendered by the learned Tribunal concerned in case O.A. No. 324 of 2016 titled as **Om Parkash Guleria Vs. Union of India & Ors,** decided on 10.08.2018, wherein a similar question was put forth before the Tribunal concerned, that ***'whether the applicant who was in receipt of army pension at the time of his re-enrollment in the DSC, is entitled to the disability pension in the DSC service also ?'*** The learned Tribunal concerned after considering the relevant regulations observed that in terms of Regulation 179 of the Pension Regulations for the Army, 1961, *the applicant was entitled to disability pension consisting of service element as well as disability element.* Further, the Tribunal also observed that *the mere fact that the applicant was in*



CWP-29773-2024

[5]

him to become an able recipient of the component of disability pension thus for the second spell of service in the DSC. The said verdict was challenged by the Union of India before the Hon'ble Supreme Court and the same was upheld by the Apex Court in its verdict rendered in case titled as **Union Of India & Ors. Vs. Om Prakash Guleria**, decided on on 27 August, 2021, to which Civil Appeal No. (Diary No. 9346 of 2021) became assigned. The relevant paragraphs, as occur in the said verdict are extracted hereinafter.

*“2. Besides the delay of 515 days in filing the appeal, which has not been satisfactorily explained, even on merits, we find no error in the judgment dated 10 August 2021 of the Armed Forces Tribunal. **The Tribunal has correctly construed the provisions of the pension regulations and the ultimate conclusion, entitling the respondent to the service element of the disability pension and the benefit of rounding off, does not suffer from any error.***

3. The Civil Appeal is, therefore, dismissed on the ground of delay as well as on merits.”

8. The learned counsel for the petitioners further submits that in the DSC service, a minimum service of 15 years was required rather to earn service pension, whereas, respondent No. 1 had rendered only 10 years and 02 days of service with the DSC whereafter, he was not granted further extension of service.

9. However, yet the said non rendition of the supra qualifying period of service in the DSC but would not dis-entitle the present respondent, to become an able recipient of the component of disability pension, thus consisting of both service element of DSC service as well



CWP-29773-2024

[6]

respondent for his service in the DSC, thus being construed to be the apposite qualifying service, thereupon, though he was required to be completing the requisite period of 15 years, rather for his becoming entitled for service pension. However, when during the period of his serving in the DSC, he acquired a disability which has been stated to arise from rendition of military service or the same being attributable to or aggravated by military service, thereby the said entailment of a disability, thus during the spell of the present respondent serving in the DSC, whereafter he became debarred to become granted any further extension in the DSC service, rather when he was required to be invalided or discharged from service, as aptly done in the instant case.

10. If so, since the above impediment, did well estop the present respondent, rather to earn the requisite period of qualifying service, for thereby his becoming entitled for the apposite service pension. As such, when his service neither became extended nor when he become discharged on ground of some proven mis-conduct. Contrarily, when merely on account of disability(supra), as became entailed upon him, that too, evidently during the phase of his rendering military service, that he became precluded to complete the supra qualifying period, rather for his thereby earning service pension, for his rendering service in the DSC. Resultantly, the inability of the present respondent to complete the qualifying period of service in the DSC, thus cannot stand in the way of his becoming endowed the benefit of service pension, hence even for the term of 10 years, and 02 days of service rendered in the DSC, reiteratedly merely on the premise that he



CWP-29773-2024

[7]

had not completed the apposite 15 years of qualifying service in the DSC.

11. Therefore, in terms of the expostulations of law (supra) rendered by the Hon'ble Apex Court in case titled as **Union Of India vs Om Prakash Guleria**, respondent No.1 was entitled for service element of DSC service besides of the disability element thereof, as aptly done by the Tribunal concerned.

12. Further, since in terms of the judgment rendered by the Apex Court, in case titled as '***Union of India Vs. Ram Avtar***', reported in ***2014 SCC Online 1761***, wherein, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. Resultantly also thereunders an indefeasible right became vested in the present respondent for his seeking qua the apposite roundings off being made in his favour.

13. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, therebys, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the concerned, thus to at any time seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

Final Order of this Court.

14. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.



CWP-29773-2024 [8]

15. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

16. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

13.12.2024
Anjal*

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No