

SUPREME COURT OF INDIA

U.O.I.

Vs.

Surender Singh Parmar

C.A.No.9389 of 2014

(Sudhansu Jyoti Mukhopadhaya and N.V. Ramana JJ.)

20.01.2015

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA,J

1. The appellants have preferred this appeal against orders dated 19th November, 2013 and 5th March, 2014 passed by the Armed Forces Tribunal, Principal Bench at New Delhi in O.A. No.401 of 2013 and R.A No.11 of 2014 with M.A No.120 of 2014 in O.A. No.401 of 2013 respectively. By the impugned order dated 19th November, 2013, the Tribunal allowed the original appeal filed by the respondent and held that the respondent rendered actual service to the extent of 14 years by rounding off, which makes him eligible for consideration of condonation of shortfall of pensionable service of one year and in view of striking off of Rule 82(a) the respondent cannot be denied the benefit of condonation of shortfall in service on the ground that he took the discharge from service voluntarily on his own request. Therefore, the Tribunal declared that the respondent shortfall in service stands condoned in the facts of the case and directed the appellants to calculate the total benefit of pension within a period of three months and to pay the amount. By the impugned order dated 5th March, 2014, the Tribunal dismissed the review application against its earlier order and rejected oral plea for leave to appeal before this Court.

2. The factual matrix of the case is as follows:-

The respondent joined the Indian Navy on 12th August, 1971 and after rendering 13 years, 10 months and 13 days service sought his retirement on compassionate ground upon which he was released from service on 24th

June, 1985. The minimum qualifying period for pensionable service is 15 years. There is a provision in the Navy (Pension) Regulations 1964 for condonation of shortfall in service, initially it was for six months and subsequently the condonation was made permissible for one year. The respondent claimed that he was entitled to the benefit under the said Regulations and the Government of India Instructions dated 30th October, 1987. The appellant denied the said benefit to the respondent vide order dated 14th August, 2001.

3. The respondent initially approached the High Court of Delhi by filing Writ Petition (C) No.12507C of 2004. It was pointed out before the High Court that the Division Bench of the Bombay High Court in Writ Petition No.430 of 2005 titled Gurmukh Singh v. UOI vide judgment dated 22nd November, 2006 declared the Navy (Pension) Regulation 82 (a) as null and void being ultra vires to Article 14 of the Constitution of India. Regulation 82(a) provided that the benefit of condonation of shortfall in pensionable service shall not be applicable to the case in which a sailor got the discharge from the service at his own request. It was also brought to the notice of the High Court that similar finding was given by the Delhi High Court in the case of the respondent in Writ Petition (C) No.12507 of 2004 vide order dated 6th November, 2007 and that the appellant-Union of India was directed to consider the case of the respondent for the purpose of condoning the deficiency in service and pass appropriate orders within three months.

The appellant opposed the said prayer on the ground that the respondent has not completed the requisite service of 14 years upon which only one can get the benefit of condonation of shortfall of service upto one year. Therefore, according to the appellant, the respondent was not eligible candidate for condonation of the shortfall in pensionable service of one year. Before the High Court the respondent contested the statement made by the appellant that the respondent served for 13 years 8 months and 13 days and brought to the notice of the High Court that actually he served 13 years 10 months and 13 days which was not disputed. The respondent claimed benefit by rounding off the period of service in terms of Government of India Instructions dated 30th October, 1987. The Division Bench of the Delhi High Court after considering the rival submissions and taking note of instructions dated 30th October, 1987 by order dated 6th November, 2007 set aside the appellants earlier rejection order dated 14th August, 2001 and directed the appellant to re-consider the case of respondent.

4. Subsequently, a contempt petition was filed by the respondent alleging non-compliance of the said order. The contempt petition was dismissed by the Division Bench of the Delhi High Court considering the fact that appellants after the decision dated 6th November, 2007 passed the order on 2nd July, 2008 rejecting the claim of the respondent with liberty to challenge the order in accordance with law. In the said contempt proceedings the appellants gave undertaking that decision in Gurmukh Singh v. UOI would be made applicable in the case of the respondent. Thereafter, the second order of rejection was challenged by the respondent before the Tribunal wherein the impugned order was passed by the Tribunal.

5. The learned counsel appearing on behalf of the appellants submitted that the Tribunal failed to consider that as per Regulation 82 which was prevalent when the respondent was discharged, the deficiency in qualifying service could have been condoned only upto six months and not one year. He further contended that deficiency of one year as per new policy may be granted but the respondent has not completed 14 years of actual qualifying service in order to make him eligible for considering his case for condonation of deficiency of service upto one year and hence he is not entitled for the same. The learned counsel for the appellant further contended that Regulation 82(a) of the Pension Regulations for Navy, 1964 cannot be held to be invalid and the law laid down by the High Court is incorrect.

6. In the present case, the appellant has not challenged the validity of judgment passed by the Bombay High Court wherein Regulation 82(a) was declared as ultra vires. The aforesaid finding of the Bombay High Court was also accepted by the Delhi High Court in the case of the respondent. In absence of any challenge before this Court, we are not inclined to decide the question of validity of Regulation 82(a) which has already been declared ultra vires and violative of Article 14 of the Constitution of India.

It is not in dispute that the respondent has completed 13 years, 10 months and 13 days of service under the appellant. In view of declaration of Regulation 82(a) ultra vires, the prayer of the respondent for considering his case for condonation cannot be rejected on the ground that he voluntarily sought permission to leave the service. The aforesaid submission was also accepted by the High Court in the earlier writ petition preferred by the respondent.

7. The note below paragraph 5 of the Government of India, Ministry of Defence instructions dated 30th October, 1987 at clause 5 provides that in calculating the

length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service. The said provision reads as follows:-

"5. Qualifying service.

(a)xx xx xx

(b)xx xx xx

Notes:

(1) to (4) xx xx xx

(5)In calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service."

8. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By Government of India, Ministry of Defence order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto 12 months. The said provision reads as follows:-

"(a)(v)Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months."

9. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24th June, 1985 when the instruction dated 14th August, 2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned. In the facts of the case, we are of the view that it should have been made

clear that the respondent shall be entitled to benefit w.e.f. 14th August, 2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with aforesaid observations.