AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.24808 of 2013

Ex-CFN Jagadish Chandra Mohanty @ Mohapatra	....	*Petitioner*

-versus-

Union of India and Others	....	*Opposite Parties*

Advocates, appeared in this case:

For Petitioner	:	Mr. Bisikesan Pradhan Advocate
For Opposite Parties	:	Mr. P.K. Parhi Asst. Solicitor General

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
04.03.2022

Dr. S. Muralidhar, CJ

1. Challenging an order dated 12th October, 2012 of the Armed Forces Tribunal, Kolkata Bench, Kolkata (AFT) dismissing his application in O.A. No.5 of 2011, the Petitioner has filed the present petition. By the impugned order the AFT held that since there is a short fall of three months twelve days of pensionable service rendered by the Petitioner until he was voluntarily discharged from service, the provision of condonation of the

shortfall as provided in Regulation 124 will not apply in case of the Petitioner to make up for his inability to complete 15 years of mandatory service to make him eligible for pension.

2. The background facts are that the Petitioner was enrolled in the Army (Corps of EME) as an Apprentice on 30th March, 1973 and transferred as a combatant to the Bench service with effect from 14th March, 1975. The Petitioner was discharged from service at his own request on 'extreme compassionate grounds' with effect from 18th December, 1987.

3. It must be noted here that while the Petitioner claims that he was compelled to seek discharge, the fact remains that he did not make any such grievance soon after his discharge and this aspect has been denied by the Opposite Parties. Since it gives rise to a disputed question of fact, the Court is unable to adjudicate this aspect in exercise of its jurisdiction under Article 226 of the Constitution of India. Be that as it may, what is not in dispute is that the Petitioner made a representation on 8th July, 2009 to the Office of the EME Records, Secunderabad praying that the approximately two years during which he served as Apprentice had not been taken into account for calculating the eligible period for pension and that it should be so counted and he should be granted pension.

4. On 29th July, 2009 the Senior Record Officer for the Officer-in-Charge, EME Records addressed the following communication to the Petitioner:

> "**GRANT OF SERVICE PENSION**
> 1. Reference to your petition dated 08 Jul 2009.
>
> 2. As per records held in this office, you were enrolled on 30 Mar 1973 and discharged on 18 Dec 1987 at your own request on extreme compassionate grounds after rendering 14 years 08 months and 18 days service including two years apprentice service whereas 15 years qualifying service is a mandatory requirement to earn service pension vide Para 132 of Pension Regulations for the Army 1961 (Part-I).
>
> 3. Further, since you were discharged from service on extreme compassionate grounds at your own request, condonation of deficiency in service is also not applicable in your case as per provisions given at Para 125 of Pension Regulations for the Army 1961 (Part-I).
>
> 4. In view of the above, you are not entitled to get any pension."

HIGH COURT ORISSA सत्यमेव जयते

5. Dissatisfied with the above reply, the Petitioner addressed further representations on 3rd September, 2009 and 4th September, 2010. After no response was received to these representations, the Petitioner filed O.A. No.5 of 2011 before the AFT, Kolkata Bench.

6. Before the AFT, the stand of the Opposite Parties was that even after accounting for the nearly two years of Apprenticeship, the Petitioner did not complete the minimum qualifying service of 15 years for grant

of service pension. According to the Opposite Parties, during his service the Petitioner had 593 days of non-qualifying service. It was stated that he had overstayed his leave for 284 days between 21st May, 1004 and 28th February, 1995 and again 309 days from 6th October, 1995 to 9th August, 1986. According to the Opposite Parties, after deducting the non-qualifying service and including the Apprentice period service, the total service rendered by Petitioner would be 13 years 24 days and therefore, he could not be granted pension.

7. It is clear from the impugned order of the AFT it chose to go by the letter dated 29th July written by the EME Records where it had been stated that the Applicant had indeed rendered 14 years 8 months and 18 days of service. The AFT noted that in the said letter there was no mention of reduction of service on account of overstay of leave. Accordingly, the AFT concluded that the EME Records would have regularized such absence under the extant rules and regulations and would thereby have calculated his total service as 14 years 8 months and 18 days. However, the AFT still found that there was a short fall of 3 months and 12 days. In view of Regulation 125 since he had been discharged on his own request, the AFT held that the shortfall could not be condoned.

8. This Court has heard the submission of Mr. Bisikesan Pradhan, learned counsel for the Petitioner and Mr. P.K. Parhi, learned Assistant Solicitor General for the Opposite Parties.

9. Under Regulation 132 of the Pension Regulations for the Army, 1961 Volume I (Regulations), the minimum qualifying service actually rendered and required for running service pension is 15 years. Under instructions dated 17th May, 2006 of the Department of Ex-Servicemen Welfare, Ministry of Defence, the apprenticeship service rendered by a person would be counted for the purpose of computing the qualifying period for pension. Going by the letter dated 29th July, 2009 of the EME Records addressed to the Petitioner, it is plain that the Petitioner had rendered 14 years 8 months and 8 days of service. The AFT was right in rejecting the stand of the Opposite Parties regarding the Petitioner having over stayed his leave on two occasions and therefore, accumulating 593 days of non-qualifying service which had to be deducted from the above period. This part of the finding of the AFT has not been challenged by the Opposite Parties and, therefore, the Court proceeds on the basis that even according to the Opposite Parties the Petitioner had rendered 14 years 8 months and 18 days of service. Thus the short fall was less than four months.

10. Regulations 124 and 125 are relevant for the purpose and read as under:

> "124. Upon such conditions as it may think fit to impose, a competent authority may condone interruptions of service in the case of a person whose pension is sanctionable by an authority sub ordinate to the President as under:-
>
> (a) When proposed pension exceeds Rs.25/- p.m. interruption not exceeding a period of 12 months in all.

HIGH COURT ORISSA

(b) When proposed pension is Rs.25/- per month or less – all interruptions whatever duration.

Condonation of deficiencies in service for eligibility to service/reservist Pension.

125. Except in the case of

(a) an individual who is discharged at his own request.
(b) An individual who is eligible for pension or gratuity under Regulation 164.

OR

(a) An individual who is invalidate with less than 15 years service, Deficiency in service for eligibility to service pension Jkor

Reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case."

11. What comes in the way of the Petitioner's case being taken up for condonation of the shortfall is Regulation 125 (a) which states that where the person was discharged at his own request, then the short fall in pensionable service cannot be condoned.

HIGH COURT ORISSA सत्यमेव जयते

12. In ***Union of India v. Surender Singh Parmar (2015) 3 SCC 404*** the Supreme Court accepted the judgment of Bombay High Court in ***Gurmukh Singh v. Union of India*** *(decision dated 22nd November, 2006 in W.P.OAC No.430 of 2005)* striking down Regulation 82 (a) of the Navy Pension Regulations, which provided that the benefit of condonation of short fall in pensionable service shall not be applicable in case the person is discharged from service at his own request. It also accepted a similar finding of the Delhi High Court in its decision dated

6th November, 2007 in W.P.(C) No.12507 of 2004 (*Surender Singh Parmar v. Union of India*). The Supreme Court noted that these two decisions had not been questioned by the Opposite Parties.

13. Since Regulation 125(a) of the Pension Regulations for the Army is identically worded as Regulation 82(a) of the Pension Regulations for the Navy, 1964 the Court sees no difficulty in applying the ratio of the decision of the Bombay High Court in ***Gurmukh Singh*** (*supra*) which was affirmed by the Supreme Court in ***Union of India v. Surendera Singh Parmar*** *(supra)*. In other words, Regulation 125(a) of the Pension Regulations for the Army cannot be relied upon by the Opposite Parties to decline to consider the case of the Petitioner for condonation of the short fall in the pensionable service up to six months.

14. In ***Union of India v. Surinder Singh Parmar*** (*supra*) the Supreme Court also referred to para 5 of the Ministry of Defense instruction dated 30th October, 1987 Clause 5 of which provides that for the purposes of calculating the length of qualifying service, the device of rounding off would apply. The said provision reads as follows:

> **"5. Qualifying service –**
>
> (a) – (b)
>
> Notes.- (1) to (4)
>
> (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."

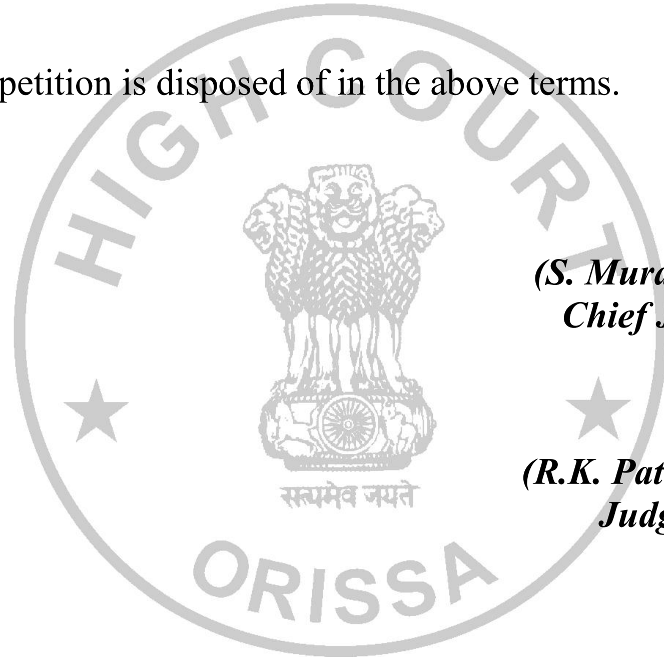
15. In ***Union of India v. Surender Singh Parmar*** (*supra*) the Respondent therein had completed 13 years, 10 months and 13 days of service. Applying the aforementioned clause 5 of para 5 of the instructions dated 30th October, 1987 the Supreme Court held that the Respondent was entitled to claim a total period of 14 years for the purposes of calculation of the qualifying period for pension.

16. In the present case, applying clause 5 of para 5 of the Ministry of Defense instruction dated 30th October, 1987 the Petitioner would be entitled to round off the period of 14 years 8 months and 18 days as 15 years. In that case there would be no occasion for further condonation of any shortfall. Even if, for some reason, the said instruction is not applied, the short fall being only around 3 months and 12 days, it is easily condonable by the Opposite Parties under Rule 125 (a) of the Pension Regulations for the Army.

17. Following the decision in ***Union of India v. Surender Singh Parmar*** *(supra),* the Court directs that the Opposite Parties will proceed to condone the short fall in the qualifying service i.e. 15 years minus 14 years 8 months and 18 days and treat the Petitioner as having the minimum qualifying period for the purposes of pension in terms of Rule 132 of the Pension Regulations for the Army. The necessary order by way of compliance with the above direction will be issued by the Opposite Parties within eight weeks from today.

18. As regards the arrears of pension, considering that the Petitioner approached the authorities with a request only in July, 2009 the arrears of pension would be payable from 1st July, 2009 onwards and the arrears shall be paid within a period of eight weeks from today. The current pension will be payable hereinafter as and when it is due. If there is any delay in carrying ou-t the above directions, the Petitioner would be entitled to simple interest @ 6% per annum on the pensionable amount for the period of delay.

19. The writ petition is disposed of in the above terms.



(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/PA