

Before Hemant Gupta & Mohinder Pal, JJ

NO. 6252992 EX-RESERVIST HARJINDER SINGH,—Petitioner

versus

UNION OF INDIA & ANOTHER,—Respondents

C.W.P. No. 13784 of 2006

11th March, 2008

*Constitution of India, 1950—Art. 226—Army Rules, 1954—
RI.13(3)III (iv)—Pension Regulations for the Army, 1961—Reg.
155—Enrollment of petitioner in Army—Under terms & conditions
of service petitioner has to serve for 20 years—Request for discharge
after about 17—½ years—Cl. (b) of Reg. 155 debarred those
individuals who were discharged from Army ‘at their own request’
before fulfilling their terms and conditions of engagement although
they had qualifying service for pension to their credit—Deletion of
words ‘at their own request’ from Cl. (b) after 1st April, 1968—
Whether respondents justified in declining Reservist pension after
petitioner had rendered requisite qualifying service—Held, no—
Seeking discharge or voluntary retirement from service cannot
mean that entire service for pensionary benefits is lost—Petition
allowed, respondents directed to fix & pay Reservist pension to
petitioner.*

Held, that right to pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end by way of discharge from service at one’s own request for voluntary retirement or resignation in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficent scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee is no more in service and would not be entitled to the thereof, but it is another thing to say that although he, at all relevant times, was in service and would be deprived of the benefit only because he has either sought discharge or resigned or retired voluntarily. Seeking

discharge or voluntary retirement from service cannot mean that the entire service period for the purpose of qualifying service for pensionary benefits is lost.

(Para 7)

Further held, that the petitioner having completed qualifying service for receiving Reservist Pension, the said benefit is a benefit earned by him. This benefit cannot be denied to him on the ground that at the end of the qualifying service he was discharged from Army service at his own request. If it is allowed to happen, it will result in the forfeiture of the benefit earned by him. The respondents were not justified in declining Reservist Pension to the petitioner after he had rendered requisite qualifying service for the purpose of pensionary benefits.

(Para 7)

Navdeep Singh, Advocate, *for the petitioner.*

Naveen Chopra, Advocate *for the respondents.*

MOHINDER PAL, J.

(1) Claim in the present Writ Petition is for release of Reservist Pension to the petitioner, who was discharged from Army service on 17th January, 1967, after rendering seventeen years, two hundred and eighteen days of combined Colour and Reserve qualifying service.

(2) The petitioner was enrolled in the Army on 14th June, 1949, under 'Colour-Reserve' system of enrolment, which was in vogue during that period. Under this system, an individual was supposed to serve for seven years in the Army on regular basis (known as Colour Service) after which eight years were supposed to be spent in reserve, during which period the person could indulge in any civil vocation but could be called upon to serve the nation in case of emergency. While the petitioner was serving in the Army, his terms of engagement were changed to ten/ten system (ten years in Colour and ten years in reserve). The petitioner was recalled to the active service during 1962 war with China and 1965 war with Pakistan. He was discharged from Army

service on 17th January, 1967 under Rule 13(3) III (iv) of the Army Rules, 1954 (for short 'the Army Rules') at his own request after he had put in seventeen years, two hundred and eighteen days of Combined 'Colour-Reserve' Service. The Reservist Pension was declined to the petitioner on the ground that when the petitioner was discharged from service on 17th January, 1967, at his own request, there used to be clause (b) in Regulation 155 of the Pension Regulations for the Army, 1961 (Part-I) (for short 'Pension Regulations') which provided that pension was not to be granted to those individuals who were discharged at their own request before fulfilling their terms of engagement even if they had completed qualifying service of fifteen years for pension. This clause was later on deleted from Pension Regulation 155 with effect from 1st April, 1968. The petitioner having been discharged from Army service at his own request on 17th January, 1967, he was not entitled to the Reservist Pension.

(3) After notice, claim of the petitioner has been contested by the respondents by filing a written statement alleging therein that as per terms and conditions of service, the petitioner was due to discharge from service with effect from 13th June, 1969. However, he was discharged from the Army service on 17th January, 1967 under Rule 13(3) III(iv) of the Army Rules before fulfilling the terms and conditions of engagement at his own request on extreme compassionate grounds. As per Pension Regulation 155(b), which was in vogue at the time when he was discharged from service, Reservist Pension was not to be granted to those who were discharged from Army service at their own request before fulfilling their terms and conditions of engagement. The words "at his own request" was deleted from Pension Regulation 155 (b) with effect from 1st April, 1968, but the petitioner having discharged from service at his own request on 17th January, 1967 i.e. prior to the modification of Pension Regulation 155(b), he was not entitled for Reservist Pension.

(4) We have heard Mr. Navdeep Singh, Advocate, appearing for the petitioner and Mr. Naveen Chopra, Advocate, appearing for the respondents and have gone through the records of the case.

(5) The only ground on which the Reservist Pension has been declined to the petitioner is that he was discharged from the Army on

17th January, 1967 at his own request whereas as per terms and conditions of his engagement, he was to discharge with effect from 13th June, 1969. Clause (b) of Pension Regulation 155, which was in vogue at that time, provided that Reservist Pension was not to be granted to those who had been discharged at their own request before fulfilling their terms and conditions of engagement even if they had completed qualifying service for pension. This Clause (b) of Pension Regulation 155 was deleted with effect from 1st April, 1968. However, the petitioner having discharged from Army Service at his own request on 17th January, 1967 i.e. before the deletion of Clause (b) from Pension Regulation 155 with effect from 1st April, 1968, he was not entitled to Reservist Pension.

(6) Pension Regulation 155 reads as under :—

“An OR reservist who is not in receipt of a service pension may be granted on completion of the prescribed combined colour and reserve qualifying service of not less than 15 years, a reservist pension equal to 2/3rd of the lowest pension admissible to a sepoy, but in no case less than Rs. 375 p.m. on his transfer to pension establishment either on completion of his term of engagement or prematurely, irrespective of the period of colour service.”

(7) The petitioner was enrolled in the Army on 14th June, 1949 and discharged from this service on 17th January, 1967, after rendering seventeen years, two hundred and eighteen days of combined Colour and Reserve qualifying service. Under Pension Regulation 155, quoted above, he is entitled to Reservist Pension as per the rates fixed by the Central Government from time to time. Mere fact that before 1st April, 1968, there was clause (b) to Pension Regulation 155 which debarred those individuals who were discharged from the Army at their own request before fulfilling their terms of engagement although they had qualifying service for pension to their credit, cannot be made a ground to deny the Reservist Pension to the petitioner. It is well-settled that right to pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end

by way of discharge from service at one's own request or voluntary retirement or resignation in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficent scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee is no more in service and would not be entitled to the benefit thereof, but it is another thing to say that although he, at all relevant times, was in service and would be deprived of the benefit only because he has either sought discharge or resigned or retired voluntarily. Seeking discharge or voluntary retirement from service cannot mean that the entire service period for the purpose of qualifying service for pensionary benefits is lost. The petitioner having completed qualifying service for receiving Reservist Pension, the said benefit is a benefit earned by him. This benefit cannot be denied to him on the ground that at the end of the qualifying service he was discharged from Army service at his own request. If it is allowed to happen, it will result in the forfeiture of the benefit earned by him. In our considered view, the respondents were not justified in declining Reservist Pension to the petitioner after he had rendered requisite qualifying service for the purpose of pensionary benefits. The petitioner was a boy when he was enrolled in the Army on 14th June, 1949. He is now more than seventy five years old, residing in an Old Age Home at Chandigarh and any delay in releasing the Reservist Pension to him is inexcusable.

(8) Accordingly, we allow this Writ Petition and direct the respondents to fix the Reservist Pension of the petitioner as per the rates fixed by the Central Government from time to time and pay the arrears of pension for a period of three years and two months prior to the date of the filing of the writ petition i.e. 30th August, 2006. The respondents are directed to disburse the arrears to the petitioner within two months from the date of receipt of a copy of this order positively. In case it is not done within the said period, the entire arrears will carry interest at the rate of nine per cent per annum from the date of expiry of two months till the date of payment.

R.N.R.