

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2546/2004
MA No.2110/2004

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New Delhi this the 24th day of August, 2005.

Hon'ble Mr. Shanker Raju, Member (Judl.)

Braham Dutt,
S/o Sh. Bhudha,
R/o Vill & PO Tilpat,
Distt. Faridabad (Haryana)

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through the Secretary,
Ministry of Defence, Govt. of India,
South Block, New Delhi.
2. Chief of the Air Staff,
Air Head Quarters,
Vayu Bhawan, New Delhi.
3. The Commanding Officer,
No.56, Air Stores Park, Air Force,
Sector IV, Faridabad (Har).

-Respondents

(By Advocate Shri Harinath Ram)

1. To be referred to the reporters or not? Yes/~~No~~ Yes
2. To be circulated in the outlying Benches or not? Yes/~~No~~ Yes.

S. Raju
(Shanker Raju)
Member (J)

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ORDER (ORAL)

An order dated 28.9.2001, depriving applicant pensionary benefits is the subject matter of the present OA.

2. Applicant who had been appointed as a civilian in Indian Air Force on medical grounds was discharged on request in 1981 having served the respondents for 19 years, one month and 20 days. A representation preferred for grant of retiral benefits is turned down on the basis of Rule 26 of the CCS (Pension) Rules, 1972, giving rise to the present OA.
3. It is no more res integra that on resignation without taking up another employment past service is forfeited for all purposes, including

qualifying service for pension, as per Rule 26 of the CCS (Pension) Rules, 1972. Rule 88 of the rules, provides as under:

"88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

4. In case of a hardship with the concurrence of the DoPT any requirement of the rules can be relaxed to any extent to deal with the matter in a just and equitable manner.

5. In the above backdrop learned counsel for applicant contends that applicant has requested for discharge in the shape of voluntary retirement because of sickness and as such his discharge is to be treated as voluntary retirement, which does not entail forfeiture of past service for pensionary benefits. A reliance has been placed on Rule 29 of the rules *ibid*, where on completion of 10 years service one is entitled to pension. He has also relied upon a decision in **Lt. Col. P.S. Bhargav v. Union of India**, JT 1997 (1) SC 427, where on resignation pensionary benefits have been allowed.

6. Learned counsel also relies upon a decision of this Bench in OA3389/2002 in **Smt. Santosh Devi v. Union of India & Ors.** decided on 6.1.2004 to contend that in **Dr. Prabha Atri v. State of U.P. & Ors.**, 2003 (1) SCSLJ 157 resignation and retirement are two different concepts and as the request was on

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medical grounds for voluntary retirement the qualifying service cannot be forfeited.

7. Learned counsel further relied upon Government of India, Ministry of Defence order dated 14.8.2001, where approval of the Defence Minister has been accorded as delegation to the service headquarters administrative powers to condone shortfall in qualifying service for grant of pension upto 12 months and also pensionary awards to those who are discharged on resignation. Accordingly a decision of Jaipur Bench of the Tribunal in **Sheochand Ram v. Union of India & Ors.**, ATJ 2004 (1) 128 is relied upon to contend that even on completion of 10 years service one is entitled to pro rata pension.

8. On the other hand, learned counsel for respondents vehemently opposed the contentions and stated that discharge on resignation forfeits past service and Rule 49 would apply to post retirees of 1997. It is stated that the decisions are distinguishable and objects to maintainability of the OA on the ground of limitation.

9. MA-2110/2004 has been filed by applicant for condonation of delay as applicant was sick and the grievance of applicant having been entertained by respondents vide their letter dated 28.9.2001 keeping in fact that there is no mala fide or intentional delay. In the interest of justice and having regard to the decision of the Apex Court in **State of Bihar v. Kameshwar Prasad**, 2000 (2) ATJ SC 614 to impart substantial justice where technicality has no role to play, delay in filing the present OA is

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condoned. Moreover, grant of pensionary benefits is a recurring cause of action.

10. I have carefully considered the rival contentions of the parties and perused the material on record.

11. No doubt applicant on medical grounds applied for his discharge but as the request was not for voluntary retirement it was treated as a resignation. Whereas applicant had completed 19 years, one month and 20 days service, whereas pension is not a bounty but it is a legal right of a person with dint of hard work. The consequences of serving the Government with reward have been denied to applicant by implication of the rules. Ministry of Defence order dated 14.8.2001 gives wide powers delegated to service headquarters not only includes in clause-v condonation of shortfall in qualifying service upto 12 months but also grant of pension to the officers who have resigned. This clearly shows that in undue hardship cases to have welfare of the government servant as the matter has to be treated in just and equitable manner, Rule 88 ibid gives power of relaxation of any rule to any extent and this includes relaxation of Rule 26 and treatment of qualifying service as valid for pensionary benefits as also to accord of pension by condonation of shortfall of 11 months in 20 years service.

12. Equity, good conscience and fair play are three important parameters forming part and parcel of system of justice. Some time the technicalities have to give way to the equity. However, this has to be ensured that this exercise of equity is not against law.

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13. As Rule 88 of the Pension Rules provides such a power of relaxation, I am of the considered view that in the circumstances at the time of discharge from service on medical grounds undue hardship has been caused to applicant, which has to be redeemed. The present is a case, which has to be dealt with in a just and equitable manner.

14. In the result, for the foregoing reasons, in the light of decision dated 14.8.2001 of Ministry of Defence, in the event applicant prefers a representation to the service headquarters, his claim for relaxation of rules and grant of pensionary benefits after condonation of shortfall in qualifying service be considered by a detailed and speaking order to be passed within two months from the date of receipt of the representation of applicant. In the event relaxation is accorded, applicant's retiral benefits be calculated and disbursed to him, within two months thereafter. The OA stands disposed of accordingly, but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

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