
(1995) 04 DEL CK 0039

Delhi High Court

Case No: Civil Writ Appeal No. 628 of 1976

Bijai Singh Sardar Bahadur, OBI

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: April 19, 1995

Acts Referred:

- Pension Regulations for Army, 1961 - Regulation 225

Hon'ble Judges: A.D. Singh, J

Bench: Single Bench

Advocate: R.K. Saini, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This writ petition was filed by Ex. Risaldar and Hony. Captain Bijai Singh for securing military pension Along with adhoc increases in the pension sanctioned by the Government of India from time to time i.e. w.e.f 1.9.69,1.3.73, 1.8.73 and 1.1.74. Besides he prayed for the arrears of pension and grant of O.B.I, allowance with effect from 1.4.73.

(2) This petition was filed in 1976 but before it could be heard and disposed of Bijai Singh did not survive to see the outcome of his petition. He died on April 10,1982. This petition is being continued by his legal heir, Umed Singh, who was brought on record on September 19, 1984.

(3) The facts giving rise to this petition are as follows:

(4) On July 15, 1912 the deceased petitioner was enrolled as an active military personnel in 27 Cavalry division. Later 27 Cavalry was amalgamated with 16 Cavalry. In the year 1915, he was. sent to Basra(Iraq) with 16th Cavalry and participated in the first world war. In 1923 the deceased petitioner returned to India with 16 Cavalry and was stationed at Jhansi. On June 16, 1930 he was transferred to Governor's Bodyguard at Madras. On June 16,1930 the deceased petitioner was

promoted to the rank of Jamadar while he was serving in the Governor's Bodyguard at Madras. Thereafter in 1932 he was promoted as Risaldar. On August 1, 1940 he was appointed as Indian A.D.C. to the Governor of Madras and was given the rank of Honorary Lieutenant. This order was issued under the signatures of the Secretary to the Government of (India defense Department. In the year 1945 the petitioner was awarded First class O.B.I, allowance with medal. In the same year, on September 5, 1946 he retired from service as Indian A.D.C. to the Governor of Madras. On his retirement he was in receipt of pension of Rs.150.00 per month under PPO/Madras/88 w.e.f. 15.3.47-Subsequent to his retirement, he was given honorary rank of Captain in the year 1946 itself. On December 30,1969 the Government of India sanctioned payment of enhanced rate of ad hoc pension for army retirees with effect from September], 1969 but the deceased petitioner did not get the increase. Even the O.B.I. allowance was stopped from February 28,1973. Being aggrieved of the stoppage of O.B.I. Allowance and non payment of enhanced rate of adhoc pension the deceased petitioner filed a representation to the Accounts Officer, Controller of defense (Accounts) Allahabad on July 16,1984.

(5) The Accounts Officer (Pension) by his communication dated July 18,1975 to the Army Headquarters, A.G.I. Branch, Dhq, New Delhi (Annexure Ix to the writ petition at page 31 of the writ record) stated that the deceased petitioner was drawing civil pension under PPO-Madras/88 issued by the Accountant General U.P. Allahabad and as such question of payment of military pension to the petitioner did not arise. A copy of this letter was endorsed to the deceased petitioner with the remark that the deceased was not a military pensioner and his case cannot be pursued by Accounts Officer (Pension). Thereafter the deceased petitioner made another representation dated October 23, 1975. Finally he Filed the present writ petition being aggrieved of the action of the respondent in not treating him as an army pensioner.

(6) Learned counsel for the petitioner submitted that the petitioner was an army pensioner and there was enough material to show that the stand of the respondent was not correct. He invited my attention to the .various documents which are on the pension record of the petitioner received from Tamilnadu Government.

(7) I have considered the submission of the learned counsel for the petitioner and I ♦ have also gone through the record. It appears to me that the petitioner is an army pensioner and was entitled to receive adhoc increases/reliefs admissible to military pensioners up to the date of his death viz. April 10, 1982. It is not disputed that the deceased petitioner joined the military service in the year 1912 and served in various positions and also participated in the First world war. It was on June 16, 1930 that he was transferred to Governor's Bodyguard, Madras. After joining the Governor's bodyguard he was promoted as Jamadar. If he had severed his connection with the army, there was no reason for his promotion as Jamadar. Again in 1932 he was promoted as Risaldar and subsequently was given Hony. rank of a Lieutenant while he was in the Governor's Bodyguard. The office record of the

Comptroller

(8) GOVERNOR'S Household, Madras contains a certificate issued by the Assistant Accounts Officer dated 10/12,1946 according to which qualifying service of the deceased petitioner was certified for 34 ye.ars I month and 19 days. The certificate reads as follows:-

"PEN.NO.B.21-1067- Office of the Accountant General, Madras, dated 10th/12th December 1946.

To,

SUB: Pension application of Risaldar (Hon.Lt.) Bijai Singh Sardar Bahadur, O.B.I. Indian Aid-de-Camp to H.E. the Governor.

REF: Letter No.Spl.380 dated 7.10.46 from the Commandant, Madras Governor's Body guard.

Forwarded.

2.Certified that qualifying service of Risaldar(Hon.Lt.) Bijai Singh Sardar Bahadur O.B.I., late an Indian Aid-de- Camp to H..E. the Governor has been duly proved for 34 years I month and 19 days; and that an ordinary pension not exceeding Rs.150.00 Rupees one hundred and fifty only per mensem is admissible under paras 225(1) and 227 of the Pension Regulations of the Army in India Part II.

3.The calculations have been duly verified.

4.The pension is chargeable as follows and will commence from 4.9.46.

5.Superannuation allowances and pensions Superannuation and retired allowances - Provincial charges Rs.715.00 defense Department Rs.78-11-0 Rs.150.00

SD/-V.Sambamurthi Ayyar,

ASSISTANT Accounts Officer,

To,

THE Secretary to the Government of Madras, Finance (Pension) Department. COPY forwarded to the Commandant, Madras Governor's Bodyguard for information. THE last pay certificate of the applicant showing settlement of claims of the F.C.M.A. Poona may please be obtained and furnished to enable this office to authorise payment on receipt of sanction.

SD/-V. SAMBAMURTHI Ayyar,

ASSISTANT Accounts-Officer."

(9) Since this certificate was issued in the year 1946 and the petitioner was enrolled in the army in the year 1912, the qualifying service of the deceased petitioner had

correctly been shown as about 34 years. If he was considered to have snapped his ties with the army on his transfer to the Governor's bodyguard in 1930 then the certificate would have shown military service of the petitioner as 18 years and civilian service of 16 years. This certificate also shows that the pension of the deceased petitioner was granted under paras 225(1) & 227 of the "Pension Regulations Of the Army In India Part II". If he was not a military pensioner, there was no reason for his qualifying service to be considered as 34 years for the purpose of granting pension under the Pension Regulations Of the Army In India. This certificate lends credence to the submission of the learned counsel for the petitioner that the deceased petitioner was a military pensioner.

(10) Again, in case the petitioner had been permanently transferred to the civilian service there was no reason why the Accountant General Madras would have sent last pay certificate of the deceased petitioner to the Field Controller of Military Accounts Poona. Letter of the Assistant Accountant General, Madras dated November 20, 1946 to the Military Secretary to the Governor of Madras shows that a copy of the last pay certificate was sent to the Field Controller of Military Accounts, Poona. The letter reads as under:

"OFFICE of the Accountant General, Madras, Fort St. George, dated 20th November 1946, No. G.A.D. I./Mis. 995.

To

THE Military Secretary to His Excellency the Governor of Madras, " Madras.

SUBJECT: War gratuity-Lt. Bijari Singh Sardar Bahadur O.B.I.

REFERENCE: Your letter C.2.56-1/46 dated 4.11.46.

ONE copy of the last pay certificate of Lt. Bijai Singh Sardar Bahadur, O.B.I., was sent to the Field Controller of Military Accounts, Poona in this office endt. No.G.A./I/Misc. 892 dated 24.10.1946.

SD/-Assistant Accountant General."

(11) The above letter is also a pointer to the fact that the petitioner was a military pensioner.

(12) There is another communication on record which needs to be taken note of. The Treasury Officer Meerut by his letter dated November 5, 1974 to the Accountant General U.P. Allahabad sought clarification whether the petitioner was to be considered as a civil pensioner or a military pensioner. But from a persual of the letter it is, however, clear that the Treasury Officer Meerut was of the opinion that the petitioner was a military pensioner as he was drawing Obi allowance, which is given to a military pensioner only. The letter (Annexure Ii to the writ petition at page 18 of the writ record) in so far as it is relevant is extracted below:-

".....I have the honour to say that from the P.P.O. No. Madras/88, it is evident that pensioner was Risaldar(Hon.Lt.) These designations are held by the military pensioners. From the aforesaid cir. it is not clear whether these will apply in the case of this pensioner or not. The pensioner is press ing hard for the payment of enhanced D.A. The pensioner is a military pensioner, this plea is getting force, as the P.P.O. on the strength of which this pensioner was drawing O.B.I, allowance (which is given to the military pensioners only) was asked for and was sent to the C.D.A(P) Allahabad in compliance with the letter No.At7/III/OS/771/60 dated 17.11.1973 by the Sub Treasury Office, Hapur. The pension was drawing O.B.I. Allowance @ Rs. 2.00P.D....."

(13) Even Pension Payment Order Disburser"s Portion dated 17.9.76 (page 94 of the writ record) relating to award of Obi indicates that petitioner was a army pensioner.

THE following entries in this regard are material;-

"DEBITABLE: defense Services Estimates

HEAD of A/c : Items adjustable by CDA(P)."

(14) Thus it is clear from the material on record that the deceased petitioner was granted pension on his retirement in the year 1946 under paras 225(1) and 227 of the "Pension Regulations of the Army In India Part II. The petitioner was granted O.B.I. allowance which is given to the army pensioner only. Even after his transfer to Governor"s Bodyguard, the petitioner was promoted in army as Jamadar and was also given Honorary ranks. In any view of the matter he was an army pensioner, entitled to receive army pension including such increases thereto as were sanctioned by the Government of India till his death, even if out of 34 years of his service only 18 years thereof were considered as Constituting army service.

(15) Having regard to the above discussion it seems to me that the petitioner was an army pensioner and it is unfortunate that he kept on receiving a paltry sum of Rs.150.00 right from the date of his retirement till the time of his death with no increase whatsoever for more than two decades. Accordingly I hold that deceased petitioner was justly entitled to receive pension in accordance with the Pension Regulations of the Army as also the ad hoc increase in the pension sanctioned by the Government in regard to military pensioners from time to time until his death. The writ petition, Therefore, succeeds and the rule is made absolute. The respondents are directed to calculate the arrears of pension which were admissible to the petitioner till the time of his death. The arrears will be paid to his legal heir within four months with interest @ 12% per annum from the date of death of the petitioner till the date of payment. The learned counsel for the petitioner will also be entitled to receive costs from the first respondent which are quantified at Rs.5000.00.