

## Birbal Vs Union of India and Others

**Court:** Delhi High Court

**Date of Decision:** Nov. 27, 2001

**Acts Referred:** Defence Service Army Regulations, 1987 " Regulation 122, 132

**Citation:** (2002) 97 DLT 96 : (2002) 62 DRJ 185

**Hon'ble Judges:** Dr. M.K. Sharma, J

**Bench:** Single Bench

**Advocate:** V.P. Sharma, for the Appellant; Jayant Bhushan and Anil Dutt, for the Respondent

**Final Decision:** Dismissed

### Judgement

Mukundakam Sharma, J.

In this writ petition, the petitioner has mprayed for a direction to the respondents to grant mto the petitioner

service pension form the date of mhis discharge from the Army after quashing the morders dated 7th March, 1991 and 1st August, 1997. m

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2. The petitioner was enrolled in the Indian mArmy as a Sepoy. While serving in the Indian Army, mthe petitioner was declared a deserter for a

period mof 797 days that is with effect from 21st mSeptember, 1965 to 26th November, 1967. The mpetitioner finally retired from service on

19th mJune, 1972. A claim was made by the petitioner to mthe effect that while computing the total length of mservice of the petitioner, his entire

period of mservice should be reckoned including the period mduring which he was declared a deserted that is, mwith effect from 21st September,

1965 to 26th mNovember, 1967. m

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3. It is an accepted position that in case mthe aforesaid period is computed towards the total mand actual length of service of the petitioner, the

mpetitioner shall have 15 years of service in the mIndian Army which is the qualifying service to earn mservice pension as provided for under the

Army mRegulation. However, in case the said period is mexcluded, the petitioner shall not have 15 years of mqualifying service which, according

to the mrespondents, is mandatory for earning service mpension. The aforesaid issue as to whether the mperiod from 21st September, 1965 to

26th November, 1967 could be computed as the period spent on duty was referred to a Full Bench of this Court. The said issue came up for

consideration before the Full Bench of three Judges of this Court and by judgment and order dated 11th May, 2001, the decision rendered

by this Court in *Ex-Sappu S.D.P. Yadav v. Union of India and Ors.* (C.W.P. No. 4156/1995 decided on 22nd August, 1997 was over-

ruled. It was further held by the aforesaid judgment and order that as the petitioner did not render any service during the aforesaid period, the

benefit of the said period could not be given to the petitioner for the purpose of earning service pension in terms of Regulation 132 of the

Army Regulations.

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4. In that view of the matter and in the light of the aforesaid decision of this Court, the period from 21st September, 1965 to 26th November,

1967 cannot be treated to be actual service of the petitioner rendered in the Indian Army and he is not entitled to the benefit of the same for

the purpose of earning service pension in terms of Regulation 132 of the Army Regulations. Therefore, the petitioner did not have 15 years of

army service as is required under Regulation 132 of the Army Regulation which provides that the minimum period of qualifying service

(without weightage) actually rendered and required for earning service pension would be 15 years. Regulation 122 defines the words

"qualifying service for pension and gratuity". (iii) of Regulation 122(a) provides that all service from the date of appointment or

enrolment/transfer for man's service to the date of discharge would qualify for pension or gratuity with the execution of any period of

unauthorised absence unless pay and allowances are admitted for the period of absence.

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5. As the period between 21st September, 1965 to 26th November, 1967 cannot be computed as the petitioner's actual service rendered for

earning service pension, the requirement of the provisions of the Army Regulation 132 is not satisfied in the present case.

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6. Counsel appearing for the petitioner at this stage sought to submit that the petitioner was at least entitled to payment of pro rate pension as

the petitioner had rendered 10 years of qualifying service. In this connection, the petitioner sought to rely upon the resolution issued by the

Ministry of Personnel, Public Grievances and Pensions dated 18th March, 1987 annexed with the writ petition as "Annexure P-10" and

placed at page 99 of the paper mbook. In support of his contention, the counsel malso sought to rely upon the notification dated m30th October,

1987 which is issued by the mGovernment of India, Ministry of defense. Counsel malso sought to rely upon the period of weightage mwhich would

be added to actual qualifying service mas set out in paragraph 5 at running page 104 of mthe paper book. m

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7. I have also heard the learned counsel mappearing for the respondents on the aforesaid missue. m

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8. A similar issue came up for consideration mbefore this Court in the case of Ex-Sep. Mahinder mSingh v. Union of India and Ors.:

m(C.W.P.No. 1448/1999) disposed of on 22nd February, m2001. In the aforesaid case also reliance was mplaced on the notification issued by

the Ministry mof Personnel, Public Grievances and Pensions in msupport of similar contention. Rejecting the said mcontention, it was held in the

said decision that mthe aforesaid notification issued by the Ministry mof Personnel, Public Grievances and Pensions would mhave no application to

the case of pension of Army mpersonnel, as the said notification cannot amend mand/or substitute the Pension Regulations for the mArmy which

alone govern the cases of pension of the mArmy personnel. It was further held in the said mcase that the petitioner did not have 15 years of

mqualifying service for grant of service pension munder the Pension Regulations for the Army, 1961. m

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9. Pension so far the army personnel is mconcerned is required to be paid as per pension. mRegulations for the Army, 1961 and the qualifying

mservice for grant of pension provided for under mRegulation 132 is 15 years of qualifying service. mThe aforesaid Regulation cannot be said to

have mbeen in any manner modified and/or substituted by missuance of a Resolution/Notification dated 18th mMarch, 1987 issued by the Ministry

of Personnel, mPublic Grievances and Pensions. So far the mnotification dated 30th October, 1987 issued by the mMinistry of defense is

concerned, the same as it mappears from paragraph 2.1 thereof would be mapplicable to the armed forces personnel who were min service as on

1st January, 1986. The petitioner mretired from service on 19th June, 1972 and, mtherefore the said notification ex facie cannot be mmade

applicable to the case of the petitioner even mif it is assumed that the said notification is mapplicable to the nature of the pleas argued. So mfar the

weightage of five years is concerned, such mperiod of weightage is explicitly excluded under mthe provisions of Regulation 132 of the Army

mRegulation and, Therefore, the same is not mapplicable. None of the contentions, Therefore, mhas any merit. m

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10. The petitioner did not have 15 years of mqualifying service for grant of service pension munder the Pension Regulations for the Army, 1961

mand, Therefore, he is not entitled to be paid any mservice pension in terms of Regulation 132, nor the mpetitioner is entitled to grant of any pro

rata mpension as claimed during the course of arguments mby the counsel appearing for the petitioner. m

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11. The writ petition, Therefore, has no mmerit and is dismissed accordingly. Pending mapplication stands disposed of accordingly. m

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