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**(2001) 11 DEL CK 0086**

**Delhi High Court**

**Case No:** C.W. No. 3510 of 1997 and C.M. No. 6788 of 1997

Ex. GNR. Birbal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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

**Acts Referred:**

- Defence Service Army Regulations, 1987 - Regulation 122, 132

**Citation:** (2002) 97 DLT 96(1) : (2003) 1 SLJ 16

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

**Bench:** Single Bench

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

**Final Decision:** Dismissed

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### **Judgement**

Dr. Mukundakam Sharma, J.

In this writ petition, the petitioner has prayed for a direction to the respondents to grant to the petitioner service pension from the date of his discharge from the Army after quashing the orders dated 7th March, 1991 and 1st August, 1997.

2. The petitioner was enrolled in the Indian Army as a Sepoy. While serving in the Indian Army, the petitioner was declared a deserter for a period of 797 days that is with effect from 21st September, 1965 to 26th November, 1967. The petitioner finally retired from service on 19th June, 1972. A claim was made by the petitioner to the effect that while computing the total length of service of the petitioner, his entire period of service should be reckoned including the period during which he was declared a deserted that is, with effect from 21st September, 1965 to 26th November, 1967.

3. It is an accepted position that in case the aforesaid period is computed towards the total and actual length of service of the petitioner, the petitioner shall have 15 years of service in the Indian Army which is the qualifying service to earn service

pension as provided for under the Army Regulations. However, in case the said period is excluded, the petitioner shall not have 15 years of qualifying service which, according to the respondents, is mandatory for earning service pension. The aforesaid issue as to whether the period 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-Sepoy S.D.P. Yadav v. Union of India and Ors.*, C.W.P. No. 4156/1995 decided on 22nd August, 1997 was overruled. 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 Regulations.

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

5. As the period between 21st September, 1965 to 26th November, 1967 cannot be computed as the petitioners actual service rendered for earning service pension, the requirement of the provisions of the Army Regulation 132 is not satisfied in the present case,

6. Counsel appearing for the petitioner at this stage sought to submit that the petitioner was at least entitled to payment of pro rata 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 book. In support of his contention, the Counsel also sought to rely upon the Notification dated 30th October, 1987 which is issued by the Government of India, Ministry of defense. Counsel also sought to rely upon the period of weightage which should be added to actual qualifying service as set out in paragraph 5 at running page 104 of the paper book.

7. I have also heard the learned Counsel appearing for the respondents on the aforesaid issue.

8. A similar issue came up for consideration before this Court in the case of Ex-Sep. Mahinder Singh v. Union of India and Ors., C.W.P. No. 1448/1999, disposed of on 22nd February, 2001. In the aforesaid case also reliance was placed on the Notification issued by the Ministry of Personnel, Public Grievances and Pensions in support of similar contention. Rejecting the said contention, it was held in the said decision that the aforesaid Notification issued by the Ministry of Personnel, Public Grievances and Pensions would have no application to the case of pension of Army personnel, as the said notification cannot amend and/or substitute the Pension Regulations for the Army which alone govern the cases of pension of the Army personnel. It was further held in the said case that the petitioner did not have 15 years of qualifying service for grant of service pension under the Pension Regulations for the Army, 1961.

9. Pension so far the Army personnel is concerned is required to be paid as per Pension Regulations for the Army, 1961 and the qualifying service for grant of pension provided for under Regulation 132 is 15 years of qualifying service. The aforesaid Regulation cannot be said to have been in any manner modified and/or substituted by issuance of a Resolution/ Notification dated 18th March, 1987 issued by the Ministry of Personnel, Public Grievances and Pensions. So far the Notification dated 30th October, 1987 issued by the Ministry of defense is concerned, the same as it appears from paragraph 2.1 thereof would be applicable to the armed forces personnel who were in service as on 1 st January, 1986. The petitioner retired from service on 19th June, 1972 and, Therefore, the said Notification ex-facie cannot be made applicable to the case of the petitioner even if it is assumed that the said notification is applicable to the nature of the pleas argued. So far the weightage of five years is concerned, such period of weightage is explicitly excluded under the provisions of Regulation 132 of the Army Regulations and, Therefore, the same is not applicable. None of the contentions, Therefore, has any merit.

10. The-petitioner did not have 15 years of qualifying service for grant of service pension under the Pension Regulations for the Army, 1961 and, Therefore, he is not entitled to be paid any service pension in terms of Regulation 132, nor the petitioner is entitled to grant of any pro rata pension as claimed during the course of arguments by the Counsel appearing for the petitioner.

11. The writ petition, Therefore, has no merit and is dismissed accordingly. Pending application stands disposed of accordingly.