

CASE NO.:
Appeal (civil) 4052-4053 of 2004

PETITIONER:
U.O.I & Ors.

RESPONDENT:
Bashir Ahmed

DATE OF JUDGMENT: 02/05/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in these appeals is to the legality of orders passed by a Division Bench of the Jammu and Kashmir High Court dismissing the Letters Patent Appeal filed by the appellants and the review application in respect of the said order. The High Court by the impugned judgment in the Letters Patent Appeal upheld the view of learned Single Judge holding that the respondent is entitled to pension.

Background facts in a nutshell are as follows:

Respondent was enrolled as a Sepoy on 6.1.1969. On 1.7.1976 respondent made a declaration in writing to undergo reserve service liability of two years after discharge from service.

The request of the respondent for discharge from Army service on companionate grounds was accepted and he was discharged and his name was struck out from the strength on 6.9.1978. Thus he had rendered service for 9 years 7 months and 27 days in the Army which included some over stay leave. With effect from 6.9.1980 the respondent ceased to have any reserve liability. As such, according to the appellants, the respondent did not qualify for any pension in terms of the applicable regulations. On 21.2.2000 respondent filed a writ petition for a direction to the appellants to grant pension. Counter affidavit was filed in June, 2000. Learned Single Judge who disposed of the writ petition by order dated 28.2.2001 proceeded on the basis that no counter affidavit had been filed. Therefore, the assertion of the appellant that he had rendered 15 years of service including reserve service and was accepted on this ground alone it was held that the respondent was entitled to pension and other benefits. Letters Patent Appeal was filed by present appellants taking a positive stand that a counter affidavit had in fact been filed, the question of the respondent rendering 15 years of service did not arise as he was appointed in January, 1969 and had been discharged in 1978 and the last two years service related to reserve service. He was not entitled to any pension because he had not completed the requisite period of service. The Division Bench referred to the certificate of service of the respondent and held that the same indicated 15 years of reserved service and, therefore, he was entitled to pension. An application for review was filed, which was rejected.

In support of the appeals learned counsel for the

appellant submitted that the learned Single Judge and the Division Bench had clearly overlooked the applicable instructions issued on the basis of the statutory prescription. By Army instructions dated 29th December, 1964 the period of service required for entitlement to pension was indicated as 10 years service with the colours and 5 years service in the reserve. These instructions were applicable when the respondent was appointed. The said Army instruction was modified by Army Instruction dated 14th January, 1976. The period of requisite service was changed to 15 years service with the colours and two years in the reserve. Admittedly neither under the 1964 instructions nor the 1976 instructions, the respondent was entitled to any pension. The reserve liability certificate issued on 1.7.1976 clearly indicates that the respondent wanted discharge from service before completion of the colour service and in clear terms accepted the liability to serve in the reserve for a period of two years. It was, therefore, submitted that the learned Single Judge as well as the Division Bench should not have directed grant of pension.

In response, the learned counsel for the respondent submitted that the Division Bench looked at the original certificate of service which in column 7 shows that the respondent had rendered service of 9 years 1 month and 21 days with colours and 15 years and 1 month 1 day in the reserve. That being so, view of the High Court did not suffer from any infirmity.

We shall first refer to the certificate of service. The same was issued on 26th September, 1978. Undisputedly the respondent was discharged with effect from 6th September, 1978 and had been enrolled on 9th January, 1969. His certificate of service itself indicates this position. Therefore, the question of respondent rendering 15 years of reserved service by the date of issuance of the certificate of service was an impossibility. It is fairly accepted by learned counsel for the appellant that there was a mistake in mentioning period; but the respondent cannot take any advantage of the mistake which is clearly contrary to the factual position. Though the Division Bench looked at the original certificate of service and referred to the entry about rendition of 15 years of reserve service, it failed to notice that the entry on the face of it was absurd. Undisputedly in the certificate of service itself at page 3 it is clearly indicated that the date of enrolment is 9th January, 1969 and the certificate of service was issued on 26th September, 1978. That being so, the question of the respondent rendering more than 15 years of reserved service did not arise. In any event, the entitlement to pension is dependant upon the prescriptions in the Army Instructions which are relatable to para 134 of the Regulations for the Army 1962 (in short the 'Regulation'). The requisite parameters have been indicated above. There is another angle which appears to have been lost sight of by both the learned Single Judge and the Division Bench. The respondent was discharged in 1978 and the writ application was filed after more than two decades. In any event, it is not necessary to deal with that aspect in detail as the learned Single Judge and the Division Bench clearly erred in holding that the respondent was entitled to pension by computing the period of service. The appeals are allowed. Orders of the learned Single Judge and the Division Bench are set aside. The writ petition is dismissed. There shall however, be no orders as to costs.