

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1027 OF 2020

Union of India and another

...Appellants

Versus

Abhiram Verma

...Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 9.2.2018 passed by the Learned Armed Forces Tribunal, Regional Bench, Srinagar at Jammu (hereinafter referred to as the 'Tribunal') in T.A. No. 25/2017(SWP No. 454 of 2008), by which the learned Tribunal has disposed of the said transfer application by setting aside para 2 of letter dated 31.01.2007 to the extent it denied terminal/pensionary benefits to the respondent herein – original applicant

(hereinafter referred to as the 'respondent') and directed the appellants – original respondents to process his claim for terminal/pensionary benefits taking his qualifying service as 15 years as regards "late entrant" in terms of Regulation 15 of the Pension Regulations and to release the same together with arrears, the department – Union of India and another have preferred the present statutory appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the respondent herein commissioned in the Indian Army (Armed Medical Corps) as a Short Service Commission Officer on 27.03.1992 for a period of five years at the age of 33 years and 10 months. He voluntarily applied for Permanent Commission on 7.8.1997. He was granted Permanent Commission at the age of 39 years and 2 months on 28.01.1998. Respondent became a Graded Specialist on 1.6.1994 and thereafter he became a Classified Specialist on 1.6.1999. By letter/application dated 15.04.2000, the respondent applied for resignation on the ground of lack of promotional prospects. At this stage, it is required to be noted that his actual date of superannuation at 56 years of age was 31.05.2014. The application for resignation came to be rejected by the DG, Medical Services (Army) vide communication dated 4.9.2000. That thereafter the respondent filed a statutory complaint on 24.03.2001 against the rejection of his resignation, the

same was rejected by the Under Secretary, Government of India on 14.03.2002. That thereafter the respondent filed a writ petition before the High Court of Jammu & Kashmir being SWP No. 1573/2001 against the rejection of his complaint by the Under Secretary, Government of India. The said writ petition came to be allowed by the High Court vide order dated 11.10.2006 quashing the order of the Under Secretary which rejected the respondent's resignation and directed the Army to consider the case of resignation afresh. That thereafter the respondent's resignation came to be accepted vide order/communication dated 31.01.2007, however, it was stated that he was not entitled to any terminal benefits except for encashment of leave (the denial of the terminal benefits was the subject matter before the Armed Forces Tribunal). The name of the respondent was struck off from the Army Medical Corps vide movement order dated 22.04.2007, with effect from 23.04.2007.

2.1 That thereafter the respondent preferred the writ petition before the High Court of Jammu & Kashmir being SWP No. 454/2008 for grant of gratuity and pension, which subsequently came to be transferred to the Armed Forces Tribunal as TA No. 25/2017. That by the impugned judgment and order dated 9.2.2018, the learned Tribunal has disposed of the said transfer application directing the appellants to process the

respondent's claim for terminal/pensionary benefits taking qualifying service as 15 years as a "late entrant" under Regulation 15 of the Pension Regulations. That leave to appeal has also been dismissed by the learned Tribunal vide order dated 25.03.2019.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal directing the appellants to process the respondent's claim for terminal/pensionary benefits taking qualifying service as 15 years as a "late entrant" under Regulation 15 of the Pension Regulation, the Union of India and another have preferred the present appeal.

3. Ms. Madhavi Divan, learned Additional Solicitor General of India has appeared on behalf of the appellants and Shri Vikas Singh, learned Senior Advocate has appeared on behalf of the respondent.

3.1 Ms. Madhavi Divan, learned ASG has vehemently submitted that in the facts and circumstances of the case, the learned Tribunal has materially erred in directing the appellants to consider the respondent's claim for terminal/pensionary benefits taking qualifying service as 15 years as a "late entrant" under Regulation 15 of the Pension Regulations.

3.2 It is vehemently submitted that as such the learned Tribunal has wrongly observed that the respondent submitted the request for

“voluntary retirement”. It is submitted that as such it was not a case of “voluntary retirement”, but it was a case of “resignation” by the respondent on the ground of lack of promotional prospects.

3.3 It is submitted that even it was not the case on behalf of the respondent before the learned Tribunal that he submitted the application for “voluntary retirement”. Reliance is placed upon some of the averments in the petition before the High Court/learned Tribunal in which he has categorically stated that he tendered the “resignation” for want of promotional avenues.

3.4 It is submitted that since it was the case of “voluntary resignation from service”, the respondent shall not be entitled to the benefit as “late entrant” under Regulation 15 of the Pension Regulations.

3.5 It is submitted that even otherwise at the relevant time the respondent did not complete the qualifying service for the purpose of “voluntary retirement”. It is submitted that thus the date on which the respondent submitted the application for resignation on 15.04.2000, he was not even eligible for premature retirement. It is submitted that therefore it was a case of “voluntary resignation” and not “voluntary retirement”.

3.6 It is submitted that admittedly when the respondent tendered his resignation on 15.04.2000, he had only rendered service for 15 years

and 27 days. It is submitted that had the respondent not voluntarily resigned and retired at the age of superannuation, (i.e, 56 years for a Lt. Col.) on 31.05.2014, he would have rendered 22 years 2 months and 2 days of service. It is submitted that therefore when the respondent tendered the resignation, he did not complete the minimum qualifying service as per Regulation 25(a), i.e., 20 years. It is submitted that therefore the respondent took the shelter of Regulation 15 as a “late entrant”. It is submitted that the minimum qualifying service for being eligible for retiring pension is 20 years under Regulation 25(a). It is submitted that it is only in the case of compulsory retirement on attaining the age of superannuation where it is impossible for the officer to complete 20 years due to the prescribed age limit that a concession of 5 years is granted to such “late entrants” that can earn a retiring person even after completion of minimum 15 years of service.

3.7 It is submitted that therefore as it was a case of “voluntary resignation” and not a case of “voluntary retirement/retirement”. The respondent cannot be said to be “late entrant” and therefore shall not be entitled to the benefit under Regulation 15 of the Pension Regulations.

3.8 It is further submitted that in the present case the learned Armed Forces Tribunal has erred in treating the present case of “voluntary resignation” as one of “voluntary retirement”. It is submitted that there is

a vast difference between the “voluntary resignation” and “voluntary retirement”. Reliance is placed on the decision of this Court in the case of *BSES Yamuna Power Limited v. Ghanshyam Chand Sharma*. *Reported in (2020) 3 SCC 346* (paragraphs 13 & 14).

3.9 It is further submitted by Ms. Madhavi Divan, learned ASG appearing on behalf of the appellants that assuming for the time being that the respondent applied for “voluntary retirement”, in that case also, as on 15.04.2000 even he did not complete the qualifying service for the purpose of premature retirement.

3.10 Now so far as the case on behalf of the respondent, so stated in the counter affidavit on the reliance placed upon Regulation 19(h) and 19(j) of the Pension Regulations of the Army, 2008 to contend that the period of service in a central autonomous body as well as period of ante-date of commission granted to an officer in respect of possession of a Post-Graduate Qualification shall also count towards reckonable pensionable service is concerned, it is submitted that the said Regulations, 2008 shall not be applicable as the respondent has resigned in the year 2000 and even his name was struck off from the Army Medical Corps in the year 2007 and therefore Pension Regulations 1961 shall be applicable. It is submitted that, as such, such a plea was

not taken before filing of the counter affidavit before this Court and rightly not taken as the Pension Regulations 2008 shall not be applicable.

3.11 It is further submitted that even otherwise considering the applicable rules, namely, Premature Retirement/Resignation from Service of AMC Officers dated 26.03.1998, if a person has resigned on the ground of lack of career/promotional prospects the same cannot be a reason for acceptance of premature retirement/resignation and the officers who are permitted to resign are not entitled to terminal benefits, however, they are eligible to avail encashment of accumulated annual leave. It is submitted that therefore also not only the respondent was ineligible to take the benefit of Pension Regulation 15, but also was ineligible for any terminal benefits as per the aforesaid Regulations/Rules.

3.12 It is further submitted by Ms. Madhavi Divan, learned ASG that even the observations made by the learned Tribunal that the authority took seven years to decide on the application submitted by the respondent is factually incorrect. It is submitted that the respondent tendered the resignation on 15.04.2000 and the same came to be rejected by the DG, Medical Services (Army) on 4.9.2000 and even the respondent filed a statutory complaint against the rejection of the resignation on 24.03.2001. It is submitted that therefore, as such, there

was no delay at all on the part of the authority in deciding the application for resignation.

3.13. Making the above submissions and relying upon the aforesaid decision, it is prayed to allow the present appeal.

4. The present appeal is opposed by Shri Vikas Singh, learned Senior Counsel appearing on behalf of the respondent.

4.1 It is vehemently submitted that in the facts and circumstances of the case, as rightly observed by the learned Tribunal, the respondent shall be entitled to the benefit as “late entrant” under Regulation 15 as well as the benefit of Regulation 19(h) of Pension Regulations, 2008. It is submitted that, as such, Regulation 19 of the Pension Regulations, 2008 is *pari materia* to Pension Regulations, 1961.

4.2 It is submitted that in accordance with Pension Regulations, 2008, respondent's pre-commission service as Research Scholar with Gandhi Medical College, Bhopal (a Government College) and as a Medical Officer with BHEL, totalling to 6 years 4 months and 6 days should also be counted towards his total qualifying pensionable service. It is submitted that thus the respondent's total qualifying pensionable service comes to 22 years 11 months and 2 days (15 years 27 days of Army Service + 6 years 4 months and 6 days of pre-commission service + 1 and half years of ante-date seniority).

4.3 It is further submitted that even otherwise the learned Tribunal treated the respondent's case as a "late entrant" in the peculiar facts and circumstances as mentioned in para 4 of the impugned judgment which read as under:

- i) As admitted by the appellants, respondent was granted PC at a late age of 39 years 2 months, in the organizational interest, to meet the acute shortage of medical-specialist in the Army prevailing at that point of time, thereby relaxing the maximum age limit 32 years;
- ii) Over a period of time, the medical specialists became surplus in Army thereby causing acute stagnation in the promotions/career progression and lack of opportunity to do in-house specialist courses, which prompted the respondent to seek pre-mature release from the Army so as to establish his career elsewhere at that young age;
- iii) the respondent was 42 years of age when he had applied for the pre-mature severance on 15.04.2000, which was initially rejected by the Appellants on the false ground that there was shortage of medical specialists in the Army; and
- iv) the appellants inordinately delayed in accepting respondent's request which happened only with the kind indulgence of the J&K High Court and accordingly by the time respondent was released from the

Army, he had already crossed the age of 49 years of age which was too late to establish his practice or start a new career.

4.4 It is further submitted by Shri Vikas Singh, learned Senior Counsel that, as such, Pension Regulations, 2008 shall be applicable. It is submitted that as held by this Court in the cases of *D.S. Nakara v. Union of India* (1983) 1 SCC 305 and *K.J.S Buttar v. Union of India*, (2011) 11 SCC 429 for the purpose of granting benefit under the new Pension Rules, the date of retirement is irrelevant, though the revised scheme would be operative from the date mentioned in the new Pension Rules but would bring its umbrella even to the pensioners who retired after the specified date w.e.f. and their pension would be payable accordingly with effect from the said specific date.

4.5 Relying upon the decision of this Court in the case of *Union of India v. Lt. Col. P.S. Bhargava*, (1997) 2 SCC 28 (Paras 7, 18 to 20), it is submitted that as held by this Court in the context of Army, there is no difference between “resignation” and “voluntary retirement” because in either case prior permission of the government would be required for an Army Personnel to leave the service. It is submitted that this Court also held that the policy letter issued by the Army Headquarter, thereby denying pension and other terminal benefits to the persons who resigned

to the service cannot be given effect to being contrary to the Pension Regulations which does not have such stipulation.

4.6 It is submitted that even otherwise the respondent had submitted his application on 15.04.2000 on a printed form prescribed by the appellants which has both options of “resignation” and “premature retirement” printed on it. It is submitted that as such the respondent’s real intention was to seek premature retirement but he was told that since he had less than 10 years of service at that point of time, as per para 7 & 13 of the Army HQ Policy dated 26.03.1998, the premature release before 10 years of service has to be termed as “resignation” and not as “premature retirement”. It is submitted therefore his application was treated as one of “resignation” and not as “premature retirement” due to the aforesaid technical reason, even though the respondent has no intention to resign and thereby losing his service benefits, if any.

4.7 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

5. We have heard the learned Senior Counsel for the respective parties at length.

The short question posed for the consideration of this Court is, whether in the facts and circumstances of the case, the respondent is

entitled to the benefit of Regulation 15 of Pension Regulations, 1961 as a “late entrant” and therefore entitled to the pensionary benefits?

The incidental question which is posed for the consideration of this Court is, whether the resignation tendered by the respondent on 15.04.2000 can be said to be a “resignation” or “voluntary retirement”.

5.1 While considering the aforesaid issues, even at the cost of repetition, few dates and events are required to be considered, which are as under:

- i) the respondent applied for resignation (now according to the respondent it was a request for voluntary retirement) on the ground of lack of promotional aspects on 15.04.2000;
- ii) the application for resignation came to be rejected by the DG, Medical Services (Army) on 4.9.2000;
- iii) the respondent filed a statutory complaint against the rejection of his resignation on 24.03.2001;
- iv) the respondent's statutory complaint came to be rejected by the Under Secretary, Government of India on 14.03.2002;
- v) the High Court of Jammu & Kashmir by judgment and order dated 11.10.2006 quashed the order of the Under Secretary who rejected the

respondent's resignation and consequently directed the department to consider the case of the resignation afresh;

vi) respondent's resignation came to be accepted in pursuance of the High Court's order vide communication/letter dated 31.01.2007, however, it was stated that the respondent is not entitled to any terminal benefits except for encashment of leave;

vii) the name of the respondent came to be struck off from the Army Medical Corps vide Movement Order w.e.f. 23.4.2007;

viii) as per paras 7 & 13 of the Army HQ Policy dated 26.3.1998, the qualifying service for the purpose of premature retirement was 10 years of service, otherwise his application has to be termed as "resignation";

ix) admittedly the respondent did not complete the ten years of service on 15.04.2000 when he tendered his resignation and therefore as such was not eligible to apply for "voluntary retirement";

x) when the respondent tendered application for resignation on 15.04.2000, the respondent rendered service for 15 years and 27 days only; and

xi) the minimum period of qualifying service actually rendered for earning retiring pension shall be 20 years as per Regulation 25(a), however, if an officer is a "late entrant" who, as such, has rendered

service at least for 15 years and who has retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service (actual) as per regulation 15.

6. To bring the case within Regulation 15 and get the benefit as a “late entrant”, it is the case on behalf of the respondent that his application tendered on 15.04.2000 was not an application for “resignation”, but it was a request for “voluntary retirement”. The submission on behalf of the respondent that what was tendered on 15.04.2000 was not an application for “resignation” but it was an application for “voluntary retirement” has no substance and cannot be accepted for the following reasons:

- i) that the qualifying service for the purpose of “voluntary retirement” is minimum 10 years’ service. On 15.04.2000, the respondent did not complete 10 years of service and therefore was not eligible for applying for “voluntary retirement” and therefore on 15.04.2000 otherwise also he could not have applied for “voluntary retirement”;
- ii) in the application dated 15.04.2000, the cause shown was lack of promotional aspects. Even the High Court of Jammu & Kashmir in its judgment and order dated 11.10.2006 which was filed by the respondent specifically noted the submission on behalf of the respondent that the “petitioner having joined the Commission at a later stage has no chance

of promotion to the first selection, i.e., to the rank of Colonel in the Army Medical Corps. Petitioner moved an application dated 15th April, 2000 before the respondents' seeking “**resignation**” from the army on the ground of non-availability of promotional prospects and ineligibility to acquire technical skill”. Even the High Court in its judgment and order dated 11.10.2006 treated and considered the application submitted by the respondent dated 15.04.2000 as application for “**resignation**” and proceeded on that footing. Even the subsequent petition filed before the High Court being SWP 454/2008, the respondent never contended that it was an application for “voluntary retirement”. If we see the averments in the writ petition all throughout the word used by the respondent is “resignation”. Therefore, only as an afterthought and to get the benefit of “late entrant” under Regulation 15, now it is the case on behalf of the respondent that what was meant by him at that time was praying for “voluntary retirement” and it was not an application for “resignation”;

iii) even as per the applicable rules for premature retirement/resignation of AMC Officers dated 26.3.1998, a request of an officer to seek premature retirement/resignation on the ground of lack of career prospects shall not be accepted and even if the officers are permitted to resign, they are not entitled to terminal/pensionary benefits; and

iv) even from para 6 of the written submissions dated 15.09.2021 filed on behalf of the respondent, it can be seen that the respondent has accepted that on 15.04.2000 he was not eligible for “voluntary retirement” and therefore he used the word “resignation” to get out of the technical reason. Therefore, it can be said that he has admitted that on 15.04.2000 he did not fulfil the criteria for “voluntary retirement” as on that day he had not completed 10 years of service.

Therefore, from the aforesaid facts, the only conclusion would be that on 15.04.2000 the respondent tendered “resignation” for lack of promotional avenues/aspects and it was not a case of “voluntary retirement”.

7. Even, there is a distinction between the “resignation” and “voluntary retirement”. A person can resign at any time during his service, however, an officer cannot ask for premature/voluntary retirement unless he fulfils the eligibility criteria.

8. This Court had an occasion to consider the distinction between “resignation” and “voluntary retirement” in the case of *Senior Divisional Manager, LIC v. Shree Lal Meena*, reported in (2019) 4 SCC 479, which has been subsequently followed by this Court in the case of *BSES Yamuna Power Ltd. (supra)*. In paragraph 22, it is observed and held as under:

“22. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in *RBI v. Cecil Dennis Solomon* [*RBI v. Cecil Dennis Solomon*, (2004) 9 SCC 461: 2004 SCC (L&S) 737]. On a similar factual matrix, the employees had resigned sometime in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under: (SCC pp. 467-68, paras 10)

“10. In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary....”

8.1 The law laid down by this Court in the case of *Shree Lal Meena* (*supra*) has been reiterated by this Court in the subsequent decision in the case of *BSES Yamuna Power Ltd.* (*supra*) and in the subsequent decision, this Court also considered the observations made in paragraph 26 in *Shree Lal Meena* (*supra*) that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions. It is further observed that the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial

provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. Therefore, having tendered the "resignation", the respondent has to suffer the consequences and now cannot be permitted to take 'U' turn and say that what the respondent wanted was "premature retirement" and not "resignation".

9. Now so far as the reliance placed by the respondent on Regulation 19(h) and 19(j) of the Pension Regulations of the Army, 2008 to contend that a period of service in a central autonomous body as well as period of ante-date of commission granted to an officer in respect of possession of a Post-Graduate Qualification shall also be counted for the purpose of pensionable service, the same cannot be accepted, firstly on the ground that the same was not raised before the High Court/AFT. Even otherwise also, the Pension Regulations of the Army, 2008 shall not be applicable to the case of the respondent as the respondent would be governed by the Pension Regulations, 1961, which have no *pari materia* provisions like Regulation 19(h) and 19(j) of the Pension Regulations of the Army, 2008. The same has no retrospective applicability. As such, the respondent had resigned on 15.04.2000 and even his resignation was accepted on 31.01.2007, much prior to the coming into force of the Pension Regulations of the Army, 2008.

10. Now so far as the reliance placed upon the decisions of this Court in the cases of *D.S. Nakara (supra)* and *K.J.S. Buttar (supra)* is concerned, the same shall not be applicable to the facts of the case on hand. Similarly, the decision of this Court in the case of *Lt. Col. P.S. Bhargava (supra)* shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the respondent. In the case before this Court, it was found that the officer completed the requisite qualifying service which was for the purpose of pensionable benefits. However, the same was sought to be denied on the ground that he voluntarily resigned. In the present case, as observed hereinabove, the minimum qualifying service for the purpose of pensionable benefits is 20 years as per Regulation 25(a) and if his case is considered as a “late entrant”, then 15 years as per Regulation 15.

11. In light of the above findings, it is required to be considered whether the respondent can be said to be a “late entrant” and is entitled to the benefit of Regulation 15 as a “late entrant” and the pensionable benefits or not? Regulation 15 reads as under:

“Regulation 15 – Late Entrants

15. For purposes of the regulations in this Chapter, a “late entrant” is an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service (actual) qualifying for pension but whose total qualifying service is less than twenty years (actual).”

As per Regulation 15, a “late entrant” is an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service (actual). As the respondent did not retire on reaching the prescribed age limit for compulsory retirement, the respondent cannot be said to be a “late entrant”. The purpose and object seems to be to give 5 years relaxation/grace for qualifying service for earning a retiring pension. As per Regulation 25(a), the minimum period of qualifying service actually rendered and required for earning a retiring pension shall be 20 years. However, if an officer is not able to complete the minimum period of qualifying service, i.e., 20 years and before completing 20 years of service he is attaining the age of superannuation and is retired on reaching the prescribed age limit of compulsory retirement, but has completed 15 years of qualifying service, he is considered as a “late entrant” and is entitled to pensionary benefits by getting 5 years grace period. Therefore, to that extent the same can be said to be a relaxation/grace of 5 years for getting the benefit of pensionable benefits provided the case falls within Regulation 15 and an officer is a “late entrant”. As observed hereinabove, the respondent cannot be said to be a “late entrant” and therefore not entitled to the benefit of Regulation 15 and therefore not entitled to the pensionary benefits.

12. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the learned Armed Forces Tribunal dated 9.2.2018 in T.A. No. 25/2017 quashing and setting aside para 2 of letter dated 31.01.2007 to the extent it denied terminal/pensionary benefits to the respondent and directing the appellants to process the respondent's claim for terminal/pensionary benefits taking his qualifying service as 15 years as regards "late entrant" in terms of Regulation 15 of the Pension Regulations is hereby quashed and set aside and it is held that the respondent is not entitled to the terminal/pensionary benefits as a "late entrant" in terms of Regulation 15 of the Pension Regulations. The present appeal is allowed accordingly, however, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI;J.
SEPTEMBER 30, 2021. [A.S. BOPANNA]