

Supreme Court of India

Kamal Singh Ghugtyal vs Union Of India & Ors on 3 November, 1987

Equivalent citations: 1988 AIR 101, 1988 SCR (1) 769

Author: B Ray

Bench: Ray, B.C. (J)

PETITIONER:

KAMAL SINGH GHUGTYAL

Vs.

RESPONDENT:

UNION OF INDIA & ORS

DATE OF JUDGMENT 03/11/1987

BENCH:

RAY, B.C. (J)

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RAY, B.C. (J)

SEN, A.P. (J)

CITATION:

1988 AIR 101                      1988 SCR (1) 769

1987 SCC Supl. 656              JT 1987 (4) 246

1987 SCALE (2) 931

ACT:

Pension Regulations for the Army, 1961 (Part 1): Regulations Nos. 132 & 126: Entitlement to pension-Havaldar rendering less than qualifying service-Held not entitled to pension.

HEADNOTE:

Regulation No. 132 of Pension Regulation for the Army, 1961 (Part I) prescribes minimum qualifying colour service of fifteen years for earning service pension. Regulation No. 126 provides for counting of former service.

The petitioner's representation for pension was rejected on the ground that he had not been in the Army service for a period of 15 years as required under the Army Pension Rules.

In the writ petition the petitioner claimed that he had served in the Army from November 1939 to August 1948, when he was released in the rank of Havaldar, that he was again recalled and served in the Army Supply Corps (MT) from July 1948 to July 1953 in the rank of Havaldar, when he was again recalled by the Kumaon Regiment and served in the Lok Sahayak Sena from July 1953 to July 1956 in the rank of Havaldar. He further stated that service rendered by him in

the LSS (third spell) should be treated as services in the army and he having served for more than 15 years in the army was entitled to pension.

His claim that he was in the army service for over 19 years, was contested by the respondents, who stated that the petitioner was enrolled in the Army on November 24, 1940 and discharged from service with effect from October 26, 1946, that he was subsequently re-enrolled in ASC (MT) with Army on March 8, 1948 and discharged from there on May 20, 1952, and that he has re-enrolled with the Kumaon Regiment on March 2, 1955 for Lok Sahayak Sena and discharged from there on September 2, 1957. It was further stated that the service rendered by him in LSS was not countable towards pension and that his service in the first two spells was 10 years and 54 days only.

The petitioner could not produce relevant documents in support of his statement.

770

Dismissing the writ petition,

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HELD: The petitioner has not rendered 15 years of army service to be able to get the benefit of army pension as required under the army rules. [772F]

The statements of the petitioner regarding the periods of service rendered by him in the first and the second spell are inconsistent with his record of service produced by the respondents at the hearing. [772D-E]

His service in the National Volunteer Force (LSS) cannot be treated as army service countable towards pension. [772D]

#### JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 1702 of 1986. (Under Article 32 of the Constitution of India) K.M.M. Khan Amicus Curiae for the Petitioner. O.P. Sharma, Mrs. Subhadra and P. Parmeshwaran for the Respondents.

The Judgment of the Court was delivered by B.C. RAY, J. The petitioner who was a Havaladar in the Army (No. 4 142276) has moved this writ petition praying for an order directing the respondent Nos. 1 to 3 to give pensionary benefit to the petitioner as he has served about 19 years in the army as a Havaladar. The petitioner has stated that in the first spell he has served in Kumaon Regiment from November, 1939 to August, 1947 during the second world war. He was released from the army service in August, 1947 in the rank of Havaladar (No. 16235). The petitioner was again recalled during Kashmir operations, in the Kumaon Regiment and he served in the Army Supply Corps (MT) from July, 1948 to July, 1953 in the rank of Havaladar (DUR-No. 6556074). The petitioner further stated that he was recalled from Army Supply Corps (MT) by Kumaon Regiment and transferred to impart training in the Lok Sahayak Sena of K.R.C. Platoon No. 28 where he served from July, 1953 to July, 1956 in the rank of Havaladar. As his job was to impart military training to Lok Sahayak Sena

which is like NCC, he retained a regular army No. 4142276. The petitioner stated that in an alleged incident of storing illicit arms in his house, there was a police raid and all his papers were taken away by the police and as such he had no papers left with him to prove his service in the regular army except a statement of accounts QE 11/56, a copy of which has been annexed as annexure P-2. It has been stated that the petitioner was intimated by a letter dated 27.9.1983 issued by the District Sanik Welfare and Resettlement office, Almora in reply to his representation for pension that he has not been in the army service for a period of 15 years as required, to be entitled to get pension according to Army Pension Rules. His claim for army pension was, therefore, rejected: This letter has been annexed as annexure P-5 to the writ petition. The petitioner has stated in the writ petition that his service rendered in the LSS (third spell) should be treated as service in the army and he having served for more than 15 years in the army is entitled to pension.

An affidavit-in-opposition has been filed on behalf of the respondents sworn by Capt. P.E. Joseph. In para 1 of the said affidavit it has been stated that the petitioner was originally enrolled with the Kumaon Regiment on 24th November, 1940 and discharged from service with effect from 26th October, 1946. He was subsequently re-enrolled in ASC (MT) with Army No. 6556074 on 8th March, 1948 and discharged from there on 20th May, 1952. It has been further stated that in the third spell of service he was re-enrolled with the Kumaon Regiment on 2nd March, 1955 for Lok Sahayak Sena and allotted Army No. 4142276. He was discharged from there on 2nd September, 1957. It has been further stated in para 3 of the said affidavit that the claim of the petitioner that he was in army service for over 19 years was not based on facts. It has been further stated that his service in the first two spells is 10 years and 54 days only and even if his service with 29 LSS is counted towards qualifying service his total service would be less than 15 years. So he will not be entitled to pension as per the extent army rules. The petitioner on the other hand was unable to produce relevant documents in support of his statement regarding the period of his service in the army rendered both in the first and second spell of service. It appears from a letter dated 21st October, 1982 issued by the Lieutenant, Sahayak Abhilekh Adhikari, Asstt. Record officer for OIC Records that the service rendered by the petitioner in LSS cannot be counted towards pension as the members of that unit are not treated as army personnel. This letter has been annexed as annexure 'D' to the counter-affidavit. It has been further stated in the affidavit that since the individual has not served in the army as an incumbent for more than 15 years, he is not entitled to any pension as contemplated under the army rules.

A supplementary counter-affidavit on behalf of the respondents verified by 2nd Lieutenant Jagdish Singh, Records Kumaon Regiment, Ranikhet has been filed wherein it has been stated in para 9 that the petitioner having not completed the required 15 years of service, was not entitled to pension as per prevalent rules. It also appears from the letter dated 3rd February, 1987 issued under the signature of Major, Senior Record officer for officer-in-Charge addressed to the organisation Directorate, Adjutant General's Branch, Army Headquarters that since the petitioner had not completed 15 years pensionable service in both the spells, he was not entitled to service pension as per the existing orders. It has been further stated therein that the petitioner's service in 28 National Volunteer Force (LSS) training team was not countable towards pension for which necessary clarification had already been given by the CDA(P), Allahabad vide letter dated 21st October, 1982.

The respondents at the time of hearing produced the relevant records wherefrom it appears that the petitioner has not completed 15 years of army service as his service in the LSS can not be treated as army service. It is also evident that the statements of the petitioner regarding the periods of service rendered by him in the first and the second spell are inconsistent with his record of service as mentioned in the letter dated February 3, 1987, annexed as annexure 'B' to the supplementary counter-affidavit filed on behalf of the respondents as well as from the letter issued under the signatures of Sahayak Abhilekh Adhikari, Asstt. Record officer for OIC Records dated October 16, 1981, annexed as annexure P-4 to the writ petition. The army regulation Nos. 126 and 132 were also placed before us in this connection. We are constrained to hold that the petitioner has not rendered 15 years of army service to be able to get the benefit of army pension as required under the army rules. Writ Petition is therefore, dismissed. There will however, be no order as to costs.

P.S .S.

Petition dismissed.