

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1539 of 1997

in

SPECIAL CIVIL APPLICATION No 2242 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SOHANSINGH J BHATIA

Versus

COMMANDANT ARMY MEDICAL CORE

Appearance:

MR MISHRA for Appellant

MR JD AJMERA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 31/03/98

ORAL JUDGEMENT

1. Admitted. Mr. J.D. Ajmera appears and waives service of notice of admission on behalf of the respondents. In the facts and circumstances, the matter is taken up today for final hearing.

2. This Letters Patent Appeal is filed against dismissal of Special Civil Application No.2242 of 1995 by the learned Single Judge by his decision dated October 13, 1997.

3. Appellant is the original petitioner. He filed the above petition for an appropriate writ, direction or order quashing and setting aside the action of the respondent authorities of denying him pension and other retiral benefits to which, according to him, he was otherwise entitled. When the matter came up for hearing before the learned Single Judge, the learned Single Judge observed in the order that the petitioner was not eligible for pensionary benefits on the ground that he had not completed "qualifying service". According to the learned Single Judge, the qualifying service for pension was 15 years as per paragraph 132 of the Pension Regulations for the Army, 1961, Part-I. The appellant had completed, as mentioned in the petition, service of about 14 years and more but had not completed 15 years. The learned Single Judge also observed that relaxation can be granted by the authorities maximum by six months. So, even if relaxation is taken into account, the appellant would not be completing 15 years of qualifying service and, hence, he was not entitled to pensionary benefits.

4. Mr. Mishra, learned counsel for the appellant, drew our attention to prayer clause and submitted that the prayer of the appellant-petitioner was not only pensionary benefits, but also other retiral benefits. In this connection, our attention was drawn by Mr. Mishra to Defence Service Regulations - "Pension Regulations for Army, 1961, Part-I" as declared on 4th April, 1961. Particular attention was drawn to Regulation 167 "Scale of Special Pensions and Gratuity", which reads as under :-

"167. The scale of special pension or gratuity :-

Qualifying service	Scale of special pension/ gratuity.
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Combatants

15 years or more Pensions at the rates specified
in regulation 136.

10 years or more but

less than 15 years Pension proportionate to minimum
service pension, under regulation
136 appropriate to the rank and
group in the ratio that the
completed years of qualifying
service rendered bears to 15.

5 years or more but
less than 10 years Gratuity at the scale of 1 1/3
months' for each completed years
of qualifying service.

Less than 5 years Gratuity equal to 3 months' pay.

Non-Combatants
(Enrolled)

20 years or more Pension at the rates specified in
regulation 146.

15 years or more but
less than 20 years Pension proportionate to the
minimum service pension under
regulation 146 in the ratio that
the completed years of qualifying
service rendered bears to 20.

5 years or more but
less than 15 years Gratuity at the scale of 1 1/3
months' pay for each completed
year of qualifying service.

Less than 5 years Gratuity equal to 3 months' pay.

5. It was stated that even if the appellant is not
entitled to pensionary benefits, he would be entitled to
benefits under Regulation 165. Mr. Ajmera drew our
attention to a fact which is mentioned in the list of
events in which it was stated by the learned counsel for
the appellant as under :-

"While discharging him from the service,
he(appellant) was paid gratuity, etc."

6. In the facts and circumstances, we allow the
appeal. However, we do not say whether the appellant
would be entitled to invoke provisions of Regulation 167
and as to whether he would be entitled to pension or

gratuity, as mentioned therein. We also say nothing about the distinction between gratuity and special gratuity. Learned counsel for the respondents stated that these Regulations may not apply to the case of the appellant. We do not decide and do not say that they are applicable to the case of the appellant. The Authority will decide as to whether the Regulations would apply to the case of the appellant and whether he would be entitled to any benefit in accordance with the Regulations. The authorities will take the decision in accordance with law expeditiously, preferably within three months from the receipt of the writ.

7. Appeal is, accordingly, allowed to the above extent. No costs.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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