

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**T.A. NO. 27/2010**

**(Arising out of Writ Petition (C) No. 3133/2004)**

**P R E S E N T**

**HON'BLE MR. JUSTICE C.Y. SOMAYAJULU, Member (J)  
HON'BLE CMDE MOHAN PHADKE (Retd), Member (A)**

**IC- 30822 M Ex-Major Prasanta Kumar Sinha  
Son of Shri Sarat Chandra Sinha,  
Apurba Path, R.B.Baruah Road,  
Guwahati-781003,  
Dist Kamrup (Assam).**

**...Applicant**

**- Versus-**

- 1. The Union of India,  
Represented by the Secretary of  
Defence, Govt. Of India, South  
Block, New Delhi-110011.**
  
- 2. The Secretary,  
Ministry of Personnel & Training,  
Govt. Of India, North Block,  
New Delhi-110011**

**...Respondents**

**Legal practitioners for  
Applicant (s)**

**Mr. S. Roy**

**Respondent (s)**

**Mr. S Bhattacharjee, CGSC**

**Date of Hearing : 14.12.2010 & 09.11.2010**

**Date of Judgment & Order : 24th December, 2010**

**JUDGMENT & ORDER**

**[By Cmde Mohan Phadke]**

IC-30822 M & Ex-Major Prasant Kumar Sinha was granted a permanent commission in the Indian Army on 22<sup>nd</sup> December, 1974. His application for permanent retirement was approved by the Army Headquarters (Military Secretary's Branch/MS 7C, Letter No.38176/2409/MS 7C dated 6<sup>th</sup> April 88 at Annexure A of the petition). As per para 6 of the petition, the petitioner retired on 6<sup>th</sup> May 88 and was transferred to the Regular reserve of Officers ( Class X ) from 6<sup>th</sup> May 88 viz. the date of his retirement till 30<sup>th</sup> September, 2003. During this period (about 15 years and 5 months) he was liable to be recalled to the Army Service. He was also required to seek prior approval of the Government before taking up commercial employment/employment under Foreign Government. In 1993 the petitioner applied for the dealership of a retail outlet of Hindustan Petroleum through the Directorate General of Resettlement, Ministry of Defence, but was told that he was not entitled for the same as he was not covered by the existing definition of the term 'Ex-serviceman' as he had not completed 20 years of service. After completing his term as a reservist he once again applied to the Director General of Resettlement vide his letter dated 31<sup>st</sup> July 2002 for a clarification on this issue but was informed by the Govt. Of India, Ministry of Defence, Directorate General of Resettlement vide letter 8115/Pvt.Emp-2 dated 2nd September 2002 (at Annexure B-1) "*You had taken premature retirement without completing contractual period of service, you do not get the status of Ex-servicemen. Period of reserve liability also does not make you eligible for this. Your application is thus returned unactioned.*"

2. Subsequently, in response to his letter dated 17th March 2003 he was once again informed vide Annexure B-2, *"You have taken the premature retirement on your own request and have not completed the specific terms of engagement. You are 'therefore not eligible to Ex-Servicemen status as per Govt. Of India, Ministry of Personnel, Public Grievances & Pension, (Deptt of Personnel & Training) Notification No 36034/5/85-Estt (SCT) dated 27 Apr 1986."*

3. Aggrieved by his being not considered as Ex-Serviceman the petitioner filed the instant writ petition, in Gauhati High Court, challenging his exclusion from the definition of "Ex-Serviceman" under Rule 2 despite his rendering service of more than 20 years "both physically and as reservist" he also prayed for being treated as 'Ex-Serviceman' after amending the definition of Ex-Serviceman in accordance with the principles of natural justice and the rights guaranteed to him under the Constitution of India. The petitioner further, sought to be declared entitled to concessions and benefits admissible to an "Ex-serviceman".

4. The petitioner has contended that the existing definition of Ex-Serviceman given in Govt. Of India, Ministry of Personnel, Public Grievances and Pension (Directorate of Personnel & Training) Notification No.36034/5/85/Estt (SCT) dated 27<sup>th</sup> April 86 was violative of Article 14 of the Constitution of India as it discriminated between short service and emergency commissioned officer who join the service for five years and revert back to the comforts of civil life on the one hand and permanent regular commissioned officers, who contracted for a longer period, on the other hand. [In this context paragraphs 10, 18, 19, 20 and 21 of the petition refer.]

5. In this regard the petitioner has cited his own example to say that he had joined service in 1974. He was governed by para 9(B) of the definition of the term 'Ex-Serviceman' but this was subsequently amended in a manner detrimental to his interest. This was bad in law inasmuch as the terms and conditions governing the individual at the time of his joining service cannot be changed to his disadvantage.

6. The petitioner has also contended that during his service in the reserve he continued to be an 'officer' within the meaning of Section 3 (xiii) (B) and Section 2 (G) of the Army Act. He accordingly contended that he thus continues to be under Army Act during the period of his reserve service. He has been denied the benefits and concessions that are admissible to 'Ex-Serviceman' and, that being so, there was no consideration whatsoever for the contractual service rendered by him as a Reservist. For a contract to be valid there has to be consideration. Absence of consideration, as in this case, was in gross violation of the provisions of the Indian Contract Act 1872.

7. As against the minimum qualifying service of 20 years for pension he had rendered 13 years and 4 months of physical service and 15 and 3 months of Reserve service (without consideration but with all restriction and liabilities). Both the services put together should, therefore, have been considered towards recognizing him as an 'Ex-Serviceman' and also considering him qualified for minimum pension.

8. In a welfare state post-retirement benefits are a part of socio-economic justice. The Hon'ble Supreme Court has consequently made the pension rules more beneficial to the employees. The definition of 'Ex-Serviceman' stands in

direct violation of the views expressed by the highest court in the land. Finally, the petitioner has concluded by saying that the respondents have amended rule 2 of the notification which defined Ex-Serviceman to include persons released during the period (5.11.86 to 30.6.87) at their own request.

9. The Respondents have in response to the petition contended that the Petitioner was granted premature retirement vide Army Headquarters letter No 38116/241/MS-7C/ dated 06 Apr 88 but since the case was more than 15 years old record pertaining to his premature retirement had been weeded out and consequently it was not possible to comment on his medical category at the time of his premature retirement or the ground on which he had sought premature retirement. Regular Reserve of Officers was maintained by the Govt. Of India vide Special Army Instruction 10/S/63. It is applicable to all officers who retire before attaining the age of compulsory retirement. Such officers on the Reserve List are liable to recall to active service in grave emergency in the interest of national security. [In so far as the allotment of dealership was concerned the Petitioner did not qualify as he did not fulfill the prescribed eligibility criteria as in Annexure-1.] Further, Reservist Service does not count towards physical service and, therefore, the Petitioner was rightly informed that he was not eligible for the status of 'Ex-Serviceman'. As against this Short Service Commissioned Officers/Emergency Commissioned Officers were eligible for the status of 'Ex-Serviceman' on completion of their contractual periods. This was so as Short Service Commissioned Officers/Emergency Commissioned Officers were commissioned for a specified period and for a short period and were entitled only to gratuity and not pension. Besides, this was also imperative with a view to increase the attractiveness of SSC/EC. The Permanent Regular Commissioned Officers on the other hand belonged to a different category and hence it was not right to compare them with SSC/ECOs.

10. Whilst denying the contention of the Petitioner that the notification which defined 'Ex-Serviceman' was bad in law the Respondents have contended that since the Petitioner proceeded on premature retirement in April 1988 he cannot claim benefit under the Pre-1987 definition.

11. The Respondents have further contended that Reserve liability does not count towards physical service and qualify the ex defence personnel for the status of 'Ex-Serviceman'. It is also not correct to say that the State does not discharge any obligation towards the Reservists as they are given pay and allowances as admissible to serving officers when recalled for duty. Similarly, they become subject to Army Act only when called up for duty. Moreover, the Reserve liability does not preclude the Petitioner from taking up alternative employment. As per the orders in vogue the Petitioner was transferred to Regular Reserve of Officers (class x) up to 30 Sept 2003. However, Special Army Instruction 10/S/63 was amended in 1991 and the reserve liability was reduced to 5 years or till the age of compulsory retirement whichever is earlier. Consequently, the Petitioner was no longer on Reserve List after May 1993 i.e. on completion of 25 years from the date of premature retirement. The Respondents have then reiterated that the time spent on Reserve List does not count towards pension. The Respondents have concluded by saying that Petitioner having voluntarily sought premature retirement before completing pensionable service was not entitled to the status of an 'Ex-Serviceman' and also that the amendment to the definition of ex serviceman was made by a High Level Committee on problems of ex servicemen in the best interest of the nation and ex serviceman.

12. The issues that arise for consideration are:-

1. Whether the petitioner is entitled to be considered an Ex Serviceman and

2. Whether he is entitled to concessions and benefits as admissible to Ex Servicemen.

The answer to the first question is quite clearly in the affirmative. In this regard it has to be noted that the petitioner was commissioned in the Indian Army on 22 Dec 74 and served for about 13 years and four months till his premature retirement on medical grounds on 06 May 1988. The fact that he served in the Indian Army for over 13 years and was granted premature retirement on his application is not in dispute. It is in fact borne out by Army Headquarters letter dated 06 Apr 1988 at Annexure- A of the petition. Further, during the hearing, the petitioner, when queried, showed the identity card that was issued to him consequent upon his retirement and which showed him to be an 'Ex Serviceman'. By virtue of the service rendered by the petitioner as an officer in the Indian Army he has, necessarily to be considered an Ex Serviceman and this status cannot be denied to him in the absence of any provision to the contrary. The petitioner in this case was duly released from service on premature retirement and is thus entitled to be called a Major (Retd) and, as a corollary an 'Ex Serviceman'.

The decision communicated vide GOI, MOD letters dated 23 Apr 1994 (Annexure -B) 02 Sep 2002/Annexure-B1) relates to employment assistance and informs the petitioner that he is not an 'Ex serviceman' in that context. In fact this decision appears to be in conformity with the definition given in Govt of Indian Ministry of Personnel DOP&T office memorandum of 27 Mar 1987 as amended vide OM of 14 Apr 1987. (Barring this notification no other definition of Ex Serviceman has been cited before us.) The latest clarification given by the GOI, MOD vide their letter 4008/DGR/S&R/RES-9 dated 01 Dec 2010 which further encloses DOP & T /Estt(Reservation) Section OM No 36034/6/94-Estt(SCM) dated 09/10-10-1995 again repeats the same stance,

“3. However, it has been clarified by Department of Personnel & Training vide Office Memorandum No 36034/6/94-Estt(SCT) dated 9/10 Oct 1995 (copy enclosed) that the Armed Forces Personnel who retired/released at their own request but after having earned their pension will be eligible for the status of ‘Ex-servicemen’ for the purpose of reservation in posts in government.

4. In the case of Ex Major Prasant Kumar Sinha, he has apparently himself sought Premature Retirement without completing the minimum period required for earning pension. He would therefore not be eligible for reservation in posts for Ex-servicemen in government”.

The DOP&T OM enclosed as authority pertains to “Revision of the definition of Ex Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979” as stated in the subject heading of the said OM. The definition of this OM has a restricted scope which relates to re-employment of Ex Servicemen in Govt Service and cannot therefore be applied across the board to all situations.

Barring the aforesaid notification there is no other rule/order cited before us which excludes the Petitioner from the definition of ‘Ex-Serviceman’ or the other benefits that accrue there from. There is, therefore, no rule/order which denies the petitioner the other normal benefits that are admissible to an ‘Ex Serviceman’ such as the medical and canteen facilities etc. It is accordingly considered that the Petitioner is entitled to the status of an “Ex Serviceman” except for the purposes for which such status has been specifically excluded such as re-employment. Accordingly, the respondents are to issue necessary orders in this regard. Further to remove the anomalous situation that exists at present

the Respondents may also consider issuing a comprehensive definition of the term 'Ex Serviceman' so that persons such as the petitioner in this case do not suffer mental anguish, anxiety and trial and torment, as faced by the petitioner, who had to run from pillar to post and wait for more than two decades to get decision on this subject.

The petition is accordingly allowed. There will be no order as to costs.

MEMBER(A)

MEMBER(J)

