

Sohan Singh

Vs

Union of India and Another

Civil Appeal No. 727 of 1978

(A. N. Sen, Ranganath Misra JJ)

15.09.1983

JUDGMENT

AMARENDRA NATH SEN, J. -

1. The appellant was employed in the Air Force as an airman. On the Expiry of the period of service of 9 years the appellant in terms of the relevant provisions of the regulations made an application for the term of his service being extended by another 6 years. Unfortunately for the appellant, the appellant got involved in a criminal case in relation to theft of certain MIG Batteries. The authorities concerned after holding an inquiry decided to hand over the case to the Municipal Court instead of trying the appellant by Court Martial. Before any order had been passed on the said application of the appellant for extension of his term the appellant continued in service for a further period of one year in view of the provisions of D.I. Rules. As the appellant happened to be an accused in the criminal case the authorities concerned on the basis that the appellant was an accused in a criminal case and was likely to be convicted of the charge of theft, discharged the appellant considering the appellant to be unsuitable by order dated April 6, 1973. The appellant was, however, actually discharged on November 19, 1973. Against this order of discharge the appellant filed a writ petition in the Delhi High Court which was dismissed by the Delhi High Court and the appellant has preferred this appeal with leave granted by this Court. After the dismissal of the writ petition by the Delhi High Court the criminal case against the appellant was finally disposed of and the appellant was acquitted of the charge of theft on November 8, 1976.

2. We have heard the learned counsel for the parties. We have also carefully considered the materials which have been placed before us.

3. It appears that on an earlier occasion when the appeal came up for hearing the authorities had agreed in Court to delete from the order of discharge the words "unsuitable for retention in Air Force (on disciplinary grounds)" and had further agreed to pay to the appellant Service Gratuity and Death-cum-Retirement Gratuity admissible under Pension Regulations of the Air Force, 1961 Part I for the period of qualifying service in the Air Force upto the date of his discharge.

4. On a careful consideration of the materials we are satisfied that the order of discharge of the appellant was passed mainly on the ground that the criminal case against the appellant was pending and the authority concerned was of the opinion that the appellant was likely to be convicted in that particular case. The materials on record clearly indicate that the pendency of the criminal case against the appellant and the possibility of the appellant being convicted of the said charges had greatly weighed with the authority and had influenced its decision in directing the discharge of the appellant. The note of the Commanding Officer recommending discharge on the ground that the

appellant was not suitable, records that 'the appellant was likely to be convicted.' We have no hesitation in coming to the conclusion that if the order of acquittal had been pronounced before the date of the order of discharge of the appellant, the authority concerned would have allowed the application for extension of the term of service of the appellant. If extension had been allowed, as in the normal course it would have been granted if the order of acquittal were there at the relevant time, the appellant would have been entitled to continue in service for a further period of six years in the usual course. Out of the said period of the six years the appellant in view of the provisions of D.I. Rules had in fact served for a little over a year before he was actually discharged.

5. It appears that after the discharge of the appellant the authorities concerned had given a certificate of good conduct to the appellant. That certificate which is at p. 36 of the paper book reads as follows :

This is to certify that 251906 Corporal (non-commissioned officer) Sohan Singh Fitter II Air Frame has been serving in the Indian Air Force since October, 1963.

2. During his services he had been loyal and dutiful. He had proved himself a technician of high calibre. He has been assessed as Superior in his trade efficiently and of very good character.

I wish him all success. Sd. (D. Keelor) Vr. C. Wing Commander Officer
Commanding No. 4 Squadron, A.F. Dated September 19, 1973.##

6. Taking into consideration the peculiar facts and circumstances of this case we are, therefore, of the opinion that the justice of the case requires that the appellant should be compensated by payment of a lump sum amount in lieu of the benefits to which he would have been otherwise entitled if he had continued in service for the extended period of 6 years. However, without going into the merits of the actual claim of the appellant for this particular period we are of the opinion that the ends of justice will be sufficiently met if we direct the authorities concerned to pay to the appellant a sum of Rs. 35,000 by way of compensation. This amount will be paid in addition to the amounts which are to be paid to the appellant by way of Service Gratuity and Death-cum-Retirement Gratuity. The amount will be paid to the appellant within one month from today. The authority concerned is further directed to delete from the order the words "unsuitable for retention in Air Force (on disciplinary grounds)"

7. The appeal is disposed of accordingly. There will be no order as to costs.

</html