

Capt. Rachpal Singh

Vs

Union of India

Civil Appeal No. 720 of 1985

(V. Khalid, R. S. Pathak JJ)

04.12.1986

JUDGMENT

KHALID, J. -

1. The appellant joined the Indian Army on February 9, 1964, as an Emergency Commissioned Officer. During his service, he was promoted to the rank of Acting Captain. He was released from the Army with effect from May 30, 1970, as per letter dated February 19, 1970. The appellant states that he sustained three injuries during service. The first injury was sustained while he was on patrolling duty and the second injury during military service. These two injuries were detected in time. There was a third injury linked to the first injury. It was not detected in time but was discovered subsequently. He was placed in temporary medical category 'CEE' for the first two injuries. Subsequently, on April 24, 1969, this category was upgraded and he was placed in temporary medical category 'BEE-1'. After re-examination on January 17, 1970, he was given medical category 'BEE-2' permanent.

2. The appellant's case is that his release from service must be on medical grounds after complying with the procedure laid down in Army Rule 15-A. This was not done. Therefore, he made various representations to the higher authorities, without success. He filed a suit in the Civil Court, Gurdaspur for a declaration that his release was not valid in law. The suit was dismissed. He then moved the High Court of Delhi in writ No. 53/82, for the issuance of an appropriate direction that his release order was unjust. The writ petition was dismissed. He then moved this Court by special leave. When the special leave petition was pending, he received a communication dated May 16, 1983, from the Union of India to the effect that the disability caused to him should be regarded as attributable to military service. On receipt of this letter, he requested this Court to permit him to withdraw his special leave petition with liberty to make suitable representation to the authorities concerned. This Court permitted the request as per its order dated September 9, 1983. Thereafter he made a representation on October 3, 1983. This was rejected and he was told by order dated January 3, 1984 that he had been discharged on the basis of a phased programme. The appellant moved the Delhi High Court again challenging this order by filing a writ petition. The writ petition was dismissed in limine. Hence this appeal by special leave.

3. As stated above the appellant contends that his release should be under Rule 15-A of the Army Rules and that the order of release based on the alleged phased programme is bad because the procedure laid down in the said rule has not been followed. According to him, this order had been so worded to escape the procedure laid down in Rule 15-A. He strongly relied upon a decision of this Court under similar circumstances in the case of Virendra Kumar v. Union of India (AIR 1981 SC 947 : (1981) 1 SCC 485 : 1981 SCC (L&S) 233 : 1981 Lab IC 433). In that case the release

order was quashed as the procedure laid down under Rule 15-A was not complied with and the officer was directed to be given all the benefits from the date of release to the date of judgment. The case of the respondent as disclosed from the counter-affidavit in this case is that the release was not under Rule 15-A but under a phased programme. The counter-affidavit is sworn to by an Assistant Emergency Commission for the duration of National Emergency and for so long thereafter as his services were required. Emergency Commission was liable to be terminated at any time by the Government of India under para 15 of the Army Instruction.

4. It is further stated in the counter-affidavit that the appellant's contention that he was at all times governed by Rule 15-A of the Army Rules, 1954 is incorrect since the said provision was not applicable to him. He was released from Emergency Commission service as he was ineligible to apply for grant of Permanent Commission. Regarding the three injuries it is stated that the first injury was sustained "in a field area on March 13, 1966, during the course of routine check of night picket/patrol in the camp when he slipped on the terrace at a distance of about 25 yards from the Officers' Mess and accidentally fell down to the extent of 12 feet". That he sustained the first injury while patrolling is, thus, incorrect. The second injury sustained by him on July 16, 1967, was during organised games. Thus, in accordance with the Court of Enquiry, the first injury is attributable to military service in field area and the second injury is attributable to military service in peace area. Regarding the third injury, it was discovered during hospitalisation and was a sequel to the first injury. It was not treated as a separate disability.

5. It is further stated that the appellant was released from the Army as per para 15-A (iii) of the Army Instructions under the phased programme for release of Emergency Commissioned Officers which was approved by the government and communicated to all Army Headquarters. The appellant had applied for grant of Permanent Regular Commission, but his application was returned to his unit as he did not fulfil the condition of acceptable medical category and hence was ineligible to apply for grant of Permanent Commission. He filed statutory appeals before the higher authorities which was all dismissed.

6. The respondent disputes that the appellant was released from Indian Army on medical grounds as his category had gone low due to injuries sustained by him during active military service. He was never told at any time that he was released on medical grounds. He takes shelter in the Ministry of Defence letter dated May 16, 1983, which inadvertently had mentioned "invalidated out of service". This mistake was later corrected. In fact, the appellant was released not by the order dated May 16, 1983, but under Army Headquarter's letter dated February 19, 1970, which did not indicate that he was released on medical grounds. The letters on which the appellant relies were issued in connection with grant of disability pension for the Army service rendered by the appellant and are not relevant to the question of release which was effected under separate orders.

7. We would have straightway allowed the appeal and directed all the benefits to be given to the appellant relying upon Virendra Kumar case (AIR 1981 SC 947 : (1981) 1 SCC 485 : 1981 SCC (L&S) 233 : 1981 Lab IC 433) if the release order was under Rule 15-A of the Army Rules. This fact is seriously disputed by the respondent. In Virendra Kumar case (AIR 1981 SC 947 : (1981) 1 SCC 485 : 1981 SCC (L&S) 233 : 1981 Lab IC 433), it was common ground that the release was on account of physical disability which can be seen from the following paragraph :

4. It is common ground that the appellant was released or discharged on account of physical disability. This is also vouched for by the communication from the President's Secretariat to the appellant dated April 13/23, 1971 extracted in the paper

book. Once we assume that the termination of the emergency commission of the appellant was on the basis of medical unfitness or physical disability, the procedure to be followed in releasing the officer becomes important. In Service Jurisprudence, procedural safeguards are of prime significance.

The case on hand is clearly distinguishable because it is not admitted by the respondents that the appellant's release or discharge was on account of his physical disability. Since there is this factual dispute between the parties, we will try to resolve it with reference to the facts of this case.

8. The Army Act, the Rules and Regulations and Instructions thereunder govern the service conditions of the commissioned officers including those on Emergency Commission, like the appellant before us. Termination of Emergency Commission is provided in Rule 15 of the Army Instruction. A contention was raised in Virendra Kumar case (AIR 1981 SC 947 : (1981) 1 SCC 485 : 1981 SCC (L&S) 233 : 1981 Lab IC 433) that the Army Instruction did not have any statutory status and could not therefore bind the service conditions of the Emergency Commissioned Officer. This contention was repelled by this Court. We respectfully agree.

9. Termination of commission is provided in para 15 of the Army Instructions which reads as follows :

15. Termination of Commission. - (a) The commission of an officer may be terminated at any time by the Government of India -

(i) For misconduct, or if services are found to be unsatisfactory; or

(ii) On account of medical unfitness; or

(iii) If his services are no longer required; or

(iv) If he fails to qualify at any prescribed test or course.

(b) An officer may on giving three months notice be permitted to resign his commission on compassionate grounds of which the Government of India will be the sole judge. An officer who is permitted to resign his commission on compassionate grounds will not be eligible for terminal gratuity.

(c) An officer granted this commission, if eligible and suitable in all respects may be considered at the appropriate time for Permanent Regular Commission in the Regular Army.

10. The case of the appellant is that his termination was on the second ground while that of the respondent is that it was on the third ground. The appellant takes advantage of an inadvertent mistake that crept into the letter dated May 16, 1983, informing him that he was invalidated out of service with 30 per cent disability from June 1, 1970. This mistake was corrected and a letter was sent to him on November 11, 1983, informing him to read "disability from which the officer was found suffering at the time of release" for "disability on account of which the above named was invalidated out of service", in the letter dated May 16, 1983. The appellant's case is that this correction has been deliberately made to deny him the benefits due to him. He went on making representations and he was ultimately told by letter dated January 3, 1984, that no relief could be given to him. The letter signed by the Under Secretary to the Government of India reads as follows :

I am directed to refer to your representation dated November 14, 1982, on the above subject, and to say that your request has been carefully considered. The provisions of Army Rule 15-A which govern invalidment from service are not attracted in your case as you were released from service as per the phased programme of release of Emergency Commissioned Officers.

2. Incidentally, it may be mentioned that this Ministry's letter No. 6(43) 78/Pen-App. Cttee dated May 16, 1983 stands amended vide Corrigendum No. 6(43) 78-Pen-App. Cttee dated November 11, 1983.

11. The appellant does not seriously dispute the case that his release would be justified if it was under the phased programme. Procedure for screening of Emergency Commissioned Officers is well known since it is given wide publicity. Emergency Commissioned Officers apply pursuant to such publication. Those whose applications are in order in all respects are called for interview by the Services Selection Board. The appellant applied for Permanent Commission as part of normal screening courses. His application was returned as he was in a medical category which was not acceptable under the eligibility criteria. He was, therefore, not called for the second stage of screening, i.e. interview, by the Services Selection Board.

12. The release order came thus, as per the phased programme. He belonged to EC-VII course. He was found ineligible and was released. The respondents have appended the documents showing the details regarding release of Emergency Commissioned Officers and procedure for grant of Permanent Commission, as Annexures 1 and 2 in the second counter-affidavit. The screening committee found the appellant ineligible and his release, therefore, followed.

13. Viewed in the light of the phased programme the release order dated February 19, 1970, is a valid order. The appellant did not seriously press the claim that if his release was under phased programme, it was bad in law. We, therefore, do not go into the question whether the procedure adopted for release under the phased programme was proper or not on the scanty materials made available before us. We are relieved of this exercise since the appellant rested his claim largely on the violation of Rule 15-A.

14. The appellant cannot be credited with a straight case in his reliance on Rule 15-A. At all previous stages he met with failure at the hands of the authorities and the High Court. Before this Court also, he did not press his case at the first instance but got the SLP withdrawn, perhaps with justification, in view of a new communication from the higher authorities. In para 9 of the present special leave petition, it is specifically stated that he was released from the Indian Army on May 30, 1970, on medical grounds as his category had gone low due to the injuries sustained by him during the active military service. This statement is sought to be supported with reference to Exs. D-1 to D-6, dating from April 6, 1971 to May 16, 1983. We would refer to some of them to disabuse the impression that he attempts to create that his release was on medical unfitness. Exhibit D-1, dated April 6, 1971 is a certificate which reads :

Certified that Capt. R. S. Dhaliwal (EC-56482) was granted Emergency Commission in the Army with effect from February 9, 1964 and released on May 30, 1970 according to phased programme. His pre-commission training started on July 29, 1963.

This clearly shows that he was released according to the phased programme. Exhibit D-2, is dated

August 11, 1972 and reads as follows :

Certified that Capt. R. S. Dhaliwal (EC-56482) Arty was granted Emergency Commission in the Army with effect from February 9, 1964 and released on May 30, 1970 according to phased programme. His pre-commission training started on July 29, 1963. His character and conduct while in service were good.

This again shows that his release was according to phased programme. Annexure D-3 is dated January 12, 1976. There is a slight change here which reads as follows :

Based on the entries in the Record of Service (IAFZ-2041), it is certified that Shri Rachpal Singh Dhaliwal was granted Emergency Commission with personal No. EC-56482 in the Indian Army with effect from February 9, 1964. He was released from the Army in low medical category on May 30, 1970. At the time of release the officer was holding the rank of A/Cpt.

Though it is stated that he was released in "low medical category" it does not show that it was not according to the phased programme. Exhibit D-4, dated June 3, 1976 reads as follows :

Based on the entries in the Record of service (IAFZ-2041) in respect of Ex A/Capt Rachpal Singh Dhaliwal (Ex 56482) it is certified that he was granted Emergency Commission in the Army with effect from February 9, 1964 and was released therefrom with effect from May 30, 1970.

2. It is further certified that at the time of release he was suffering with the following disabilities :

* (i) Fracture lower third tibia (Rt) and fibula (Rt) and

* (ii) Fracture lateral condyle tibia (Rt)

(*) Authority : Govt. of India, Ministry of Defence letter No. 216371/76/Pen-C dated June 3, 1976.

This also does not show that his release was not under the phased programme. All that it shows are as to what were the disabilities which the appellant was suffering at the time of release. Annexures 5 and 6 dated June 3, 1976 and May 16, 1983, respectively, are letters from the Government of India to the Chief of the Army Staff in relation to the appellant. The subject mentioned in both these annexures is "claim to disability pension in respect of Capt. R. S. Dhaliwal." Annexure D-6 reads as follows :

In supersession of this Ministry's letter No. 219170/R-61/Pen. A dated January 24, 1978 and with reference to letter No. 216371/76/Pen-C dated the June 3, 1976 on the above subject, I am directed to say that the President is pleased to decide that the disability on account of which the above named was invalidated out of service should be regarded as attributable by military service, composite assessment being 30 per cent Pt. w.e.f. June 2, 1970.

2. The claimant's sheet roll is forwarded herewith for necessary enforcement thereon and onward transmission to his Commanding Officer. All the other documents are

also returned herewith. The receipt of the documents may please be acknowledged.

3. This letter issues with the concurrence of Ministry of Finance (Defence) vide their U.O. No. 862/s/Pen/83.

This may in some measure support the appellant's case because it shows that the appellant was invalidated out of service on account of disability attributable by military service. It is this accidental inadvertent error in this communication that was subsequently corrected by the letter dated November 11, 1983 and reiterated in the communication dated January 3, 1984. The correct position appears to be that at the time of release, the appellant had some disability but the authorities never accepted the position that the appellant was invalidated out of service on account of this disability though there were some disabilities which he was suffering at the time of his release.

15. It is relevant to note that most of the annexures produced by the appellant along with his petition relate to his request for either proper treatment or to appear before a Board for Permanent Regular Commission or for suitable civil employment or for disability pension. Annexure E-4 is a letter to the President of India, written by the petitioner which reads as follows :

I have the honor to bring the following facts to your notice :

(a) I was commissioned in the Army as an EC Officer on February 1964.

(b) On March 13, 1966 while I was serving with 1819 PNR I sustained an injury "Fracture Lower third tibia and fibula Rt. leg". This injury was attributed to military service by a court of inquiry. The injury was sustained by me while I was on patrolling duty in operational area.

(c) On July 16, 1967 while I was serving with 19 AD Regt I sustained another injury "Lateral condyle tibia Rt. leg". This was also attributed to military service by a court of inquiry. I remained medical category CEE (Temporary) for both the injuries.

2. On January 17, 1970 I was downgraded to medical category BEE Two permanent by medical board held at Deolali with 20 per cent of disability.

3. Considering the above facts I have the following submission to make :

(a) I have not so far received a copy of my medical board, held on January 17, 1970.

(b) Though I have been recommended for 20 per cent of his disability I have not received any intimation about my disability portion.

(c) A certificate stating that I have served in the Army released on medical ground could have helped me to a great extent for my rehabilitation in civil.

(d) I had booked refrigerator under indent No. 98104, January 9, 1970 while serving in the Army. My money was refunded with my release from the Army.

I request your honour to direct the Army authority to take proper action at an early date.

This shows that the petitioner had himself requested for a certificate to show that he had served in

the Army and that he was released on medical ground, so that he could use them for civil rehabilitation. This indicates that the petitioner knew that his release was not on medical ground and also that he was aware that it was as per the phased programme of release of Emergency Commissioned Officers. Most of the representations relate to his claim for disability pension. The letter issued on May 16, 1983 also related to disability pension and it cannot have any impact on the order of release with effect from May 30, 1970. The letter dated May 16, 1983, therefore, cannot be pressed into service for the purpose of building up a case of release on medical ground.

16. We have given our anxious consideration to the facts of this case. There is no reason to disbelieve the respondent's case that, an accidental error crept into the order dated May 16, 1983. We are not satisfied that the appellant has made out a case to get any relief since it is not admitted by the respondent that his release was under Rule 15-A. The appeal has, therefore, to fail and is dismissed.

</html