

Rameshwar Yadav

Vs

Union of India and Another

Writ Petition (Civil) No. 400 of 1987

(K. N. Singh, K. Jagannatha Shetty, Kuldip Singh JJ)

10.01.1989

ORDER

1. This petition under Article 32 of the Constitution of India is directed against the order of the Controller of Defence Accounts (Pensions), Allahabad dated September 23, 1986 suspending the pensions granted to the petitioner.
2. The petitioner was employed in the Army as soldier. On his superannuation, he was granted pension of Rs. 108 per mensem with effect from November 1, 1978. He continued to draw that pension till January 31, 1983. After his retirement the petitioner was involved in a murder case and convicted for the offence under Section 302 IPC and awarded imprisonment for life. In view of petitioner's conviction of the CDA (Pensions) passed the impugned order suspending the payment of pension to the petitioner in exercise of his powers under Regulation 119 of Pension Regulations Part I (1961) read with para 29.1 of Pension Payment Instructions (1973) for the period the petitioner was undergoing imprisonment. The petitioner has challenged the validity of the suspension pension by means of the present petition.
3. Learned counsel for the petitioner made submission challenging the validity of the aforesaid order as well as the validity of Regulation 119 of Pension Regulations Part I (1961) and para 29.1 of Pension Payment Instructions (1973). After hearing the learned counsel for the parties, at some length, we are of the opinion that it is not necessary to decide the question of validity of the aforesaid provisions in the present petition as in our opinion the petitioner is entitled to relief even otherwise. Regulation 119 confers power on the competent authority to withhold in whole or in part the pensions of a pensioner, who is convicted of a serious crime by a court of law. Para 29.1 of Pension Payment Instructions (1973) also confers power on the Disbursing Officer to forthwith suspend the payment of pension payable to a pensioner, if he is sentenced to imprisonment. On the release of the pensioner from imprisonment, the Disbursing Officer is required to restore his pension.
4. These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.

5. That apart, the amount of pension granted to the petitioner was Rs. 108 which is a paltry amount and which in all likelihood may not be sufficient to sustain the petitioner's family members. The competent authority did not address himself to any one of these aspects. No reasons are recorded as to why the entire pension was necessary to be suspended. The impugned order is therefore unsustainable in law.

6. Having regard to the special facts and circumstances of the case, we are of the opinion that the suspension of total pension payable to the petitioner was unreasonable. We, accordingly, set aside the order of the CDA (Pensions), Allahabad dated September 23, 1986. We further direct that the suspension of pension should be confined to Rs. 8 and the rest of the amount, namely, Rs. 100 per mensem (or the revised amount, if any) should be paid to the petitioner. The respondents are directed to pay the arrears of the pension to the petitioner within four weeks and they shall continue to pay the aforesaid amount of pension per mensem to the petitioner. As when the petitioner is released from imprisonment it would be open to him to recover the remaining amount of pension in accordance with the rules. The parties will bear their own costs.

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