

Major G. S. Sodhi

Vs

Union of India

Criminal Miscellaneous Petition Nos. 8905 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

19.03.1991

ORDER

JAYACHANDRA REDDY, J. –

1. In these two Criminal Miscellaneous Petition Nos. 8905 of 1990 and 491 of 1991, the petitioners are Major G. S. Sodhi and Lt. Col. S. K. Duggal respectively. They were tried by court-martial and ultimately were removed from service. Both of them had filed Writ Petition (Cri.) Nos. 478 of 1989 and 525 of 1988 respectively and they were dismissed by a common judgment of ours dated November 30, 1990. In these two criminal miscellaneous petitions the common prayer is for ordering instantaneous release of the petitioners' provident fund, gratuity and pension.

2. It is submitted that the petitioners are entitled to the pensionary benefits which they have earned and their removal from service does not in any manner disentitle them from having these benefits. On behalf of the respondent Union of Indian it is submitted that the pensionary benefits in respect of those who are dismissed from service, cannot be claimed as a matter of right as these benefits are at the discretion of the President of India and are granted purely on compassionate grounds. It is also submitted that the gratuity is regulated by Army Regulations 2-A and 4 and that Regulation 3 lays down that the full rate of pension or gratuity provided in these Regulations shall not be granted unless the service rendered has been satisfactory and if the service rendered has not been satisfactory, the competent authority may make such reduction in the amount of pension or gratuity as it thinks proper.

3. The two petitioners herein have put in number of years of service. Major G. S. Sodhi has but in about 17 1/2 years of service and was also awarded some medals for his meritorious service. Likewise, Lt. Col. S. K. Duggal, the other petitioner has rendered about 21 years of service without any blemish. Therefore their services up to the date of punishment have been satisfactory. However, we do not propose to examine the other provisions of the Army Act or Rules or Regulations in view of the fact that this Court on two earlier occasions granted similar relief to the officers who were court-martialled and removed from service. In Lt. Col. (T. S.) Harbans Singh Sandhu v. Union of India (Writ Petition No. 553 of 1972 decided on November 22, 197), a bench of three Judges of this Court passed an order in favour of the army officer who was cashiered, holding that he was entitled to be paid the entire pension and gratuity under the rules. In passing such an order, this Court took into consideration the fact that no other penalty forfeiting the pensionary benefits was passed. Therefore he cannot be deprived of his pensionary benefits by applying any of the Regulations. It was held as under :

"So he filed the present writ petition to compel the government to pay him what is

due by way of gratuity and pension. This was his property and could not be taken away except by due process of law. The only provision of law pointed out to us by counsel on either side is Section 16(a) of the Pension Regulations, 1961 (for the Army). It is found from the records that there is no order passed under the said regulation nor is it the case of the Union of India in their return that any such order depriving the petitioner wholly or partly of his pension or gratuity has been made by the President. The inevitable consequence is that he is entitled to be paid the entire pension and gratuity under the Rules. We direct the respondent to pay the said sum within three months from today."

A similar order was also passed in Religious Teacher Ex. N. Sub. R. K. Sharma v. Chief of the Army Staff (Cri. M.P. No. 349 of 1980 in W.P. (Cri.) No. 244 of 1980 dated April 29, 1980), by a bench of two Judges of this Court. While dismissing the writ petition, the bench observed that "the court-martial has not inflicted a punishment on him of forfeiture of pension or other service benefits and counsel for the other side has assured the court that whatever the pension and other service benefits are permissible to the petitioner under the law will be given to him."

4. In the instant case also, the court-martial has inflicted any other punishment of forfeiture of pension or other service benefits of the petitioners. Therefore they are also entitled to these benefits. Accordingly the respondent is directed to pay the entire pension, gratuity and provident fund under the rules to each of these petitioners within three months from the date of receipt of this order. Both the criminal miscellaneous petitions are accordingly disposed of.

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