

Union of India and Others

Vs

Subedar Ram Narain and Others

Civil Appeals No. 3609 of 1996 with Nos. 3612, 3613 of 1996

(S.P. Bharucha, G. T. Nanavati, B. N. Kirpal JJ)

15.09.1998

JUDGMENT

KIRPAL, J.

1. The only question which arises for consideration in this and the connected appeals is whether the respondent who was a Junior Commissioned Officer would be ineligible for pension or gratuity in respect of all his previous service on his being dismissed under the Army Act, 1950.
2. The respondent was enrolled in the Indian Army on 17-3-1962. He was promoted to the rank of Subedar Major with effect from 1-3-1984. While he was serving with the 75 Medium Regiment, he was kept in close arrest with effect from 17-11-1988 and was then court-martialled under the provisions of the Army Act. He was charged under Section 40(a) for using criminal force to his superior officer, and Section 48 of the Army Act, 1950 for being in a state of intoxication while on duty.
3. The General Court-Martial found the respondent guilty and thereupon he was dismissed from service on 1-8-1989. He filed an appeal to the Chief of the Army Staff against the decision of the General Court-Martial but the same was rejected after due consideration.
4. The respondent then filed Writ Petition No. 423 of 1989 in the High Court of Jammu and Kashmir praying for quashing of the court-martial proceedings. This petition was, however, withdrawn and another Writ Petition No. 917 of 1992 was filed in the Delhi High Court for the grant of pensionary benefits. The High Court while relying upon the decision of this Court in the case of Major G. S. Sodhi v. Union of India [(1991) 2 SCC 371 : 1991 SCC (L&S) 691 : (1991) 16 ATC 546 (II)] came to the conclusion that as the General Court-Martial had not passed an order depriving the respondent of pensionary benefits, therefore, he would be entitled to the same notwithstanding his dismissal from service.
5. In this appeal by special leave, the challenge is to the aforesaid conclusion of the High Court.
6. On behalf of the appellant, it was contended by Shri N.N. Goswami, learned Senior Counsel, that the provision with regard to eligibility for receipt of pensionary benefits by the junior commissioned officer on being dismissed or discharged under the Army Act is governed by Regulation 113(a). This provision, it was contended, was different from the provision which was applicable in the case of commissioned officers. It was submitted that the High Court, in the instant case, erred in relying upon a decision this Court in Major Sodhi case [(1991) 2 SCC 371 : 1991 SCC (L&S) 691 : (1991) 16 ATC 546 (II)] which did not pertain to the applicability of Regulation 113(a). Our attention was

drawn to Regulation 16(a) which related to the payment of pension to an officer who is cashiered, dismissed, removed or called upon to retire. It was that regulation which had application in Major Sodhi case [(1991) 2 SCC 371 : 1991 SCC (L&S) 691 : (1991) 16 ATC 546 (II)].

7. Chapter III of the Regulations relates to junior commissioned officers, other ranks and non-combatants (enrolled). It is not in dispute that the provisions of this chapter applied to the respondent in this and other appeals. Regulation 113 with which we are concerned reads as follows :

"113. (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service.

In exceptional cases, however, he may at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is discharged under the provisions of the Army Act and the Rules made thereunder remains eligible for pension or gratuity under these Regulations."

Regulation 16(a) falls in Chapter II of the Regulations which relates to the commissioned officers. The said Regulation, insofar as it is relevant, reads as follows :

"16. (a) When an officer who has to his credit the minimum period of qualifying service required to earn pension, is cashiered or dismissed or removed from service, his pension may, at the discretion of the President be either forfeited or be granted at a rate not exceeding that for which he would have otherwise qualified had he retired on the same date."

8. Referring to the said Regulations, this Court has held in *Maj. (Retd.) Hari Chand Pahwa v. Union of India* [1995 Supp (1) SCC 221 : 1995 SCC (L&S) 433 : (1995) 29 ATC 220] and *Union of India v. Brig. P. K. Dutta* [1995 Supp (2) SCC 29 : 1995 SCC (L&S) 760 : (1995) 29 ATC 654 : JT (1995) 1 SC 413] that even if these Regulations are not statutory, the same are still binding because pensionary benefits are payable only under these Regulations and, therefore, the same can be forfeited in the manner and circumstances as provided for by the said Regulations.

9. The first sentence of Regulation 113(a) clearly provides that an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service. In other words, a person like the respondent to whom Section 113(a) applies will not be entitled to receive any pension on an order of his dismissal being passed. Clause (b) of Section 113 makes a distinction in the case of a person who is discharged, and not dismissed, under the provisions of the Army Act. In the case of discharge, a person remains eligible for pension or gratuity under the said regulation. The latter part of Section 113(a) provides that in exceptional cases, the President may at his discretion, grant service pension or gratuity at a rate not exceeding that for which an individual would have otherwise qualified had he been discharged, and not dismissed, on the same day. Reading Regulation 113, it is clear that in the case of a junior commissioned officer or a person belonging to another rank or a non-combatant (enrolled), he would become ineligible for grant of pension or gratuity on the passing of an order of dismissal. The disentitlement to pensionary benefits is the normal result of a dismissal order. But the President may, in exceptional cases, at his discretion, order the grant of pension. Therefore, if no order is passed by the President, then the

result is that the dismissed junior commissioned officer remains disentitled to pension or gratuity.

10. The terms of Regulation 16(a) are clearly different from Regulation 113(a). According to Regulation 16(a), when an officer as defined in Section 3(xviii) of the Army Act, 1950, is cashiered or dismissed or removed from service, then the President has the discretion of either forfeiting his pension or ordering that he be granted pensions at a lesser rate. The dismissal, removal etc. of a commissioned officer does not, in other words, automatically result in the forfeiture or lessening of his pension. Power is, however, given to the President that in such a case he may either direct the forfeiture of the officer's pension or reduction in the rate thereof. Major Sodhi case [(1991) 2 SCC 371 : 1991 SCC (L&S) 691 : (1991) 16 ATC 546 (II)] was one which dealt with the question of forfeiture of a commissioned officer's pension on his being dismissed from service. It is in the context of Regulation 16(a) that it was observed that as no order was passed under the said Regulation, therefore, the officer concerned would be entitled to the receipt of full amount of pension or gratuity which would normally be payable to him.

11. The question with regard to forfeiture of pension in the case of a junior commissioned officer to whom the provisions of Regulation 113 applied came up for consideration before this Court in Union of India v. R. K. L. D. Azad [1995 Supp (3) SCC 426 : 1995 SCC (L&S) 1283 : (1995) 31 ATC 190]. After referring to Regulation 113(a), this Court at p. 429 observed as follows : (SCC para 11)

"11. In view of the plain language of the above regulation the respondent cannot lay any legal or legitimate claim for pension and gratuity on the basis of his previous service as, admittedly, he stands dismissed in accordance with Section 73 read with Section 71 of the Act. The second question must, therefore, be answered in the negative."

12. Shri Prem Malhotra, learned counsel for the respondent, submitted that withholding the pension when the respondent had been court-martialled and dismissed would amount to double jeopardy. It was submitted that under Section 71(j) of the Army Act, one of the punishments which could be inflicted after a court-martial was that of "forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service". Elaborating this contention, it was submitted that like dismissal from service as provided by clause (e) of Section 71 of the Army Act, forfeiture of pay and allowances was one of the punishments which could be imposed under clause (j). If such a punishment of forfeiture had been awarded, the respondent would have continued to remain in service but by ordering the dismissal from service under Section 71(e), he is also being deprived under Regulation 113(a) of the pension which he had earned.

13. We find no merit in this contention. Section 71 of the Army Act provides for different types of punishments which could be inflicted in respect of an offence committed by a person subject to the Army Act and convicted by courts-martial. The punishments are of varying degrees, from death as provided by Section 71(a) to stoppage of pay and allowances as provided by Section 71(h). The punishment of forfeiture of pay and allowances as provided by Section 71(j) is of a lesser nature than that of dismissal from service as provided by Section 71(e). When punishment under Section 71(j) is imposed, no recourse can be had to Regulation 113(a), because the said Regulation applies only if an order of dismissal is passed against the person concerned. In other words, Section 71(j) and Regulation 113(a) cannot apply at the same time. On the other hand, when the punishment of dismissal is inflicted under Section 71(e), the provisions of Regulation 113(a) become attracted. The result of punishment is that the benefit of pension or gratuity which is given under the Regulation is

taken away. The order of dismissal under the provisions of the Army Act in the case of an employee like the respondent would make him ineligible for pension or gratuity. For a person to be eligible to the grant of pension or gratuity, it is imperative that he should not have been dismissed from service. The dismissal under the provisions of the Army Act is, therefore, a disqualification for getting pension or gratuity.

14. It was also submitted by Shri Malhotra that Regulation 113(a) was discriminatory and, further, pension which is earned becomes the property of the person concerned and the same cannot be taken away. But no such contentions was raised before the High Court. In any case, we see no merit in the said contention. Firstly, junior commissioned officers and commissioned officers belong to different classes. They are not similarly situated. Moreover, pension is granted by the rules and regulations which can and do provide for the circumstances which would make a persons ineligible to receive the same. Dismissal makes a junior commissioned officer disentitled to receive pension or gratuity. Regulation 113(a) is not in any way invalid.

15. For the aforesaid reasons, we come to the conclusion that unlike Regulation 16(a) which applies to the commissioned officers, in the case of non-commissioned officers, other ranks and non-combatants (enrolled), the dismissal of such a person under the Army Act would ipso facto render him ineligible for pension or gratuity. The President, however, has a right in the case of a person dismissed under the provisions of the Army Act but in exceptional circumstances and at his discretion to grant service pension at a rate not exceeding that for which the individual concerned would have otherwise qualified had he been discharged on the same day.

16. In view of the aforesaid, this appeal is allowed, the judgment of the High Court is set aside the result of which would be that the writ petition filed by the respondent would stand dismissed. There will be no order as to costs.

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17. The question involved in these appeals is identical to the one in Civil Appeal No. 3609 of 1996. For the reasons stated therein, these appeals are also allowed but with no order as to costs.