

SUPREME COURT OF INDIA

Jc-116244 Ex-Subedar Joginder

Vs.

Union of India

(B. Kirpal, S V.Patil and P.V.Reddi JJ.)

16.10.2001

JUDGMENT

Shivaraj V. Patil, J.

1. The appellants joined Indian Army in 1965 and was promoted to the rank of Naib Subedar in 1983. On 23.2.1985 he was charge-sheeted along with three others for offence under Section 52(a) of the Army Act for committing theft of property belonging to the Government on 3.3.1984. He was tried by the General Court Martial between 8.3.1985 and 13.7.1985. He was sentenced to suffer rigorous imprisonment for six months and was dismissed from services. The appeal filed by him under Section 164(2) of the Army Act was dismissed. He filed Civil Writ Petition No. 354 of 1989 in the High Court of Delhi on 12.10.1989, which was dismissed as withdrawn on 11.7.1990. The appellant made representation to the President of India on 26.8.1996 under Regulation 113(a) of the *Pension Regulations for the Army, 1961* (Part-I) for the grant of service pension under exceptional circumstances. He filed Civil Writ Petition No. 16240 of 1997 in the High Court of Punjab and Haryana at Chandigarh. In the said writ petition the Division Bench of the High Court directed the respondents to consider his representation. The said representation was rejected on 29.4.1998. Thereafter, the appellant filed Civil Writ Petition No. 14239 of 1998 challenging the action of the respondents rejecting his claim for grant of pension on 2.8.1998. The High Court dismissed the writ petition in limine on 8.9.1998. Hence this appeal.

2. We notice the relevant provisions of the Army Act and Regulations:-

“The Army Act, 1950

"Section 52. Offences in respect of property. - Any person subject to this Act who commits any of the following offences, that is to say, -

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or (b) to (f) ..."

Pension Regulations for the Army, 1961

"Regulation 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."

The submissions made by the learned counsel on either side were on the similar lines that were made in Civil Appeal No. 7805/97 etc."

3. This Court in *Union of India vs. R.K.L.D. Azad*¹, while agreeing with the law laid down in *Major (Retired) Hari Chand Pahwa vs. Union of India*, observed that the grant of pension and gratuity to Junior Commissioned Officers, other ranks and non-combatants (enrolled) is regulated by Chapter III of pension regulations. Under Regulation 113 (a), an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of previous service, however, as an exception, the President may in his discretion grant service pension or gratuity partially or fully. Dealing with the question whether a Junior commissioned Officer of the Indian Army who has to his credit the minimum period of qualifying service required to earn pension or gratuity is eligible for the same in case he is dismissed from service under the provisions of the Act. In para 11 of the Judgment. It is stated thus:-

"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."

4. Under Regulation 113(a) he was ineligible for pension or gratuity in respect of previous service as he was dismissed from service under Section 52(a) of the Army Act. Unlike Regulation 16(a) passing of an order by the President for forfeiting the pensionary benefits is not required under this Regulation governing the respondent. But, however, in exceptional case the President has the discretion to grant pension, partly or fully, depending upon the circumstances of each case.

5. Further, in the view we have taken in the judgment in Civil Appeal No. 7805/97 etc. (*Union of India and others vs. P.D. Yadav etc.*) and having regard to the fact that Subedar Joginder Singh was dismissed from service on 13.7.1985 as a sequel to General Court Martial for an offence under Section 52(a) of the Army Act for committing theft of property belonging to the Government and that his representation under Regulation 113(a) pleading exceptional circumstances for grant of pension was rejected, we find no merit in this appeal. Hence it is dismissed with no order as to costs.

¹[1995 (5) SLR 225]