

SUPREME COURT OF INDIA

K.J.S. Buttar

Vs.

Union of India & Anr.

C.A.No.5591 of 2006

(Markandey Katju and Gyan Sudha Misra, JJ.,)

31.03.2011

JUDGMENT

Markandey Katju, J.,

1. This appeal has been filed against the judgment and order dated 13.9.2004 in C.W.P. No.20447 of 2002 of the High Court of Punjab and Haryana at Chandigarh.

2. Heard learned counsel for the parties and perused the record.

3. The appellant is an ex-captain in the Indian Army, who was commissioned on 12.1.1969. During the course of his service, the appellant suffered serious injuries of a permanent nature and was invalided out of service. The Release Medical Board held on 3.1.1979 viewed his injury 'gun shot wound left elbow' as attributable to military service and assessed the degree of disability at 50% and the appellant was released from service in Low Medical Category on 10.4.1979. Accordingly, the appellant was granted Disability Pension w.e.f. 26.7.1979.

4. The appellant filed a writ petition in the High Court claiming following benefits under Circular and Notification issued by the Ministry of Defence, Union of India from time to time :

"a) War Injury Pension w.e.f. 1.1.1996 in terms of Ministry of Defence letter dated 31.1.2001;

b) Treating the disability at 75% instead of 50% w.e.f. 1.1.1996 as per Ministry of Defence letter dated 31.1.2001;

c) Grant of service element for full 10 years of service instead of 2 years; and

d) Revision of the rates of the disability pension w.e.f. 1.1.1996 in terms of the letter dated 31.1.2001. It is pertinent to state that the Ministry of Defence letter dated

31.1.2001 had revised the rates pursuant to recommendations of Fifth Pay Commission.

5. The appellant was denied the above benefits by the respondent on the basis that he retired before 1.1.1996, and hence in terms of the notification dated 31.1.2001 he could not get the said benefits as they were granted to officers who retired on or after 1.1.1996. The appellant contended that that in view of the instruction issued on 31.1.2001 and subsequent instructions the said benefits are available to those who were invalided even prior to 1.1.1996. In addition, the appellant also prays that his disability should be treated as 75% instead of 50% in terms of clause 7.2 of the subsequent instructions.

6. The appellant had been granted the short service commission in the Indian Army on 21.1.1969. According to him while participating in the exercise conducted with live ammunition, he suffered gun shot on his left elbow and as a result the appellant was relieved from Indian Army with 50% disability on 10.4.1979.

7. A counter affidavit was filed by the respondent in the writ petition in which it was alleged that instruction dated 1.1.1996 is not applicable to the appellant. It was also contended that as regards the instruction dated 31.1.2001 it is not applicable to the appellant as he had not retired but was invalided out. With regard to the instruction dated 16.5.2001 it was alleged that the said instruction is applicable only with respect to paragraph 7.1(ii)(a) of the instruction dated 31.1.2001, and it has no application to the appellant.

8. The High Court in the impugned judgment held that paragraph 7.2 of the instructions dated 31.1.2001 is not applicable to the appellant. With respect we cannot agree.

9. As regards the claim of the appellant for pension for his full 10 years service as a short service commission officer, we have already held in *Union of India & Anr. vs. C.S. Sidhu*¹ that this claim is justified. Hence his entire service in the army has to be taken into consideration for grant of Disability Pension and he must be given arrears with interest @ 8% per annum as was granted in C.S. Sidhu's case.

10. The stand of the respondent is that the disability of the appellant cannot be enhanced to 75% because the relevant provision being para 7.2 of Government of India, Ministry of Defence, letter dated 31.1.2001 is applicable only to those cases where the officer was invalided out of service after 1.1.1996. It is alleged that the appellant was invalided out much before the date.

11. In our opinion, the restriction of the benefit to only officers who were invalided out of service after 1.1.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in *Union of India & Anr. vs. Deoki Nandan Aggarwal*² where it was held that the benefit of the Amending Act 38 of 1986 cannot be restricted only to those High Court Judges who retired after 1986.

12. In *State of Punjab vs. Justice S.S. Dewan*³ it was held that if it is a liberalization of an existing scheme all pensioners are to be treated equally, but if it is introduction of a new retrial benefit, its benefit will not be available to those who stood retired prior to its introduction. In our opinion the letter of the Ministry of Defence dated 31.1.2001 is only liberalization of an existing scheme.

13. In *Union of India & Anr. vs. S.P.S. Vains (Retd.) & Ors*⁴. it was observed :

"26. The said decision of the Central Government does not address the problem of a disparity having created within the same class so that two officers both retiring as Major Generals, one prior to 1-1-1996 and the other after 1-1-1996, would get two different amounts of pension. While the officers who retired prior to 1-1-1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the fundamental rules, the other set of Major Generals who retired after 1-1-1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1-1-1996.

27. In our view, it would be arbitrary to allow such a situation to continue since the same also offends the provisions of Article 14 of the Constitution.

28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in *D.S. Nakara* where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in *D.S. Nakara* case. The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the

provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension."

14. In our opinion the appellant was entitled to the benefit of para 7.2 of the instructions dated 31.1.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75%, and it makes no difference whether he was invalided from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996, and interest at 8% per annum on the same.

15. It may be mentioned that the Government of India Ministry of Defence had been granting War Injury Pension to pre 1996 retirees also in terms of para 10.1 of Ministry's letter No.1(5)/87/D(Pen-Ser) dated 30.10.1987 (Page 59 Para 8). The mode of calculation however was changed by Notification dated 31.1.2001 which was restricted to post 1996 retirees. The appellant, therefore, was entitled to the War Injury Pension even prior to 1.1.1996 and especially in view of the instructions dated 31.1.2001 issued by the Government of India. The said instruction was initially for persons retiring after 1.1.1996 but later on by virtue of the subsequent Notifications dated 16.5.2001 it was extended to pre 1996 retirees also on rationalization of the scheme. As per the Instructions, different categories have been provided by the Government for award of pensionary benefits on death/disability in attributable/aggravated cases. As per Para 10.1 of the Instructions dated 31.1.2001, where an Armed Forces personnel is invalided on account of disability sustained under circumstances mentioned in Category-E(f)(ii) of Para 4.1, he shall be entitled to War Injury Pension consisting of service element and war injury element. Para 4.1 provides for the different categories to which the pensionary benefits are to be awarded. Category-E(f)(ii) of Para 4.1 pertains to any death or disability which arises due to battle inoculation, training exercises or demonstration with live ammunition. Appellant is entitled to the War Injury Pension in terms of Category-E(f)(ii) of Para 4.1 and Para 10.1 of the Instructions dated 31.1.2001, which are reproduced hereunder for ready reference :-

“Para 10.1 Where an armed forces personnel is invalided out of service on account of disability sustained under circumstances mentioned in category `E' of para 4.1 above, he/she shall be entitled to war injury pension consisting of service element and War Injury Pension as follows :

(a) Service element : Equal to retiring/service pension which he/she would have been entitled to on the basis of his/her pay on the date of invalidment but counting service up to the date on which he/she would have retired in that rank in the normal course including weightage as admissible. Provisions of para 6 of the Ministry of Defence letter No.1/6/98/D(Pens/Ser) dated 3.2.1998 shall apply for calculating retiring/service pension. There shall be no condition of minimum qualifying service for earning this element.

(b) War Injury element: Equal to reckonable emoluments last drawn for 100% disablement. However, in no case the aggregate of service element and war injury element should exceed last pay drawn. For lower percentage of disablement, war injury element shall be proportionately reduced.

Category `E"

Death or disability arising as a result of :-

“(a) to (e) xxx xxx xxx

(f) War like situations, including cases, which are attributable to/aggravated by :-

(i) extremist acts, exploding mines etc., while on way to an operational areas;

(ii) battle inoculation training exercises for demonstration with live ammunition;

(iii) Kidnapping by extremists while on operational duty (g) to (i)

xxx xxx xxx

These instructions, which were initially restricted to Armed Forces personnel, who retired on or before 1.1.1996 were subsequently made applicable to the pre 1996 retirees also by virtue of instruction dated 16.5.2001. Relevant portion of the Instruction/Notification in this regard is reproduced hereunder :-

Subject - Rationalization of Pension Structure for pre 1996 Armed Forces Pensioners - Implementation of Government decisions on the recommendations of the Fifth Central Pay Commission."

16. As per para-6 of these instructions/letter dated 16.5.2001, any person, who is in receipt of disability pension as on 1.1.1996 is entitled to the same benefit as given in letter dated 31.1.2001. Further as per para-7 of this letter w.e.f. 1.1.1996 the rates of War Injury element shall be the rates indicated in letter dated 31.1.2001. Thus, in our opinion in view of the instruction dated 31.1.2001 read with our opinion 16.5.2001, the appellant was entitled to the War Injury Pension. It is pertinent to state that reading of paras 6, 7 and 8 of the Notifications/Circular dated 16.5.2001 makes it absolutely clear that the said benefits were available to pre 1996 retirees also but the rates were revised on 31.1.2001 and the revised rates were made applicable to post 1996 retirees only. But subsequently by means of the Notification dated 16.5.2001 the revised rates were extended to pre 1996 retirees also.

17. At any event, we have held that there will be violation of Article 14 of the Constitution if those who retired/were invalided before 1.1.1996 are denied the same benefits as given to those who retired after that date.

18. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his short service commission of 10 years and had not been invalided out of service. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at 50% by the Release Medical Board. As per the Defence Service Regulation/Pension regulation for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided out of service. Relevant provision (page 25 additional documents) read as under :-

"Officers Compulsorily Retired on account of Age or on Completion of Tenure. 53.(1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 percent. The retiring pension/retiring gratuity, if already, sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be. (2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease."

In our opinion the appellant is entitled to the benefit of the above Regulation.

19. As a result this appeal is allowed and we hold that the appellant is entitled to grant of War Injury Pension w.e.f. 1.1.1996. The disability element of the Disability Pension shall be commuted as 75% instead of 50% and the appellant will be granted arrears w.e.f. 1.1.1996 with an interest of 8% per annum. He will also be granted 10 years' commission service and interest as granted in C.S. Sidhu's case from the date of his release. The impugned judgment is set aside.

20. The appeal is allowed. There shall be no order as to costs.

¹(2010) 4 SCC 0563

²(1992) Suppl. 1 SCC 0323

³(1997) 4 SCC 0569

⁴(2008) 9 SCC 0125