

SUPREME COURT OF INDIA

Shish Ram

Vs.

Union of India &Ors.

C.A.No.4523 of 2006

(P.Sathasivam and A.K.Patnaik,JJ.,)

23.11.2011

JUDGMENT

A.K.Patnaik,J.,

1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 22.11.2004 of the Delhi High Court in Writ Petition (Civil) No.5580 of 2000 (for short 'the impugned judgment').

2. The facts very briefly are that the appellant was enrolled in the Army on 28.01.1963. As per the terms of his enrolment, he was to put in not less than ten years in Army Service and if required, a further period in Reserve Service which would be sufficient to complete a total period of twenty years of service. After he completed more than ten years of Army Service, he was transferred to the reserve establishment with effect from 24.07.1974. While in the reserve establishment, he was required to attend reservist training held from time to time. He attended the biennial reservist training for the year 1976. An intimation dated 20.01.1978 was sent to him to attend the biennial reservist training from 05.06.1978 to 02.07.1978 but he failed to attend the reservist training. He was given another chance and was advised to attend the reservist training with the next batch from 19.06.1978 by an intimation dated 16.05.1978 and yet he did not attend the reservist training. On coming to learn that the appellant was employed as a driver in the Delhi Transport Corporation, letters were sent to the appellant as well as the Depot Manager of the Delhi Transport Corporation for furnishing the required exemption certificate exempting him from the training during 1978, but there was no response to the letters. Consequently, the appellant was declared as a deserter with effect from 19.06.1978 and was eventually dismissed from service with effect from 20.10.1981.

3. The appellant filed Writ Petition (C) 1294 of 1997 which was disposed of by the High Court with a direction to the authorities to consider the representation of the appellant with liberty to the appellant to file a fresh writ petition in case he is aggrieved. After the representation of the appellant was rejected, the appellant filed Writ Petition (C) No.2728 of 1997 which was also disposed of by the High Court on 28.04.2000 granting permission to the appellant to withdraw the writ petition and to challenge the order of dismissal. Thereafter, the appellant filed Writ Petition (C) No.5580 of 2000 challenging the order of dismissal and

claiming pension and by the impugned judgment the High Court has dismissed the writ petition.

4. Mr. S. M. Hooda, learned counsel for the appellant, submitted that the appellant has been dismissed from service by the brigade commander who had no authority to dismiss the appellant from service. According to him, the authority who could dismiss the appellant was the officer-in-charge of the reservists. In support of this submission, he relied on Regulation 206 of the Defence Services Regulations, 1961. Mr. Hooda next submitted that in any case since the appellant had put in service during the period from 21.01.1963 to 27.01.1978, he was entitled to pension and gratuity but pension and gratuity had been denied to the appellant.

5. Mr. R. Balasubramaniam, learned counsel for the respondents, on the other hand, submitted that the authority to dismiss the appellant from service is the brigade commander and this should be clear from Section 20(3) of the Army Act, 1950. He submitted that the appellant has in fact been dismissed by the brigade commander. Regarding pension, he submitted that Regulation 113(a) of the Pension Regulations, 1961 clearly provided that an individual, who is dismissed under the provisions of the Army Act, is ineligible for pension and gratuity in respect of all previous service. He submitted that as the appellant has been dismissed under the provisions of the Army Act, he was ineligible for pension and gratuity in respect of his previous service.

6. Sub-section (3) of Section 20 of the Army Act, 1950 and Regulation 206 of the Defence Services Regulations, 1961 are quoted hereinbelow:

"Section 20 - Dismissal, removal or reduction by the Chief of the Army Staff and by other officers-

(3).An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer."

"Regulation 206. Responsibility for effecting transfer to the reserve-OsC reservists are responsible for maintaining the establishment of reservists in accordance with the quota laid down by Army headquarters. Transfers to the reserve will be effected by OsC units in consultation with OsC reservists or Officer-in-Charge records. Once a man has been transferred to the reserve, he comes under the administration and disciplinary orders of the OC reservists."

7. A reading of Regulation 206 of the Defence Services Regulations, 1961, on which the learned counsel for the appellant has relied upon, would show that a man, who has been transferred to the reserve, comes under the administration and disciplinary orders of the Officer-in- Charge reservists. There is no mention in Regulation 206 that the Officer-in-Charge reservists has the power to either remove or dismiss a reservist from service. A plain reading of sub-section (3) of Section 20 of the Army Act quoted above, on the other hand,

would show that an officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer. Regulation 206 cannot take away the power vested under the Army Act in the brigade commander to dismiss or remove any person working under him. We, therefore, hold that the High Court rightly held in the impugned judgment that the brigade commander had the power to dismiss the appellant from service.

8. Regarding pension and gratuity claimed by the appellant, Regulation 113 (a) of the Pension Regulations, 1961 is quoted hereinbelow:

"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."

Regulation 113(a) is clear 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. As the appellant had been dismissed from the service under the provisions of the Army Act, he was not eligible for pension and gratuity and the High Court was right in rejecting the claim of the appellant for pension in the impugned judgment.

9. We, therefore, do not find any merit in this appeal and we, accordingly, dismiss the same with no order as to costs.