SUPREME COURT OF INDIA

Ex-Hav. Satbir Singh

Vs.

Chief of the Army Staff, New Delhi

C.A.Nos.7939-7940 of 2012

(P.Sathasivam and Ranjan Gogoi JJ.)

09.11.2012

JUDGMENT

P. SATHASIVAM, J.

1. Delay condoned.

2. Leave granted.

3. These appeals are filed against the final judgment and order dated 02.05.2008 in Writ Petition (C) No. 3874 of 1995 and order dated 20.02.2009 in Review Petition No. 244 of 2008 passed by the Division Bench of the High Court of Delhi insofar as rejection of salary and terminal benefits for the "intervening period" during which the appellant remained out of service.

4. Brief facts:

(a) The appellant herein was enrolled in the Army on 31.08.1982. In September, 1985, he was promoted to the rank of Lance Naik and in April, 1986, he was promoted to the rank of Naik. On 14.02.1990, he got further promotion to the rank of Havildar and with the said promotion, his tenure of service was extended to 24 years and his date of superannuation also got extended to 31.08.2006.

(b) The Army Headquarters, Adjutant General Branch issued a letter dated 28.12.1988, laying down the procedure for removal of undesirable and

inefficient candidates by way of discharge/dismissal. Pursuant to the same, a show-cause notice dated 16.03.1995 was served upon the appellant as the particulars in the service record reveal 4 'Red Ink Entries' in the service of 12 ½ (twelve and a half) years. On 21.03.1995, the appellant submitted his reply and on 01.04.1995, the appellant was discharged from service.

(c) Challenging the same, the appellant filed petition being Writ Petition (C) No. 3874 of 1995 before the High Court of Delhi and prayed for reinstatement of service with all consequential benefits. By impugned judgment dated 02.05.2008, the High Court set aside the order of discharge and directed the respondents to reinstate the appellant in service with no benefit of salary and other allowances for the "intervening period."

(d) Feeling aggrieved by the said impugned judgment, the appellant filed review petition being Review Petition No. 244 of 2008. By impugned order dated 20.02.2009, the review petition was also dismissed.

(e) Feeling aggrieved by impugned judgment dated 02.05.2008 in W.P.(C) No. 3874 of 1995 and order dated 20.02.2009 in R.P.(C) No. 244 of 2008, the appellant has filed these appeals by way of special leave.

5. Heard Mr. C.M. Khanna, learned counsel for the appellant and Mr. A.S. Chandhiok, learned Additional Solicitor General for the respondents.

6. On 07.03.2011, this Court issued notice calling upon the respondents to show cause as to why "the intervening period should not be counted for the purpose of terminal benefits".

7. Since the issue in this appeal is very limited, as mentioned above, in view of narration of facts in the earlier part of our order, there is no need to traverse further factual details.

8. We have to see whether the High Court having arrived at a conclusion that the discharge/termination of the appellant from service is unsustainable and after setting aside the termination order was justified in depriving the appellant from any salary for the intervening period as well as for the purpose of terminal benefits, the intervening period during which the appellant remained out of job shall not be counted. Since we have issued notice only for the purpose of terminal benefits, there is no need to go into the entitlement of salary during the intervening period.

9. It is not in dispute that in the concluding paragraph, the Division Bench of the High Court in categorical terms set aside the order of termination. The relevant conclusion reads as under:

> "Fact remains that he was discharged/terminated from service on the basis of show cause notice. This action is found to be unsustainable. Therefore, we have no hesitation in setting aside the termination order."
>
> Having found that the discharge/termination is legally unsustainable, we are of the view that the incumbent, namely, the appellant, ought to have been provided relief at least to the extent of counting the intervening period for the purpose of terminal benefits. It is true that during the intervening period, the appellant, admittedly, did not work, in that event, the Division Bench was justified in disallowing the salary for the said period. However, for the terminal benefits, in view of the categorical conclusion of the High Court that discharge/termination is bad, ought to have issued a direction for counting the intervening period at least for the purpose of terminal benefits. According to the Division Bench, the conduct of the appellant, namely, securing 4 Red Ink Entries in the service record is the reason for not considering the intervening period even for the purpose of terminal benefits. We hold that the said reasoning adopted by the Division Bench of the High Court cannot be sustained in view of its own authoritative conclusion in setting aside the discharge/termination order.

10 In the light of the conclusion that the termination is bad and the direction to deprive the appellant the benefit of intervening period for the purpose of terminal benefits is punitive imposing break in service as the period involved amounts to dies non and the said direction was based without considering any related issue and decided on merits by the High Court, hence, the same is not sustainable and liable to be set aside.

11. In the light of the above discussion, while upholding the order of the Division Bench setting aside the termination order, we hold that for the purpose of terminal benefits, the "intervening period" for which the appellant remained out of job shall be counted. In view of the same, respondent Nos. 1 and 2 are directed to pass appropriate orders fixing terminal benefits within a period of two months from the date of receipt of copy of this judgment and intimate the same to the appellant.

12. The appeals are allowed to the extent mentioned above.