

**SUPREME COURT OF INDIA**

Malkiat Singh Khela

Vs.

Union of India

C.A.No.713 of 2013

(H.L.Dattu and Ranjan Gogoi, JJ.,)

22.01.2013

**ORDER**

SLP(Civil)No.9608 of 2009

1. Leave granted.
2. This appeal, by special leave, is directed against the judgment and order passed by the High Court of Judicature of Bombay in W.P. No. 307 of 1998, dated 22.07.2008, whereby and where under the High Court has dismissed the petition filed by the appellant.
3. The facts in brief are: The appellant is retired personnel of Indian Navy. He had joined the Indian Navy as Aviation Cadet in October 1971. He was commissioned as Sub-Lieutenant in the Executive Branch (Pilot) on 02.06.1973, thereafter he was promoted to the rank of Lieutenant Commander.
4. It has come on record that the appellant had allowed his family friends from Afghanistan to stay in his official residential accommodation from 10.01.1989 to 21.01.1989. This, according to the respondents, was in violation of an order of the Western Naval Command orders, 1986. In view of the said violation, the appellant was tried by a Court Martial in the year 1989.
5. After the inquiry, the Court Martial has held that the appellant is guilty of the offence punishable under Section 68 of the Navy Act, 1957 ('the Act' for short) and, accordingly, has passed an order imposing punishment of forfeiture of 36 months of seniority in the rank of Lieutenant Commander and severe reprimand, as prescribed under Section 81(1)(f) and (l) of the Act.
6. Sometime in the month of June 1993, the appellant had sought voluntary retirement from service after completing 20 years of service. The request of the appellant was conceded to by the respondents and, accordingly, they had permitted him to retire from service with effect from 07.03.1994.

7. It is an admitted fact that the respondents had sanctioned pensionary benefits to the appellant in a sum of Rs.1910/- per month with effect from 01.07.1993, by their order dated 07.03.1994.

8. The respondents, by their order dated 16.11.1994, had intimated the appellant of their decision to discontinue the pension of the appellant. They had opined that the said grant of pensionary benefits was erroneous as the abovementioned order of disciplinary authority imposing the punishment of forfeiture of seniority in the rank for a period of 36 months continued to subsist and in view of the said punishment the appellant is not entitled for pension, since he had not completed the qualifying service of 20 years to avail such grant. Accordingly, had issued a Show Cause Notice, dated 20.01.1996, inter alia, directing the appellant to show cause as to why the excess amount of pension paid should not be recovered from him. After considering the reply of the appellant, the respondents have confirmed their show cause notice and further have directed the appellant to refund the amounts paid to him.

9. Aggrieved by the aforesaid order, the appellant had filed the Writ Petition No. 307 of 1998 before the High Court. The Court, by its order dated 22.07.2008, has dismissed the Writ Petition.

10. We have heard Shri Ashok Kumar Gupta, learned senior counsel appearing for the appellant and Shri Paras Kuhad, learned Additional Solicitor General appearing for the respondents.

11. Shri Gupta would submit that the imposition of punishment in terms of "forfeiture of seniority in rank" would not amount to "forfeiture of service" of the appellant and, therefore, the period of service of the appellant must be calculated as 20 years instead of 17 years entitling him for the grant of pensionary benefits.

12. Section 81 of the Act provides for the various type of punishments that can be imposed under the Act. Clause (f) speaks of forfeiture of seniority in rank in the case of officers and master chief petty officers and clause (l) speaks of severe reprimand or reprimand.

13. Section 82 of the Act provides provisions as to award of punishment. Sub-Section (12) of Section 82 is relevant for the purpose of disposal of this appeal. It is as under: "Section 82 provides as to award of punishment:-

“(12) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pay, pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pay, pension, gratuity and promotion and other purposes depend upon such service.”

14. After noticing sub-section (12) of Section 82, Appendix III framed under Regulation 20 of the Navy (Pension) Regulations, 1964 ("the Regulations" for short), which provides for

qualifying service for grant of pension to the officers of general list, also requires to be noticed by us. The relevant clauses in Appendix III are clause (1) and its proviso is under:

"(1)Commissioned service.- Period of service as a permanent commissioned officer and, if it is preceded without a break, by service of one or more of the following categories subject to the refund to Government of the gratuity, if any, other than war gratuity, received in respect of such service namely:-

(a) Service as commissioned officer in the Army, Indian Navy or Air Force, irrespective of the type of commission;

(b) Mobilized commissioned service in the Indian Naval Reserve/ Indian Army in India Reserve of officers or called up commissioned service in the Indian Air Force Volunteer Reserve;

(c) Embodied or called out commissioned service as an officer of the late Indian Territorial Force or of the late Auxiliary Force (India) or of the Territorial Army [or the Auxiliary Air Force]

Provided that –

(a) Any service which was forfeited for seniority, and (b) Any period of unauthorized absence unless pay and allowance are admitted for the period of absence shall not be regarded as qualifying service."

15. It is neither in dispute nor can it be disputed by the appellant that an order of punishment was passed by the disciplinary authority for violation of the orders issued by the Western Naval Command and the punishments so imposed therein was forfeiture of 36 months seniority in the rank of Lieutenant Commander and severe reprimand.

16. The language employed in the aforesaid provisions which we have noticed earlier clearly envisages that for the purposes of calculating the pensionary benefits, the qualifying service would exclude the period of service which was forfeited under Section 82(f)(1) of the Act.

17. In the instant case though the appellant has completed 20 years of service, but in view of sub-section (12) of Section 82 of the Act, the imposition of forfeiture of seniority would involve loss of benefit of service. This means that in view of the punishment imposed by the respondents, he would lose three years of the benefit of service. In other words, that his total tenure of service would be only 17 years of service out of the statutory requirement of 20 years. However, while calculating the qualifying service, the respondents had committed a mistake which they have rectified after complying the requirements under the Statute.

18. In our considered view, all these provisions and facets of the matter have been taken note of by the High Court while dismissing the Writ Petition filed by the appellant and, upon due

consideration of the matter, we are in full agreement with the reasoning and conclusion reached by the High Court in the impugned judgment and order.

19. Accordingly, we dismiss this appeal.

20. Ordered accordingly.