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UNION OF INDIA AND ORS.

v.

BRG. P. K. DUTTA (RETD)

DECEMBER 7, 1994

B

[B. P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

C

Army Act/Army Rules/Pension Regulations : Section 71/Rule 14/16 (a)— Court Martial just after superannuation—Retiral benefits not paid—High Court directing payment—Pendency of proceedings for forfeiture of pensions not specifically mentioned before High Court—However, mention of it found in the counter affidavit filed in the High Court—Directions issued for concluding the proceedings within one month failing which directions of High Court would be given effect to—If orders passed within the stipulated period, retiral benefits would be subject to such orders—Held : No inconsistency between Section 71 (h) and regulation 16 (a).

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Respondent joined the Army as a Commissioned Officer in 1960. He rose to the rank of Brigadier and retired on December 31, 1991 on attaining the age of superannuation. Since the retiral benefits due to him were not paid, he laid a claim therefore. In January 1992, disciplinary proceedings were initiated against him. He was tried by a General Court Martial and awarded three years rigorous imprisonment and was also cashiered. These findings were confirmed by the Chief of the Army Staff and became final.

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Respondent approached the High Court by way of a writ Petition. The High Court held that cashiering by itself could not result in forfeiture of the retiral benefits, and issued directions to the Union of India to disburse within one month the retiral benefits such as pension , gratuity etc. as permissible under the rules. Union of India has preferred the present appeal.

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The appellants contended that proceedings for forfeiture of retiral benefits as contemplated by Regulation 16 (a) of the Pension Regulations, were indeed initiated and were pending, which fact was brought to the knowledge of the High Court and yet the directions were issued.

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Disposing of the appeal, this Court

HELD : 1. It appears that pendency of proceeding for forfeiture of retiral benefits was not specifically brought to the notice of the High Court. Had it been so brought to its notice, the High Court would not have made the directions. But having regard to the crucial relevance of the said averment and in the facts and circumstances of the case, this Court is inclined to take note of the statements in the counter affidavit to the above effect. Once this is so, it should follow that the directions given by the High Court become unsustainable in law. At the same time the proceedings initiated under Regulation 16 (a) have to be directed to be disposed of expeditiously. [361 A, G, H, 362 A] A

2. Regulation 16 (a) of the Pension Regulations contemplates a situation where an officer is cashiered dismissed or removed from service and provides how his pension is to be dealt with. Whereas Section 71 (h) provides the punishment which can be awarded by the Court Martial, at the conclusion of the Court Martial, Regulation 16 (a) contemplates a stage subsequent to the awarding a punishment by Court Martial and its confirmation. The nature and content of both the impositions is altogether different and distinct. So is the field occupied by clause (k) of section 71 wholly distinct from Regulation 16 (a). Therefore, there is no inconsistency between Section 71 (h) and Regulation 16 (a). [363 A to C] B

3. It is true that the Pension Regulations are non-statutory in character. But as held by this Court in Civil Appeal No. 831 of 1993 disposed of on July 26, 1994, the pensionary benefits are provided for and are payable only under those Regulations and can, therefore, be withheld or forfeited, as provided by these very Regulations. Army Rule 14 has absolutely no relevance on this aspect. [363 C, D, G] D

4. It is directed that: E

(i) The proceedings initiated under Regulation 16 (a) shall be concluded within six months. This time limit is fixed in view of the fact that the proceedings are said to have been initiated even by the time the counter affidavit was filed in the High Court. [364 A] F

(ii) If no orders are passed under Regulation 16 (a) of the Pension Regulation within the aforesaid period, the directions of the High Court shall be given effect to. [364 B] G

(iii) In case orders are passed under Regulation 16 (a) within the aforesaid period, the right of the respondent to receive retiral benefits shall be subject to such orders. [364 C] H

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8948 of 1994.

From the Judgment and Order dated 24.5.94 of the Delhi High Court in C. W. P. No. 5414 of 1993.

B V.R. Reddy, Additional Solicitor General, P.P. Malhotra, W.A. Qadri, A.K. Srivastava and Mrs. Anil Katiyar for the appellants.

B.P. Ojha and Manoj Prasad for the Respondent.

C The Judgement of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

D Heard learned Additional Solicitor General for the appellant— Union of India and the learned counsel for the respondent. The appeal is preferred against the judgement of the Delhi High Court allowing the writ petition filed by the respondent and directing the Union of India to disburse the retiral benefits such as pension, gratuity etc., as permissible under the Rules to him within one month from the date of the judgement. It was further directed that the respondent's claim for payment in respect of encashment of 202 days annual leave shall be dealt with and decided in accordance with the Rules and the amount found payable shall be paid to him within the same period. The claim for interest on the said amounts was however rejected.

F The respondent joined the Army as Commissioned Officer on June 12, 1960. He earned promotions in due course and retired in the rank of Brigadier on December 31, 1991 on attaining the age of superannuation. Since the retiral benefits due to him were not paid, he laid a claim therefor. While so, in January 1992, disciplinary proceedings were initiated against him. He was tried by a General Court Martial and awarded three years rigorous imprisonment and was also cashiered. The findings of the Court Martial were confirmed by the Chief of Army Staff and have become final.

G Since the retiral benefits were not paid to him, he approached the Delhi High Court by way of Writ Petition No. 5414 of 1993. The High Court held, following the decision of this Court in *Major G. S. Sodhi v. Union of India*, [1991] 2 SCC 371; that cashiering does not by itself result in forfeiture of the retiral benefits and accordingly allowed the Writ Petition and gave the directions aforementioned.

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The learned Additional Solicitor General, Shri V. R. Reddy, submits that the Delhi High Court was in error in giving the directions aforementioned in view of the pendency of the proceedings for forfeiture of retiral benefits as contemplated by Regulation 16 (a) of the Pension Regulations. This fact is, however, not referred to or mentioned in the judgement of the High Court. In the ordinary course we would not have allowed the appellant to raise this plea but we find that in the counter affidavit filed by the Union of India in the Delhi Court, this fact was clearly stated at two places. The following statements in the counter affidavit bear it out :

“It is further submitted that encashment of leave is not permissible under rule because of his involvement in disciplinary proceedings. Copy of Government of India letter dated 20 August, 1990 attached as Annexure R-1 in the face of filing this W. P., the provisional Pension being paid to officer has not been stopped though it should have been stopped and action should have been initiated for exercising the discretion of the competent Authority *i.e.*, the President. *The action has been initiated.*”

(emphasis added)

Again:

“It is further submitted that case the disciplinary proceedings are completed /concluded, the operation of Reg GB causes its operation and pension case of the petition has to be regulated under the provision of Reg 16 (a) of ARA Pt-I 1961 for issue of discretionary power of the President for grant or otherwise of pensionary benefits. *The case has been initiated for the same.*”

(emphasis added)

It appears that this aspect was not specifically brought to the notice of the High Court. Had it been so brought to its notice, we are sure the High Court would not have made the directions in the manner complained of. But having regard to the crucial relevance of the said averment and in the facts and circumstances of the case, we are inclined to take note of the said statements in the counter affidavit. Once this is so; it should follow that the directions as given by the High Court become unsustainable in law. At the same time the proceedings initiated under Regulation 16 (a) have to be

A directed to be disposed of expeditiously. But before we make the final directions it is necessary to deal with the contentions raised by the learned counsel for the respondent. He urged the following contentions: Regulation 16 (a) of the Pension Regulations has no statutory force. The said Regulations are administrative in nature. They cannot run counter to or be inconsistent within the Army Act or the Rules made thereunder. Section 71

B (h) of the Army Act indicates that forfeiture of retiral benefits is one of the punishments that can be awarded by the Court Martial itself. In view of the said statutory provision the Regulation cannot empower another authority to impose the said punishment. Rule 14 of the Army Rules too supports the above proposition, says the counsel. We are of the opinion that none of the said contentions merits acceptance. Section 71 specifies the punishments

C that can be awarded by the Court Martial. They include the punishment of death, imprisonment for life, cashiering, dismissal from service, reduction in rank, forfeiture of seniority of rank, forfeiture of pay and allowances and so on. One of the punishments which can be awarded is mentioned under clause (h). Sections 71 (h) and (k) read as follows:

D “71 *Punishment awardable by Courts-Martial*— Punishment may be inflicted in respect of offences committed by person subject to this Act and convicted by Court Martial, according to the scale following, that is to say:.....

E (h) forfeiture of service for the purpose of “increased pay, pension or any other prescribed purpose:

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal:.....”

F We are of the opinion that clause (h) of Section 71 contemplates *forfeiture of service* for the purpose of increased pay, pension or any other prescribed purpose and is wholly different from Regulation 16 (a), which reads thus:

G “16 (a) When an officer who has to his credit the minimum period of qualifying service required to earn pension, is cashiered or dismissed or removed from service, his pension, may at the discretion of the President, be forfeited or be granted at a rate not exceeding that for which he would have

H otherwise qualified had he retired on the same date.”

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A reading of both the provisions clearly brings out the distinct fields occupied by them. Regulation 16 (a) contemplates a situation where an officer is cashiered, dismissed or removed from service and provides how his pension is to be dealt with. Whereas Section 71 (h) provides the punishments which can be awarded by the Court Martial. Section 71 (h) contemplates a punishment awarded as the conclusion of the Court Martial while Regulation 16(a) contemplates a stage subsequent to the awarding of punishment of Court Martial and its confirmation. The nature and content of both the impositions is altogether different and distinct. So is the field occupied by clause (k) of Section 71 wholly distinct from Regulation 16(a). We are, therefore unable to see any inconsistency between Section 71 (h) and Regulation 16 (a). B
C

It is true that the Pension Regulations are non-statutory in character. But as held by this Court in Civil Appeal No. 831 of 1993 disposed of on July 26, 1994, the pensionary benefits are provided for and are payable only under those Regulations and can, therefore, be withheld or forfeited under and as provided by those very Regulations. The following holding D
from the said Judgment make the position clear :

“We do not agree even with the second contention advanced by the learned counsel. The provisions of Regulation 16 (a) are clear. Even if it is assumed that the Pension Regulations have no statutory force. We fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these regulations. It is not disputed by the learned counsel that the pension was granted to the appellant under the said regulations. The regulations which provided for the grant of pension, can also provide for taking it away on justifiable grounds. A show cause notice was issued to the appellant. His reply was considered and thereafter the President passed the order forfeiting the pension and death cum retirement gratuity. We see no infirmity in the order.” E
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We may also mention that Army Rule 14 has absolutely no relevance on this aspect.

In view of the above, the appeal is allowed with the following directions: H

- A (1) The proceedings initiated under Regulation 16 (a) shall be concluded within six months from today. This time limit is fixed in view of the fact that the proceedings are said to have been initiated even by the time the counter affidavit was filed in the High Court (The Counter affidavit was sworn to on 15 the April 1994.)
- B (2) If no orders are passed under Regulation 16 (a) of the Pension Regulations within the aforesaid period, the directions of the High Court shall be given effect to.
- C (3) In case orders are passed under Regulation 16 (a) within the aforesaid period, the right of the respondent to receive retiral benefits shall be subject to such orders.

The appeal is disposed of in the above terms. There shall be no order as to costs.

G.N.

Appeal disposed of.