

CASE NO.:
Appeal (civil) 7805 of 1997

PETITIONER:
UNION OF INDIA AND ANR.

RESPONDENT:
P.O. YADAV

DATE OF JUDGMENT: 16/10/2001

BENCH:
B.N. KIRPAL & SHIVARAJ V. PATL & P. VENKATARAMA REDDI

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 209

The Judgment of the Court was delivered by

SHIVARAJ V. PAIL, J. In short the facts leading to filing of these appeals, are as stated below.

Civil Appeal No. 7805/1997

The respondent here in joined Navy as a Sailor in April, 1965 and was commissioned in October, 1980. On account of certain alleged misconduct and irregularities, he was tried by General Court Martial on five charges. He was found guilty of the charges 2,3,4 and 5 and consequently a penalty of dismissal from service was imposed on him on 26.2.1990. He was given a show-cause notice on 21.6.1991 under Regulation 15(2) of the Navy (Pension) Regulations, 1964 as to why his pensionary benefits should not be forfeited. He sent a reply on 24.7.1991. The appellants informed him on 7.5.1992 that the action will be taken soon pursuant to the show-cause notice issued. However, without waiting any further, he filed a writ petition on 20.1.1993 in the High Court. After the filing of the said writ petition, an order was passed on 28.3.1994 forfeiting 50% of the pensionary benefits. The High Court partly allowed his writ petition and remanded the case giving certain directions to the appellants by the order dated 4.3.1997. Feeling aggrieved by the same, the appellants are before this Court in this appeal.

Civil Appeal No. 7806/1997

The respondent was commissioned in the Indian Army on 30.6.1963 and was due to retire on 31.3.1989. On 17.2.1988, he was tried by General Court Martial on certain charges and was dismissed from service on 13.6.1988 under Section 71 of the Army Act. He submitted papers for payment of pension stating that he had qualifying service. Since pension was not given to him, he filed Civil Writ Petition No. 1249/90 in the High Court on 3.3.1990. On 16.4.1991, a show-cause notice was issued under Section 16(a) of the Pension Regulations of the Army (Part I) proposing forfeiture of pension on the ground that he was dismissed from service. He submitted reply to the said show-cause notice. However, the President of India by order dated 22.7.1992 under said Regulation 16(a) forfeited 50% of the pensionary benefits. He filed Writ Petition No. 2866/90 for amendment of the writ petition challenging the said order. The High Court by the impugned order quashed the order dated 22.7.1992 and directed the appellants to reconsider his case in the light of the directions given in the judgment. Hence this appeal.

Civil Appeal No. 7807 of 1997

The respondent was commissioned in the Army as Engineer Graduate Officer on

11.1.1968. He was tried by General Court Martial on the allegation of splitting purchase orders for shelters, to bring them within the financial limits and for making purchases at rates higher than scheduled and sanctioned rates. After trial by General Court Martial he was cashiered on 11.3.1994 and was directed to undergo rigorous imprisonment for two months. He forwarded papers on 29.6.1994 to the authorities for grant of pension. On 22.2.1995, a show-cause notice was issued to him under Regulation 16(a) of Army Pension Regulations for forfeiture of pension. He claimed to have sent a reply to the show cause notice but the order was passed forfeiting his pensionary benefits stating that he had not sent any reply to the show-cause notice. The High Court quashed the impugned order forfeiting his pension and directed the appellants for re-consideration and passing fresh order. Aggrieved by the said order of the High Court dated 4th March, 1997, this appeal is filed.

Civil Appeal No. 7808 of 1997

The respondent herein entered Army service and was commissioned on 12.6.1960. He was promoted to Selection Grade rank of Acting Brigadier in December, 1986. He retired from service on 31.5.1990 on attaining the age of superannuation. He was tried by General Court Martial between 26.5.1990 to 26.9.1990 on certain charges of misconduct. Charges 2, 3, 5, 9 & 10 were held proved. Consequently he was ordered to be (i) cashiered (ii) to suffer rigorous imprisonment for six months and (iii) to forfeit all arrears of pay and allowances and other public money due to him at the time of cashiering. The first two of the sentences were confirmed by the Chief of Army Staff on 12.2.1991 but the third one was remitted. Consequently, it stood set aside. After retirement on 31.5.1990, he was initially paid provisional pension w.e.f. 1.6.1990. However, a show-cause notice was issued to him on 13.11.1992 under Regulation 16(a) of Army Regulations. He sent a reply to the said notice. Since no order was passed for quite some time, he sent reminders to the authorities. A final order was passed by the President on 4.1.1994 forfeiting the entire pensionary benefits. Questioning this order, he filed Civil Writ Petition No. 2813/1994 in the High Court. The High Court quashed the order impugned in the writ petition and directed the appellants to reconsider and pass fresh orders in the light of certain directions given. Hence this appeal is filed by the appellants aggrieved by the impugned judgment.

Mr. Mukul Rohtagi, learned Additional Solicitor General, urged that -

1. Section 71 and Regulation 16(a) are distinct and operate in different fields. While Section 71(h) contemplates a punishment at the conclusion of the Court Martial, Regulation 16(a) contemplates a stage subsequent to the awarding of punishment by Court Martial and its confirmation; Regulation 16(a) deals with the pension of an officer, who is cashiered, dismissed or removed from service.

2. Though the Army Pension Regulations are non-statutory in character the pensionary benefits are provided for and payable under them; these very Regulations provide for forfeiting pension in given situations; in other words, the Regulations which provide for grant of pension also provide for taking it away on justifiable ground; further these Regulations may not have statutory force but they are not contrary to any statutory provisions under the Act or the Rules.

3. The High Court committed an error in stating that the authorities did not consider in forfeiting pension, partly or fully, that the services of the respondents up to the date of commission of offences were satisfactory and that the Court Martial did not inflict the punishment of forfeiture of services.

4. The orders passed by the President of India forfeiting pension were neither arbitrary nor unreasonable; in fact they were passed after taking into consideration the nature of offences, the punishments awarded

and all relevant factors.

5. (a) The High Court has also failed to see that the right to grant pension is not with the Court Martial under Section 71; the grant of pension is within the powers of the President under Regulations, who can grant/forfeit pension to the officers who are cashiered, dismissed, removed or called upon to retire. (b) In passing the orders forfeiting pension of the respondents, partly or fully, well established procedure was followed in that a show cause notice was issued; on receipt of reply to the show cause notice from the respondents and after consideration orders were passed.

6. The High Court was also not right in saying that the services of the respondents cannot be termed as unsatisfactory because of their involvement in the cases of misconduct; the High Court was not right in giving directions to the appellants to reconsider the matter after issuing a supplementary show cause notice.

He added that Army Pension Regulation 16(a) and Navy Pension Regulation 15(2) are similar in content except that the authority to pass order under Regulation 16(a) vests with the President and whereas under Regulation 15(2) it vests in the Central Government; the Army Pension Regulations are non-statutory and Navy Pension Regulations are statutory; hence the same submissions cover the cases dealt with Army Pension Regulations and Navy Pension Regulations.

In short and substance the arguments advanced by the learned counsel on behalf of the respondents are :

1. Pension is not a bounty or a charity given by the State; it is a deferred portion of compensation for services rendered; right to receive pension is a Fundamental Right and is right to property under Article 300A of the Constitution of India which cannot be taken away except by authority of law.

2. Under the Army Act it is only the Court Martial, which can order for forfeiture of service for purposes of increased pay, pension or any other prescribed purpose under Section 71(h) or 71(k) of the Army Act; in case service of army personnel is terminated on the administrative side (without holding court martial) then the statutory authority to decide forfeiture or the grant of these benefits is the competent authority under Rule 14(5) and 15 of the Army Rules. Therefore, there is no question of applying non-statutory pensionary regulations to the respondents; alternatively Regulation 16(a) is inconsistent with and contrary to Section 71(h) and 71(k) of the Army Act and Rules 14(5) and 15 of the Army Rules.

3. If the Court Martial has not thought fit to forfeit the pensionary benefits then those benefits cannot be forfeited by the non-statutory regulations and there has been undue delay in passing the order forfeiting the pension in some cases.

4. The orders passed forfeiting the pensionary benefits, fully or partially, as the case may be, are unreasonable and without proper application of mind to the facts and circumstances of the case.

5. Since no punishment was imposed forfeiting pensionary benefits under Section 71(h) or (k) by the General Court Martial, it was not open to pass orders forfeiting pension, partly or fully, exercising power under Regulation 16(a); it may amount to imposing punishment twice in respect of the same charges of misconduct.

It may be necessary to narrate in brief as to the nature of charges framed against the respondents and the punishment imposed on them to appreciate the contentions urged on behalf of the respondents as to the validity, reasonableness and justification in passing the orders forfeiting pension.

Five charges were framed against P.D. Yadav (respondent in CA 7805/ 97). He was found guilty in respect of charges 2 to 5. The said charges 2 to 5 are :-

2. Did on the Twenty ninth day of September one thousand nine hundred eighty nine at about 1401 hours willfully disobey the lawful command of Lieutenant Commander (Special Duties Communication) Man Singh Rawat (81917 Z), his Superior officer in the office of the Officer-in-Charge? Communication Centre, Delhi when ordered to go out of the said office and to come afterwards and thereby committed an offence punishable under Section 47(a) of the Navy Act, 1957.

3. Did on the Twenty ninth day of September one thousand nine hundred eighty nine at about 1402 hours behave in a disorderly manner in the office of the Officer-in-Charge, Communication centre, Delhi and thereby committed an offence punishable under Section 48(c) of the Navy Act, 1957.

4. Did on the Twenty ninth day of September one thousand nine hundred eighty nine at about 1402 hours strike Lieutenant Commander (Special Duties Communication) Man Singh Rawat (81917 Z) his superior officer in the office of the Officer-in-Charge, Communication Centre, Delhi and thereby committed an offence punishable under Section 45(a) of the Navy Act, 1957.

5. Did on the Twenty ninth day of September one thousand nine hundred eighty nine at about 1403 hours use violence against Lieutenant Commander, (Special Duties Communication) Man Singh Rawat (81917 Z) his superior officer in the office of the Officer-in-Charge, Communication Centre, Delhi and thereby committed an offence under Section 45(c) of the Navy Act, 1957.

Twelve charges were framed against B.S. Ahluwalia (respondent in CA 7806/97) but the Court Martial found him guilty of charges 5, 7 and 10 and with certain variations of charges 1, 2 and 3. They are :-

1. At Dehradun on 22.2.1985", while employed as CWE, Dehradun and having already given technical sanction for Table dining (OR) FD-165 @ Rs. 450 per tabel, with intent to defraud, vide contract Agreement No. CWE/CLT/23 of 84-85, entered into an agreement with M/s. Doon Furnishers for 496 dining tables @ Rs. 730 per table and thereby caused loss to the State to the tune of Rs. 1,38,800.

2. At Dehradun, on 21.6.1985, while employed as CWE, Dehradun with intent to defraud vide CA No. CWE/DDN/6 of 85-86, final-ized a contract agreement with Allied Traders for supply and fixing of ceiling fans at an exorbitant rate of Rs. 498 per fan, while DGS & D contract rate was Rs. 413.56 per fan,

3. At Dehradun, on 21.6.1985, while employed as CWE, Dehradun with intent to defraud vide CA No. CWE/CLT/7 of 85-086 finisalised a contract agreement with M/s. Allied Traders for supply and fixing of ceiling fans at an exorbitant rate of Rs. 488 per fan, while DGS & D contract rate was Rs. 413.56 per fan.

5. At the place and date mentioned in the Charge No. 4. improperly accepted the contract agreement with the altered rates as mentioned in the said charge.

7. At the place and date mentioned in the charge 6 (21.6.1985) improperly accepted the contract agreement with the altered rates as mentioned in the said charge.

10, At Dehradun between 29.3.1985 and 5.7.1985, while employed as CWE, Dehradun, contrary to the provisions of para 24 of the General conditions

of contract (IAFW-1815Z) instead of claim-ing composition from M/s. Doon Furnishers for failure to complete the work by due date, improperly allowed extension of time by 15 days and 30 days for phases I and II respectively.

Thirteen charges were framed against E.K. Sugathan (respondent in CA 7807/97) and was found guilty of charges 6, 10, 11 and 12 and of charges 1, 2, 3, 4, 5, 7, 8 and 9 with certain variations. He was sentenced to be cashiered and to suffer rigorous imprisonment for two months. However, while confirming the finding and sentence GOC-in-C, Northern Command remitted the sentence of rigorous imprisonment. The said charges are :

1. He at field between 28th January, 1991 to 6th March, 1991 while being Garrison Engineer 571 Engr. Park when ordered to fabricate 28 SL shelters at the cost of Rs. 10 lacs, with intent to defraud, splitted the purchases of said order by placing the supply orders in contravention to para 748 of Military Engr. Services Regulations 1968 edition read with HQ Northern Command letter No. 12846/2/policy/II/SB dt. 31st October, 1975 which prohibited splitting of the purchase order to avoid the necessity of obtaining the sanction of higher authority with reference to the total amount of the said order.

2. He at field, between 25th January, 1991 to 6th March, 1991 while being Garrison Engineer 571 Engr. Park when ordered to purchase 5 SI Shelters, 6 bathing cubicles flock and 6 latrine cubicles valued at Rs. 10 lacs, with intent to defraud splitted the said purchase order by placing the supply orders in contravention to para 748 of Military Engr. Services Regulations 1968 edition read with the Northern Command letter No. 42346/2/policy/II/Eng, Dated 31st October, 1975 which prohibit splitting of the purchase order to avoid the necessity of obtaining the sanction of higher authority with reference to the total amount of the said amount.

3. He, at field, between 12th March, 1991 to 25th March, 1991, while being Garrison Engineer 571 Engr. Park when ordered to purchase 10 SI shelters valued Rs. 10 lacs, with intent to defraud, splitted the said purchase order by placing the supply orders in contravention to para 748 of Military Engineer Services Regulations 1968 edition read with HQ Northern Command letter No. 42346/ 2/policy/II/1/E3 dt. 31st October, 1975 which prohibited splitting of the purchase order to avoid the necessity of obtaining the sanction of higher authority with reference to the total amount of the said order.

4. He, at field between February 1, 1991 to February 18, 1991 while being Garrison Engineer 571 Engr. Park when ordered to purchase 713 chassis valued Rs 4.281 lacs, with intent to defraud splitted the said purchase order by placing the supply order in contravention to para 748 of Military Engineering Services Regulations 1968 edition read with HQ Northern Command letter No. 42346/2/Policy/II/EB dated 31st October, 1975 which prohibited splitting of the purchase order to avoid the necessity of obtaining the sanction of higher to authority with reference to the total amount of the said order.

5. He, at field, between February 1, 1991 to February 18, 1991, while being GE 571 Engr. Park, when directed by Chief Engineer Northern Command vide letter No. 42392/203/E3 RR dated November 17, 1990 to procure 713 chassis, without authority purchased 213 timber planks of various sizes for which no sanction existed.

6. He, at field, on 13 Feb. 1991, when Garrison Engineer 571 Engr. Park with intent to defraud placed supply order No. 3027/169 IWS dt. 13th February, 1991 for "Steel door she 6' -10" double leaf type each divided in the four parts for fixing of glass sheets of size 12-3/4"x20" 4 Nos. and PGI sheets 27"x20" duly fixed and welded provided with two lower bolt 6" sliding door belt duly fixed for looking arrangements. The frame of door made out of angle iron 40x4x40x6mm thick door leaf duly fixed with three

hinges of 4" to each leaf with two bow handle of 9" size and leaf made out of angle iron 32x32x6mm qty. 20 on M/s CDS Traders Malhard Road, Garhi Udhampur at the rate of Rs. 1650 each well knowing that the rate approved by him was higher than the prevailing market rate of Rs. 1329 each.

7. He, at field, on 12th March, 1991, when Garrison Engineer, 571 Engr. Park with intent to defraud placed supply order No. 3027/ 185/IWS dt 12th March, 1991 for "Rear corner column made out of ISMB 6"x3"x10' long welded with base plate 10"x10"x10mm thick having 4 holes of 7/8" dia and gusset plate 4"x4"x6"mm thick welded to base plate. Top plate 7"x7"x10mm thick having 2 holes of 9/10" dia welded at tope cleats of angle iron 50x50x6mm 9" long 4 Nos. having two holes of 9/16" dia welded to the column at place sq. 10, on M/s. Indow Traders, Transport Yard, Udhampur, at the rate of each well knowing that the rate approved by him was higher than the prevailing market rate of Rs. 1147.50 each Rs. 2680.

8. He, at field, on 13th March, 1991, when Garrison Engineer, 571 Engr. Park with intent to defraud placed the supply order No. 3027/199/IWS dt. 13th March, 1991 for "front right hand side column made out of ISMB 6"x3"x10' long welded with base plate 10"x10"x10mm thick having 4 holes of 7/8" dia and gusset plate 4"x4"x6mm thick welded to the base plate, top plate 7"x7"x10mm thick having 2 holes of 9/10" dia welded atop, 4 cleats of angle iron 50x50x6 mm 6" long having 2 holes of 9/16" dia welded to the column at places, qty. 10 on M/s. Mushtak Hardware, Garhi Udhampur at the rate of Rs. 2680 each well knowing that the rate approved by him was higher than the prevailing market rate of Rs. 1147.5 each.

9. He, at field, on 16th March, 1991, Garrison Engineer, 571 Engr. Park with intent to defraud placed the supply order No. 3027/205/ IWS dt. 16th March, 1991 for middle column made of ISMB 6"x3"x10 long welded with base plate 10"x10"mm thick having four holes of 7/8" dia and gusset plate 4"x4"x6mm thick having four holes of 7/8" dia and gusset plate 4"x4"x6mm thick welded to the base plate, top plate 7"x7"x10mm thick having two holes of 9/10 welded at top. 4 cleats of angle iron 50x50x6mm6" long having two holes of 9/10" dia welded to the column at places qty. 10, on M/s. Veekay Enterprises Dhar Road, Udhampur at the rate of Rs. 2680 each well knowing that the rate approved by him was higher than the prevailing market rate of 1147.50 each.

10. He, at field, on 12th March, 1991, when Garrison Engineer, 571 Engr, Park with intent to defraud placed the supply order No. 3027/183/IWS dated 12th March, 1991 for middle side made out of at 50x50x6mm welded to 6mm thick plate of size 14x7" 1 nos. at Joints, 6 cleats of AI 60x50x6mm 6" long welded attend to each truss having 9/16" dia hole for fixing columns 6 nos. cleats angle iron 50x50x6mm 4 "long having two holes 9x16" dia welded to truss for fixing of purlin at places" qty. 10 on M/s Bansi Dhar and Sone near Krishna Mandir, Adarsh Colony, Udhampur at the rate of Rs. 2770 each well knowing that the rate approved by market rate of Rs. 2218.72 which was higher than the prevail-ing market rate.

11. He, at field, on 1st Feb., 1991, when Garrison Engineer, 571 Engr. Park with intent to defraud placed the supply order No. 3027/148/ IWS dt. 1st Feb., 1991 for "timber plank partal 11x11"x8-3/4" free from cracks qty. 60 on M/s Akbar Furniture House and Saw Mills, Garhi, Udhampur, at the rate of Rs. 570 each well knowing that the rate approved by him was higher than the prevailing market rate of Rs. 429 each.

12. He, at field, on 12th Feb., 1991, when Garrison Engineer, 571 Engr. Park with intent to defraud placed the supply order No. 3027/162/IWS dt. 12th Feb., 1991 for sal wood plants 3600mmx 225mmx 100mm" qty. 25 on M/s. Sharma Saw Mills Ram Nagar Chowk, Udhampur at the rate of Rs. 1250 each well knowing that the rate approved by him was higher than the prevailing market rate of Rs. 858 each.

A.K. Malhotra (respondent in CA 7808/97) was tried on eleven charges. He

was not found guilty of charges 1, 2, 4 and 6 to 11. He was found guilty of charges 3 and 5. He was sentenced to be cashiered and his five years service was forfeited for the purpose of pension. On revision he was not found guilty of charges 1, 6, 7, 8 and 11 but was found guilty of charges 2, 9 and 10 with exceptions. Consequently there was revision in sentence also sentencing him to be cashiered, to suffer rigorous imprisonment for six months and to forfeit all the arrears of pay due to him at the time of his cashiering. Confirming authority while confirming the finding and sentence, had revised and remitted the sentence of forfeiture of all arrears of pay and allowances and other public money due to him at the time of his cashiering on 13.2.1991, which was promulgated on 16.3.1991. Charges 2, 3, 5, 9 and 10 are :-

2. At Madras, between Aug. 87 and Nov. 87, when DDST HQ ATNKK & G Area, improperly ordered dispensation of sample testing from Composite Food Laboratory, of 41.098 tons of Tea (CTC) locally purchased by Supply Depot, Madras, from M/s. Vickey Enterprises, Madras, contrary to Army HQ letter No. 72312/III/2/SI-4 dated 11 Nov. 86.

3. At Madras between October, 1987 and November, 1987, when DDST HQ ATNKK and G Area, improperly ordered dispensation of sample testing from Composite Food Laboratory or Defence Research Laboratory (Material), Kanpur, of 19.85 IL of Cresoli Liquid Black locally purchased from M/s. Gautam Chemicals, Madras and M/s. Testo Chemicals, Madras, contrary to Para 1086 of ALC Training Volume II (Supplies) 1968.

5. At Madras, between 24th October, 1987 and 14th December, 1987 when DDST HQ ATNKK & G Area, improperly and with-out justification obtained approval for local purchase of 29 KL of Cresoli Liquid Black from MG ASC HQ Southern Command, when there was no emergent requirement of local purchase of that quantity of the said item.

9. At Madras, between 31 Oct. 1987 and 25 November, 1987 when DDST HQ ATNKK & G Area, improperly allowed Supply Depot, Madras, to split-up the sanctioned local purchase of 19.85 KL of Cresoli Liquid Black valued at Rs. 2,67,975.00 (Rupees two lakhs sixty seven thousand nine hundred seventy five only), in order to bring the same within the financial powers of MG ASC, HQ Southern Command, contrary to Rule 133 of Financial Regulation Part I (Volume I), 1983, which prohibits such splitting-up.

10. At Madras, between November 1987 and February 1988, When DDST HQ ATNKK & G Area, with intent to defraud, directed Supply Depot, Margao, to split-up the sanctioned local purchase of 86,190.800 Kgs. of Meat Tinned valued at Rs. 61,19,451.23 (Rupees sixty one lakhs nineteen thousand four hundred fifty one and paise twenty three only), in order to bring the same within the financial powers of MG ASC, HQ Southern Command.

We notice the relevant provisions of the Acts and Regulations :-The Army Act, 1950

"71. Punishments awardable by courts-martial. - Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts-martial, according to the scale following, that is to say, -

- (a)
- (b)
- (c)
- (d)
- (e)

(0)

(g)

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

(i) (i)

(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;

(1)

Pension Regulations for the Army, 1961

"1. Unless otherwise provided, these Regulations shall apply to the personnel of the Army and all claims to pension, gratuity or allowances shall be regulated by the regulations in force at the time of an individual's retirement, release, resignation, discharge, death etc., as the case may be."

"2-A Unless there be something repugnant in the subject of context, the terms defined in this Chapter are used in the regulations in the sense here explained :-

(1) to (3)

(4) Pension shall include gratuity except when it is used in contradiction to term gratuity.

(5) to (7)....."

"3. The full rate of pension or gratuity provided for in these Regulations shall not be granted unless the service rendered has been satisfactory. If the service has not been satisfactory, the competent authority may make such reduction in the amount of pension or gratuity as it thinks proper."

"4. Future good conduct shall be an implied condition of every grant of a pension or allowance."

"16. (a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his/her pension, may at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date."

The Navy Act, 1957

"81. (1) The following punishments may be inflicted under this Act, namely :-

(a)

(b)

(c) dismissal with disgrace from the naval service;

(d)

(e) dismissal from the naval service; (0 to (1)

(m) forfeiture of pay, head money, bounty, salvage, prize money and allowances earned by, and all annuities, pensions, gratuities, medals and decorations granted to, the offender or of any one or more of the above particulars; also in the case of desertion, of all clothe and effects left by the deserter in the ship to which he belongs;

(n)

(2)"

The Navy (Pension) Regulations, 1964

"15. Officers dismissed, discharged, etc. - (1) No pension shall be granted to an officer who is dismissed with disgrace from service.

(2) In the case of an officer who is dismissed otherwise than with disgrace from the service, the question whether any pension shall be granted and if so, the rate of such pension shall be decided by the Central Government, provided that the pension, if granted shall not exceed the rate which would have been admissible to him if he had retired on the same date.

(3)

It is useful to look at the position of law emerging from various decisions. The facts of the case in Lt. Col. (T.S.) Harbans Singh Sandhu v. Union of India & Ors., Writ Petition No. 553 of 1972 decided on November 22, 1978 were that a General Court Martial tried the petitioner and imposed a punishment of cashiering under Section 71(d) of the Army Act and no further punishment was imposed under Section 71(h) of the Army Act for forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose: he applied for grant of pensionary benefits; the authorities did not respond: hence, he filed writ petition seeking direction to the authorities for granting gratuity and pension due. Both the sides pointed to Regulation 16(a). From the records, it was found that no order had been passed under the said Regulation. In the absence of passing any order under Section 16(a), the Court directed the respondent to pay the sum due towards gratuity and pension. Under Section 71(h) a punishment of forfeiture of service for the purpose of pension could be passed but neither that punishment was imposed on the petitioner nor order was passed under Regulation 16(a) forfeiting his pensionary benefits. In those circumstances, the Court gave direction as stated above.

It is clear from the said judgment that the questions of law, whether regulations being non-statutory could be enforced for denying pension; whether those regulations were contrary to the provisions of the Act or Rules or whether when punishment was not imposed under Sections 71(h) or (k), even then pension could be forfeited under Regulation 16(a) that arise for consideration in the present cases, were neither raised nor decided.

In the case of Major G.S. Sodhi v. Union of India, [1991] 2 SCC 371 also, relief was granted relying on the decision of Harbans Singh Sandhu mentioned above without deciding questions of law as is clear from para 3 of the judgment. This judgment proceeded on the ground that in Harbans Singh Sandhu's case, a question of law that if no other penalty of forfeiting the pensionary benefits was passed under Section 71, pensionary benefits could not be withheld; but in Harbans Singh Sandhu's case, this question was not decided; it was only noticed as a fact that no further penalty was imposed under Section 71(h) of the Act. The direction was given in that case as no order had been passed forfeiting pension under Regulation 16(a). No principle of law was decided in the said cases. In this view, these two judgments do not support the respondents. The Full Bench of the High Court itself in Malhotra's case has said that in G.S. Sodhi's case, no legal issue was decided and, therefore, it cannot be a precedent. The High Court in Yadav's case specifically referring to the

cases of Harbans Singh Sandhu and G.S. Sodhi held that they were not applicable to support the case of the petitioner.

This Court in Major (Retired) Hari Chand Pahwa v. Union of India & Anr. [1995] Supp. 1 SCC 221 while dealing with the specific contention that Pension Regulations have no statutory force and pensionary benefits could not be forfeited under Regulation 16(a), has in clear terms in para 5 stated that "We do not agree 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 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. The appeal is, therefore dismissed." We are in respectful agreement with the view expressed in the aforementioned decision that the Regulations, which provide for grant of pension, can also provide for taking it away not arbitrarily but subject to satisfying the conditions incorporated in the Regulations.

In Union of India & Ors. v. Brig. P.K. Dutta (Retd.), [1995] Supp. 2 SCC 29 while specifically dealing with the effect of order passed under Sections 71(h) and (k) and the order passed under Regulation 16(a) directly arising on the contentions as are raised in the present cases held 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). It is further stated that a reading of both these provisions clearly brings out the distinct fields occupied by them and this Court went on to say :-

"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 at 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)."

In this judgment, a reference is made to the case of Major (Retd.) Hari Chand Pahwa (supra) and affirmed that the pension regulations, though non-statutory in character, the pensionary benefits are provided for and are payable under the said regulations; therefore, the same can be withheld or forfeited as provided by the very regulations. In this judgment, it is also stated that Army Rule 14 has absolutely no relevance in regard to the forfeiture of pension under Regulation 16(a).

Yet again in the case of Union of India & Ors. v. Lt Col. P.S. Bhargava, [1997] 2 SCC 28 it is stated that Regulation 16(a) gives the President the power either to forfeit or to reduce the rate of pension in the event of an officer being cashiered, dismissed or removed from the service. Reference is made to Regulation 4 to say that conduct of the officer must be good as a condition for the grant of pension or allowance. Dealing with the contention that withholding the pension when the respondent had been Court Martialled and dismissed, would amount to double jeopardy, this Court in Union of India & Ors. v. Subedar Ram Narain & Ors., [1998] 8 SCC 52 did not find any merit in the contention and held thus :-

"Section 71 of the Army Act provides for different types of punishments which could be inflicted in respect of an offence committed by a person subject to the Army Act and convicted by courts martial. The punishments are of varying degrees, from death as provided by Section 71 (a) to stoppage of pay and allowance as provided by Section 71(h). The punishment of forfeiture of pay and allowances as provided by Section 71(j) is of a lesser nature than that of dismissal from service as provided by Section 71(e). When punishment under Section 71(j) is imposed, no recourse can be had to Regulation 113(a), because the said regulation applies only if an order of dismissal is passed against the person concerned. In other words Section 71(j) and Regulation 113(a) cannot apply at the same time. On the other hand, when the punishment of dismissal is inflicted under Section 71 (e) the provisions of Regulation 113(a) become attracted. The result of punishment is that the benefit of pension or gratuity which is given under the regulation is taken away. The order of dismissal under the provisions of the Army Act in the case of an employee like the respondent would make him ineligible for pension or gratuity. For a person to be eligible to the grant of pension or gratuity, it is imperative that he should not have been dismissed from service. The dismissal under the provisions of the Army Act is, therefore, a disqualification for getting pension or gratuity."

The High Court in the impugned judgments has held that Regulation 16(a) is not inconsistent with Sections 71(h) and (k) of the Army Act and that they cover different fields; so also Regulation 16(a) and Rules 14(5) and 15 of the Army Rules operate in different fields. The High Court has upheld the validity of Army Pension Regulation 16(a) and Navy Pension Regulation 15(2). The High Court also did not find that these Regulations were inconsistent with or contrary to relevant provisions of the Act relating to punishment referred to in the judgment. We approve these conclusions of the High Court. The High Court quashed the impugned orders forfeiting pension on the ground that prior satisfactory service of the respondents, coupled with the fact that Court Martial did not consider it appropriate to impose the punishment under Section 71(h), was not taken into consideration by the authorities. The High Court was of the view that although a person may be cashiered or dismissed from service; that itself was not enough to forfeit pension and that prior satisfactory services of the respondents ought to have been taken into consideration before passing the order forfeiting pension fully or partly. The High Court also held that provisions of Regulation 15(2) of the Navy Pension Regulation are not ultra vires of the provisions of Sections 81, 82, 47 and 27 of the Navy Act and that where the Court Martial has imposed a punishment (like dismissal) which does not entail forfeiture of pension, it is still open to the competent authority under the Regulation 15(2) to forfeit a part or whole of the pension by following due procedure. With regard to the delay in passing orders under the Pension Regulations, the High Court observed that the orders should be passed within a reasonable period, preferably within six months of cessation of service. Of course, whether there was delay or not, in passing the order forfeiting pension depends on the facts of each case. However, the High Court having regard to the facts of the cases did not consider the delay unreasonable and, therefore, declined to quash the orders of forfeiting pension merely on the ground of delay in passing them and rightly so in our opinion.

Section 71 of the Army Act provides for various kinds of punishments which may be imposed for offences committed by persons subject to the Act and convicted by Court Martial which may vary from death to stoppage of pay and allowances. In terms of Army Pension Regulation 16(a) and Navy Pension Regulation 15(2), pension may be forfeited partly or fully subject to the conditions mentioned therein. These Regulations are independent and the authority to grant or forfeit pension is the President of India and the Central Government respectively. As rightly found by the High Court, the said Regulations are neither inconsistent with nor contrary to the provisions of the Army Act or the Navy Act as the case may be. The said Regulations and the provisions dealing with the punishments under the Acts cover different fields and have different purposes to serve. Punishments

are imposed after trial on the basis of the misconduct proved. The Pension Regulations deal with the grant or refusal of pension depending on satisfactory qualifying service earned by a person and depending on the nature of punishments imposed, mentioned in the Regulations. The Regulations come into play at a stage subsequent to the imposition of punishment. No doubt, pension is not a bounty but it is the earning of a person after satisfactory completion of qualifying service and if not otherwise disentitled. Under Section 71(h), a punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, can be imposed. If forfeiture of service has the effect of reducing total qualifying service required to earn pension, a person concerned is disentitled for pension itself. In other cases, it may have bearing in regard to claim for increased pay or any other purpose. If by virtue of such punishment itself, a person is not entitled for any pension, the question of passing an order forfeiting pension under Regulation 16(a) may not arise. As per Section 71(k), in case of a person sentenced to cashiering or dismissal from the service, a further punishment of forfeiture of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal may be imposed. Clause (k) of Section 71 does not speak of pension unlike clause (h) of the same Section.

The argument that since no punishment was imposed under clause (k) by the authorities, although it could have been done, then there is no warrant to pass an order forfeiting pension under the Army Pension Regulations in respect of same offence cannot be accepted. As already noticed above, the provisions relating to punishments under the Acts and Pension Regulations operate in different fields. Clause (k) refers to forfeiture of arrears of pay and allowances and other public money due to a person at the time of cashiering or dismissal. Pension is one, which becomes due subsequent to retirement or termination of service subject to satisfying certain conditions of satisfactory qualifying service and if not otherwise disentitled for claiming pension. Firstly, clause (k) does not speak of pension as such; it speaks of all arrears, pay, allowances and other public money due to a person. It cannot be said that on the date of cashiering or dismissal there could be any arrears of pension. Section 73 of the Army Act enables the authorities to impose punishments in combination. Merely because punishment is not imposed under clauses (h) or (k) of Section 71 and other punishments are imposed, it does not mean that the President is deprived of his power and jurisdiction to pass order under Regulation 16(a); so also the Central Government under Regulation 15(2) of the Navy Pension Regulations taking note of the punishment imposed under Section 81 of the Navy Act. In a case where punishment is imposed under Section 81(m) of the Navy Act forfeiting pension and/or gratuity, need for passing an order forfeiting pension under Regulation 15(2) of the Navy (Pension) Regulations may not arise. But that does not mean that in case of punishments imposed, which are covered by Regulation 15 the Central Government is deprived of its power to pass appropriate orders under the said Regulation, when such power is specifically conferred on the Central Government under the very Regulations, which enables granting of pension and/or gratuity. It is rather not possible to accept the contention that a General Court Martial and confirming authorities imposing punishments can debar the President or the Central Government from passing orders as provided for specifically and expressly under the Pension Regulations.

A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed under Section 71 of the Army Act amounted to double jeopardy. In our view, this contention has no force. There is no question of prosecuting and punishing a person twice for the same offence. Punishment is imposed under Section 71 of the Army Act after trial by Court Martial. Passing an order under Regulation 16(a) in the matter of grant or forfeiture of pension comes thereafter and it is related to satisfactory service. There is no merit in the contention that the said Regulation is bad on the ground that it authorized imposition of a double penalty; may be in a given case,

penalty of cashiering or dismissal from service and the consequential forfeiture of pension may be harsh and may cause great hardship but that is an aspect which is for the President to consider while exercising his discretion under the said Regulation. May be in his discretion, the President may hold that the punishment of cashiering or dismissal or removal from service was sufficient having regard to circumstances of the case and that a person need not be deprived of his right to pension. A crime is a legal wrong for which an offender is liable to be prosecuted and punished but only once for such a crime. In other words, an offender cannot be punished twice for the same offence. This is demand of justice and public policy supports it. This principle is embodied in the well-known maxim "Nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa" meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that "No one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise for prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under Regulation 16(a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proved misconduct by General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present cases.

Our discussion and reasoning with reference to scope and application of Army Pension Regulation 16(a) will equally apply in relation to Navy Pension Regulation 15(2).

It is to be noted that the punishment imposed on these respondents by Court Martial, as confirmed, have become final as the respondents have not questioned their validity and correctness any further. The High Court having rejected all other contentions raised by the respondents, partly allowed their claim on the ground that the otherwise prior satisfactory services of the respondents till the date of imposition of various punishments on them was not taken into consideration by the President or the Central Government, as the case may be, in passing the orders under the Pension Regulations forfeiting their pension. Mainly on this ground, the High Court directed the authorities to reconsider the cases of the respondents and pass orders after issuing supplementary show-cause notices. Consideration of prior satisfactory service of a person till the date of imposition of punishment of cashiering or dismissal or removal from service cannot be read into Army Pension Regulation 16(a) or Navy Pension Regulation 15(2). For exercise of power under the said Regulations, what is to be seen is whether the very terms of these Regulations are satisfied or not. A plain reading of these Regulations shows that in case of a person who has been cashiered or dismissed or removed from service, at the discretion of the President under Regulation 16(a) and in case of an officer who is dismissed otherwise than with disgrace from the service, the Central Government under Regulation 15(2) of the Navy Pension Regulations can pass order forfeiting pension, partly or fully. The very fact that such punishment is imposed on a person for proved misconduct after trial by the Court Martial, itself shows his unsatisfactory service. In our view, the High Court has read something more in these Regulations in insisting for considering prior satisfactory service of a person upto the date of imposition of punishment, which is not required by the very Regulations. We may clarify here itself that in these cases we are only considering, so far

as they relate to grant or forfeiture of pension in relation to and in the context of Regulation 16(a) of Pension Regulations for the Army and Regulation 15(2) of the Navy (Pension) Regulations. Under Regulation 2-A(4) of the Army Pension Regulations 'pension' is defined as including gratuity except when it is used in contradiction to the term gratuity. Hence the pension and gratuity, as defined, are included for consideration. Regulation 3 shows that full rate of pension or gratuity shall not be granted unless the service rendered has been satisfactory; if the service has not been satisfactory the competent authority may reduce the rate of pension or gratuity as it thinks proper. Thus, Regulation 3 and Regulation 16(a) of the Army Pension Regulations deal with distinct and different situations. Further, Regulation 4 states that future good conduct shall be an implied condition for every grant of pension or allowances. Consideration of satisfactory service may be relevant in terms of Regulation 3 for granting pension in the normal course after satisfactory qualifying service. But Regulation 16(a) being a distinct and specific Regulation enables for forfeiture of pension, partly or fully, as a sequel to imposition of a particular type of punishment. Regulation 16(a) in this regard is self-contained. The High Court clearly committed an error in holding that previous satisfactory service of a person upto the date of imposition of punishment should have been taken into consideration for exercise of power under Regulation 16(a) and it cannot be sustained. This being the position we are unable to agree with the High Court that a previous satisfactory service of a person prior to the date of imposition of punishment should be considered for the purpose of Regulation 16(a). Consequently the impugned judgments cannot be sustained.

What remains to be seen is whether the orders passed by the President and the Central Government, as the case may be, forfeiting pension of the respondents, were arbitrary, unreasonable or without application of mind.

It is the case of the appellants that before passing orders forfeiting pension either under Army Pension Regulation 16(a) or Navy Pension Regulation 15(2), show cause notices were issued to the respondents; replies received from the respondents and all the relevant factors appearing from the records were considered. According to them, the orders passed in their discretion by the President or the Central Government, as the case may be, having regard to all aspects, are justified and sustainable. We have perused copies of the notings of the Ministry of Defence and the orders made pursuant thereto. From the said records, we find that there has been application of mind and having regard to the serious nature of charges already narrated above and keeping in view the relevant circumstances including the punishments imposed on proved charges, the impugned orders appear to have been passed forfeiting pension. The said orders passed forfeiting pension are not merely based on the fact that the appellants were punished by Court Martial, as assumed by the High Court. Moreover, by issuing show-cause notices giving opportunity to the respondents to explain the circumstances and their hardship before passing the impugned order, the principles of natural justice were also complied. In the given circumstances when the impugned orders forfeiting pension were passed in the discretion of the authorities exercising the power available under the Regulations, we cannot find fault with them. Thus, the orders passed are neither arbitrary nor unreasonable. In this view, we do not find any error or infirmity or illegality in passing the said orders.

Having regard to the provisions and position of law, the discussion made and for the reasons recorded hereinabove, we find merit in these appeals and they deserve to be accepted. Hence, the impugned judgments of the High Court are set aside and the appeals are allowed. No cost.