

PETITIONER:
UNION OF INDIAN & ORS.

Vs.

RESPONDENT:
LT. COL. P. S. BHARGAVA

DATE OF JUDGMENT: 10/01/1997

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J.

In this appeal, from the judgment of the Guwahati High Court, the question of law requiring consideration is whether an army officer, who has earned pensionary and other retirement benefits, must forfeit the same on his resigning the job from the Army.

The respondent joined the Army Dental corps sometimes in the year 1960. He was given grading in Army in 1962. Thereafter he served in different capacities and was classified as a specialist and had been promoted to the rank of Lt. Colonel. On 2.1.1984 the respondent wrote a letter requesting for permission to resign from the service w.e.f. 30.4.1984 or from an early date. The said letter contained the reasons why he wanted to resign. The said resignation was accepted by communication dated 24.7.1984 in which it was stated that the respondent shall stand relieved of all army duties as early as possible, but not later than 24.8.1984. In this latter, it was also mentioned that consequent upon his resignation the respondent shall not be entitled to gratuity, pension, leave pending resignation and travel concession.

On the receipt of the aforesaid letter, the respondent wrote a letter dated 18.8.1984 stating that he was not interested in leaving the service. This was followed by another letter dated 22.8.1984 wherein the respondent prayed for cancellation of permission to resign. It was also stated therein that if it was not possible to cancel such permission, then his application may be treated as being one for release/pre-mature retirement. These letters were presumably written because the respondent realised that he was being deprived of pension, gratuity etc. as a consequence of his resignation. The respondent's letters dated 18.8.1984 and 22.8.1984 were not accepted and the respondent was "struck off" the strength on 24.8.1984.

The respondent soon after writing of letter dated 22.8.1984, filed a writ petition in the Guwahati High Court being Civil Rule No. 570 of 1984. The relief which was sought in that Civil Rule related only to the acceptance of his resignation. Two contentions were urged before the High

Court which were (1) the resignation was not accepted by the competent authority and as such the acceptance of resignation could not be given effect to and: (ii) the letter of withdrawal should have been considered by the authority and the petitioner ought to have been allowed to withdraw the letter seeking the permission for resignation. This writ petition was, however, rejected.

The respondent then filed a fresh writ petition being Civil Rule No. 1994 of 1986 in which it was contended that he should not be deprived of pension and other benefits. It was contended that the pension was not a matter of grace and as he had completed the qualifying service, he was entitled to the pensionary and other benefits.

The appellants, in its reply before the High Court, relief upon a letter dated 25.4.1981 of the Army Headquarter in which it was, *inter alia*, stated that if an officer was permitted to resign his commission, then he would not be entitled to any terminal benefits such as pension, gratuity and leave pending resignation.

The Guwahati High Court vide its judgment dated 25.4.1987 came to the conclusion that it was unreasonable to deny terminal benefits like pension in cases of resignation where prior permission was necessary to resign. Without striking down the contents of the aforesaid letter dated 25.4.1981 it came to the conclusion that the conduct of the respondent showed that he did not intend to lose his pension and other terminal benefits. It held that the aforesaid Army Headquarter's letter, containing the provision of automatic forfeiture of pensionary and other benefits in case of resignation, did not appear to be reasonable and could not, therefore, be given effect to. In this connection, it observed that "as validity of this provision has not been challenged in the present proceeding, we are leaving the matter only by saying that we are not enforcing the provision". The High Court, accordingly, allowed the writ petition and directed the appellants herein to make available to the respondent all the admissible terminal benefits.

On the day the judgment was pronounced, a request was made for a certificate to leave to this Court. This prayer was rejected. Thereafter the High Court suo moto by order dated 30.4.1987 issued a certificate under Article 134 A (a) of the Constitution observing that this was a fit case for appeal to this Court under Article 133(1) of the Constitution. Hence, this appeal.

It has been first sought to be contended on behalf of the appellant that the second writ petition should not have been entertained by the Guwahati High Court because the respondent had earlier filed a writ petition challenging the acceptance of his resignation but had not claimed any relief with regard to the terminal benefits. It is fairly conceded by Mr. Goswami, the learned counsel for the appellant, that this contention was not raised before the High Court and, in our opinion, it will not be proper, at this late stage, to allow the Union of India to raise the contention in this appeal for the first time.

It was then submitted on behalf of the appellant that according to the aforesaid letter dated 25.4.1981, there was an automatic forfeiture of the terminal benefits on the resignation of the respondent having been accepted and the High Court erred in granting relief to the respondent.

It will be appropriate, at this stage, to refer to the provisions regarding the grant of terminal benefits to which our attention has been invited. The grant of pension to the army personnel is governed by "Pension Regulations for the

Army" (hereinafter referred to as "the Pensions Regulations"). These Regulations have been issued under the authority of the Government of India and they apply to the personnel of Regular Army, the Defence Security Corps and the Territorial Army.

Regulation 22 of the Pension Regulations relates to the grant of pension and is as under:

"An officer permitted to retire from service may be granted a retiring pension or gratuity in accordance with the regulations in this chapter, provided that a retiring gratuity may be granted at the discretion of the President only in an exceptional case to an officer who is permitted to retire or whose service are otherwise terminated after completing the minimum qualifying service".

Regulation 25 provides for the qualifying service and is in the following terms:

"25(a) The minimum period of qualifying service required for a retiring pension is 20 years (15 years in the case of a late entrant see regulation 15). Only completed years of qualifying service shall count.

(b) The minimum period of qualifying service for a retiring gratuity shall be 10 years.

The service which qualifies for pension is provided for in Regulations 26. Regulation 38 provides that "All service which qualifies in full for retiring pension also qualifies for gratuity and on the same conditions

It would appear from the aforesaid Regulations that on the completion of the qualifying service, an officer, like the respondent, would be entitled to get pension and gratuity. The Regulations, however, contained three provisions which specifically provide for situations where full amount of pensionary benefits need not be given. These are Regulations 3.4 and 16 which read as under:

(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.

(b) When an officer who has to his/her credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign or in the event of his/her refusing to do so is retired from or gazetted out of the service, he/she may at the discretion of the President be granted a pension at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date in the normal manner."

The mere perusal of Regulation 3 shows that the competent authority may make a reduction in the amount of pension or gratuity if the service has not been satisfactory. The reading of this Regulation clearly shows that normally full rate of pension or gratuity is to be granted unless the service which is rendered is not satisfactory. It is not the case of the appellant that the respondent's service was not satisfactory. Therefore, no reduction of pension or gratuity under Regulation 3 could have been ordered.

Regulation 4 makes it a condition for the grant of pension or allowance that the conduct of the officer must be good. There is no suggestion that the conduct of the respondent was such as to deprive him of the terminal benefits under Regulation 4.

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. Under sub-regulation (b) of Regulation 16, if an officer is called upon to retire or resign, he may at the discretion of the President be granted a pension at a rate not exceeding what he would have otherwise qualified. Regulation 16(b) gives the power to the President to reduce or forfeit the pension of an officer who has to his credit the minimum period of qualifying service only in the event of his being cashiered, dismissed or removed from the service. Even in such a circumstance, there is no automatic forfeiture of pension or gratuity. An officer whose service is terminated by reason of his being cashiered, dismissed or removed from the service would normally be entitled to get his pension though the President has a right to forfeit or reduce the pension.

Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits.

The letter of 25.4.1981 issued by the Army Headquarter does state that pensionary benefits will be lost if an officer resign from service, but it has not been shown to us that this latter, in any way, supersedes or purports to amend or modify the aforesaid Regulations. In view of the specific right of pensionary benefits having granted by the said Regulations no effect need be given to the letter dated 25.4.1981.

In our opinion, the decision of the High Court under appeal, whereby the writ petition filed by the respondent had been allowed, calls for no interference. The appeal is, accordingly, dismissed with costs. Counsel for Rs. 5,000/- (Rupees Five Thousand only).

JUDIS