
(1997) 03 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No"s. 2866 and 4706 of 1990

B.S. Ahluwalia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Army Act, 1950 — Section 71

Citation : (1997) 3 AD 429 : (1997) 67 DLT 922 : (1997) 41 DRJ 308 : (1998) 1 ILR Delhi 1

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J; Chander Mohan Nayar, J

Bench : Full Bench

Advocate : Sanjeev Ralli, J.S. Manhas, Rakesh Tikku and A.K. Vali, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) These two writ petitions raise certain common issues and can be disposed of together. Petitioner in Cw 2866/90 is Col. B.S. Ahluwalia while petitioner in Cw 4706/90 is Lt. E. K. Sugathan.

(2) The facts in Cw 2866 of 1994 are as follows: The petitioner. Col. B.S. Ahluwalia was commissioned in the Indian Army on 30.6.1993 and was due to retire on 31.3.89. On 17.2.1988 he was tried by General Court Martial, it passed a sentence on 13.6.88 of dismissal from service, u/s 71 of the Army Act. (Nothing was stated about forfeiture of pensionary benefits). The petitioner had 20 years qualifying service for pension, he says that on 31.1.1989, he submitted all relevant pensionary documents along with medical examination report, to the concerned authorities, for payment of pension. On 22.2.1989, the Chief of Army Staff confirmed the dismissal order. According to petitioner, he had 28 years of pensionable service as on 22.2.89. On 24.10.89, the petitioner reminded the respondents regarding non-payment of pensionary benefits to him. On 3.3.1990, writ petition was filed. During the pendency of the writ petition, the appeal u/s

164(2) was dismissed on 12.12.90 and the order confirmed. On 16.4.91, a show cause notice was issued under Regulation 16(a) of the Pension Regulations of the Army (Part 1) proposing forfeiture of pension because of the dismissal of the petitioner. Leave encashment was also not granted. On 18.7.91, petitioner submitted reply and on 22.7.1992 an order was passed by the President of India under Regulation 16(a) of the Pension Regulations forfeiting 50% of pensionary benefits. Petitioner filed Cm 6183/93 for amendment of writ petition, questioning the order dated 22.7.92 and the said Cm was allowed on 20.1.94.

(3) The facts in Cw 4706/94 are as follows: The petitioner Lt. Col. E.K. Sugathan was commissioned in the Army as Engineer Graduate Officer on 11.1.1968 with two years ante-date seniority. The petitioner says he had 20 years qualifying service for pension and was also entitled to be granted provisional pension under Regulation 38. The petitioner was tried by General Court Martial on the allegation of splitting purchase orders for shelters to bring them within financial limits and for making purchases at rates higher than schedule and sanctioned Rates and was cashiered on 11.3.94 and directed to undergo rigorous imprisonment for 2 months. The same was confirmed on 11.6.94. (Nothing was stated about forfeiture of retirement benefits). On 18.6.94, petitioner filed a statutory appeal u/s 164(2) of the Army Act questioning the sentence levied by the General Court Martial. On 29.6.94, petitioner forwarded papers for pension and gratuity to the Cda (o) Pune, the pay-disbursing authority who, in turn, submitted the verified accounts to the Cda (Pension) Allahabad, by letter dated 12.7.94. Reminders were sent. Neither provisional nor full pension was granted. Petitioner was due for superannuation on 1.4.1995. He had 10 months service as on 11.6.94. Writ petition was filed on 16.11.94 seeking pension, gratuity and other pensionary benefits with 15% interest. On 22.2.95 a show cause notice was issued under Regulation 16(a) for forfeiture of pensionary benefits. Petitioner sent a reply dated 21.3.95 by Regd. post (AD). On 20.9.95, an order was passed forfeiting pensionary benefits (see petitioner's additional affidavit dated 6.5.96) stating that petitioner had not sent any reply. As slated in the said affidavit, petitioner had sent reply on 21.3.95 by Regd. post (AD) to the defense Minister, the same was delivered on 24.3.95 (as per the certificate dated 27.11.95 of the Supdt. of Post Offices, Trivandrum). The photocopy of the acknowledgement has been filed as Annexure C to the said affidavit. Petitioner wrote on 9.10.95, seeking review of the order on ground of violation of natural justice. No further reply has been filed by the respondent. In the counter-affidavit. Regulation 16(a) has been relied upon. It was also stated in Cw 2866/90 that leave encashment can be granted only if the officer has been granted full pension in the normal manner and that as the officer has not been granted pension because of disciplinary grounds, he is not entitled to encashment of leave. It will be noticed that in Cw 2866/90, the case of Col. B.S. Ahluwalia, 50% of pensionary benefits have been forfeited and leave encashment was denied though petitioner had 130 days to his credit on the ground of his dismissal and the petitioner therein contended (see written submissions dated 15.7.95) that no provision of any Rule has been

quoted to say that if dismissal order is passed or if full pension is not granted, leave encashment could be denied. Petitioner in Cw 2866/90 also claimed that the order of the President is only prospective and pensionary benefits prior to 22.7.92, being the date of the forfeiture order, have to be paid. He claimed full pensionary benefits for the period 22.2.89 to 21.7.92 and also questioned the correctness of the denial of 50% of pensionary benefits from 22.7.92. Respondents filed written submissions on 20.7.95. No specific provision was referred to by the respondents in regard to denial of the leave encashment. In fact, the above point was raised in the original writ petition Cw 2860/90 and reiterated in the rejoinder dated 16.7.91 and the petitioner's written submissions dated 20.7.95. We shall summarise the crucial facts in the two cases. In Cw 2866/90, Col. B.S. Ahluwalia was due to retire on 31.3.89 but pursuant to Gcm, he was dismissed from service on 13.6.88. Writ petition was filed on 3.3.90 and it was only thereafter that a show cause under Regulation 16(a) was issued on 16.4.91 and petitioner sent a reply on 18.7.91, and order was passed on 22.7.92 forfeiting "pensionary benefits" up to 50% and denying leave encashment totally. In the other case Cw 4706/94 of Lt. Col. E.K. Sugathan, he was due to retire on 1.4.95, but was cashiered on 11.3.94 (order confirmed on 11.6.94). Petitioner Filed Writ petition on 16.11.94. Thereafter, on 22.2.95, show cause notice was issued under Regulation 16(a), reply sent on 21.3.95, pensionary benefits were forfeited by an order dated 20.9.95. Petitioner raised an issue that the respondents plea that petitioner's reply was not received cannot be accepted in view of the postal certificate that petitioner's reply to show cause was received by respondents on 24.3.95. Petitioner applied for review. Before, we go into the points involved in the cases, we may state that in this Full Bench we have heard the case of Brig A.K. Malhotra vs. Union of India, Cw 2813/94, and the main judgment has been delivered by us today in that case holding that the power under Regulation 16(a) is an independent power and that even if u/s 71(h) or (k), the Court Martial has not thought it fit to forfeit pensionary benefits, it is still permissible for the President to exercise powers under Regulations 16(a) and Regulation 3A and consider whether full pension or gratuity are payable. We have referred to the several rulings of the Supreme Court in this behalf. We have also pointed out that for persons dismissed or cashiered or removed by the Court Martial, the normal rule is to grant the pensionary benefits unless the service has not otherwise been satisfactory. We do not want to repeat what we have said in that judgment. To the extent of the validity, applicability and scope of Regulation 16(a), that judgment will govern these two cases also. Leaving out the said points covered by Brig. A.K. Malhotra's case, the further points that remain to be considered in these two writ petitions are : (1) Can action under Regulation 16(a) be initiated "at any time" as per the sweet will of the authorities and, if not, what can be considered to be reasonable period within which action under Regulation 16(a) should be initiated? (2) Are the orders, under Regulation 16(a) when issued, prospective ? (3) Are the orders liable to be quashed as being contrary to the principles laid down by us in Brig. A.K. Malhotra's case (CW 2813/94), and if so, what are the directions to be issued ? Point I Pensionary

benefits are no longer a bounty but are a right to property and are liable to be paid soon after superannuation or cessation of service, once necessary qualifying service is rendered. Under Regulation 3 and 3A, it is not disputed that pension is payable on completion of 20 years of qualifying service while gratuity is payable on completion of 10 years - if the service has been satisfactory. If an officer is punished by punishment of cashiering or dismissal or removal u/s 71 of the Army Act by a Court Martial and is otherwise eligible for pension or gratuity and if the Court Martial has not forfeited the said benefits, then the position as pointed out by the Full Bench in Brig. Malhotra's case (CW 2813/94) is that the right to pension and gratuity cannot be denied. The authorities have a duty to discharge their obligation under Regulations 3 and 3A to pay these benefits to the officer concerned. If they want to impose any cuts in the pensionary benefits they have to initiate action under Regulation 16(a) by way of issuing a show cause notice. The question is about the reasonable or unreasonable delays on the part of the authorities in granting the pensionary benefits or in initiating action under Regulation 16(a). Various situations in which reasonable delay can occur can now be considered. The punishment inflicted by the Court Martial may in some cases be under challenge in writ jurisdiction at the instance of the officer who has been punished. But even so, the pendency of the said writ petition cannot be an excuse for not initiating action for grant of pensionary benefits or for action under Regulation 16(a), in cases where the Court Martial has not forfeited the pensionary benefits in whole or in part. Of course, if there is stay of initiation of proceedings for grant of pension that could be an excuse but it is most improbable that an officer who challenges the punishment will seek stay of proceedings relating to grant of pensionary benefits. It is then argued for the respondents that the relevant Regulations prescribe a procedure for applying for pensionary benefits in a particular format and it is for the officer to take the first step by making an application and not for the department to consider the grant of pensionary benefits. It is true that such a procedure may have been prescribed. But, in our view, if the right to these pensionary benefits has already accrued to the officer by virtue of his satisfying the conditions necessary for the grant thereof, then the procedure of sending an application can be treated only as a reminder to the authorities to take steps in that behalf. The relevant particulars upon which pensionary benefits are to be computed are normally available with the department. Of course, if the officer had worked at different places during his service, it might be necessary to seek some information from the officer or from the various stations where he might have worked during the course of his service. But it is not as if pensionary benefits become payable from the date of application of the officer. Application or no application, they are payable from the due date of retirement or cessation of service after completion of qualifying service, provided that the benefits have not been forfeited in any Court Martial proceedings or under orders under the Pension Regulations. It is indeed surprising that in several cases, when the officers come to Court, after allowing considerable time to the authorities to perform with their duties, the authorities instead of proposing to pay the pensionary benefits, think of issuing a

show cause notice under Regulation 16(a) for forfeiture of pensionary benefits. These cases fall into more than one category. In cases where no action for grant of pension or for imposing cuts in the benefits is taken even after filing of a writ petition or even by the date of judgment, the Court can certainly direct release of full pensionary benefits as was done in Sodhi's case JT 1992 (4) SC 335. If, however, a show cause notice is given under Regulation 16(a) during the pendency of the writ petition, the Court may direct the matter to be finalised in 6 months as done in Brig P.K. Dutta's case 1995(1) SCC 413. What delay is to be considered as grossly unreasonable for quashing the proceedings for forfeiture by the Court, would indeed depend upon the facts and circumstances of each case. In Cw 2866/90, Col. B.S. Ahluwalia was due to retire on 31.3.89 but was dismissed from service on 13.6.88 by the Court Martial without forfeiture of pensionary benefits. The writ petition was filed on 3.3.90 and on 16.4.91, show cause notice was issued under Regulation 16(a) and 50% of benefits were taken away by order dated 22.7.92. In Cw 4706/94 Col. Ex Sugathan was to retire on 1.4.95 but was cashiered on 11.3.94, writ petition was filed on 16.11.94 and only on 22.2.95 show cause was issued and benefits totally forfeited on 20.9.95. Even by 11.3.94, he had the necessary qualifying service for grant of pensionary benefits. On the facts of these two cases, we are not inclined to quash the proceedings under Regulation 16(a) on the sole ground of delay in the issue of notices under Regulation 16(a), even though they have been issued after the filing of the writ petition, for reasons stated hereinafter. It is argued for the respondents that Regulation 16(a) confers a discretion on the concerned authority and does not prescribe any time limit within which action under Regulation 16(a) is to be initiated. It is true the Regulation 16(a) uses the words:

"....HIS/HER pension, may, at the discretion of the President, be either forfeited or be granted at a rate....."

" But, in our view, the discretion is not absolute in the sense that it can be exercised at any time the said authority thinks it fit to exercise the same. When power coupled with a duty whether statutory or administrative, is conferred on a public authority, without time limitation, the Court can, as a matter of judicial review, lay down reasonable limitations on the time within which the power is to be exercised. In The State of Gujarat Vs. Patil Raghav Natha and Others, , the Supreme court observed that though u/s 211 of the Bombay Land Revenue Code, no time limit was laid down for exercising suo moto powers of revision, the power of the Commissioner to suo moto revise an order made u/s 65 must be exercised "in reasonable time". Sikri, J (as he then was) observed:

"The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211 but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised".

The learned Judge on a consideration of the other provisions of the statute held

that, exercise of suo moto revisional powers beyond one year was "too late" and that reasonable time would be three months. Again in *Mansaram Vs. S.P. Pathak and Others*, it was held that the power must be exercised "in a reasonable manner and the reasonable exercise of powers inheres its exercise within reasonable time". In *Kerala State Housing Board and Others Vs. Ramapriya Hotels (P) Ltd. and Others*, and *Ram Chand and Others Vs. Union of India (UOI) and Others*, the above rulings were applied. In our view, the right to pensionary benefits which has accrued after years of satisfactory service cannot be wrongfully denied or unduly postponed. In fact, "there is no automatic forfeiture of pension or gratuity" merely because of dismissal, cashiering or removal u/s 71 of the Act and even such officers will "normally be entitled to get pension", (Sec AIR 1997 565 (SC) , Undue delay on the part of the competent authority cannot be allowed to deprive the officers of the fruits of years of their satisfactory service. Having regard to the nature of the right to pensionary benefits and the basic need of retired officers (or those who have completed the qualifying service) to receive the same, we are of the view that the show cause notice for forfeiture, either wholly or partly, under Regulation 16(a) should normally be issued within 6 months of the date from which the benefits become payable unless there are special circumstances justifying the delay. Merely because Regulation 16(a) does not fix a time limit, it does not mean that the said power can be exercised at any time, belatedly. It has become necessary to set out the above broad parameters inasmuch as there is an increase in the number of show cause notices that are being issued under Regulation 16(a) beyond reasonable time or after writ petitions are filed. However, in the two cases before us, though show cause notices were issued after the writ petitions were filed, inasmuch as final orders under Regulation 16(a) have also been passed, we are not quashing the show cause notices on ground of delay but we propose to consider their validity on merits. Point 1 is decided accordingly. Point 2: A point has been raised for the petitioners that till the date the orders under Regulation 16(a) are passed, the petitioners are entitled to the pensionary benefits in full. In our view, this contention cannot be accepted. Under the scheme of the Pension Regulations, the pensionary benefits are no doubt payable to the officer on superannuation or with effect from the date of termination of service in accordance with the provisions in Regulations 3, 3A and 16(a) and other relevant provisions. There could be some normal administrative delay in grant of the pensionary benefits or in the passing orders of forfeiture. For purposes of exercising powers under Regulation 16(a) a show cause notice is to be issued, reply received and then order passed. In the nature of things, these steps may take some time. In case, the competent authority decides that the service as a whole has not been satisfactory and the pension is to be forfeited in full, or in part, the same will have to be operative from the date on which the pensionary benefits accrued and became payable. Supposing on the ground that service is not satisfactory, a cut of say, 50% in pension is decided to be imposed, the cut is to be on the pension payable from the very date upon which it becomes payable and not merely from the date of the order. Therefore, where orders under

Regulation 16(a) are passed later, whose validity is upheld, there is no scope of the full pension being paid up to the date of the order under Regulation 16(a). This contention is accordingly rejected. Point 3 : The question is whether the individual orders passed under Regulation 16(a) are liable to be quashed on merits. We have already stated under Point I that we are not quashing the same on the ground of delay inasmuch as though show cause notices have been issued after the filing of the writ petitions, final orders have also been since passed. We have set out in Point I the period within which action under Regulation 16(a) should normally be initiated by way of show cause notices. We, Therefore, propose to decide whether the final orders passed under Regulation 16(a) are liable to be quashed on merits. In Brig. A. K. Malhotra's case (C.W. 2813/94) in which we have delivered Judgment today, we had occasion to discuss a similar issue under Point 3. We have pointed out there that if the Court Martial has not thought it fit to forfeit the pensionary benefits wholly or partly under Sections 71(h) and (k) of the Act, but has only passed a sentence of dismissal, cashiering or removal, then it was not sufficient for the competent authority under Regulation 16(a) to merely rely on the same for forfeiting the pensionary benefits but that it is also necessary for the authority to consider whether the service of the officer concerned has been satisfactory (vide Regulation 31). As pointed out in that Judgment, the mere fact that a sentence of dismissal, cashiering or removal or other sentence has been imposed by the Court Martial does not mean that the service of the officer has not been satisfactory. The normal rule is the grant of pensionary benefits in full, unless the competent authority is of the view that the service has been not satisfactory or unless the authority comes to the conclusion that the nature of the offence proved to have been committed u/s 71 is so extraordinarily grave as to warrant a conclusion that it had totally wiped out the right to pensionary benefits acquired by years of satisfactory service. Where an administrative authority comes to a conclusion without considering relevant facts, its decision requires to be quashed. If in these two writ petitions, the denial of pensionary benefits has been based solely on the punishment imposed by the Court martial without keeping in mind the service which was otherwise satisfactory, then the orders forfeiting pension, whether partly or wholly, are liable to be quashed. Bearing these principles in mind, we have gone through the relevant records in each of these two cases. In C.W. 2860/90 relating to Lt. Col. B. S. Ahluwalia, 50% of pension has been forfeited, as disclosed from the record, keeping in view the loss allegedly caused to the State for Rs. 1,40,000 and the fact that the officer has no regular source of income and has an unmarried daughter and long service (Flag A Note 93, para 8, Note 94, para 2). A perusal of the record shows that the satisfactory service rendered by him has not been considered. In C.W.4706 of Lt. Col. Sugathan, the fact that 12 charges out of 13 were held proved and they related to corruption was taken into account and not the earlier satisfactory service. (Flag A, Note para 1) (para 6). In both the cases, it was also not considered whether the findings on these charges would necessarily wipe out the beneficial result of his earlier satisfactory service. For the above reasons, these orders are liable to be

quashed and the matter has to be reconsidered in the light of our Judgment in Brig. A.K. Malhotra case (supra). For the reasons given therein, we direct the respondents to issue a supplemental show cause notice, consider the reply and pass fresh orders and communicate the same to the parties. Copies will be filed in this Court. This will be done within six months from today. Thereafter, petitioner if aggrieved can file objections here. We are adopting this course for the reasons given in Brig A. K. Malhotra's case and as the matters have been long pending and there is no point in subjecting the petitioner to a fresh round of litigation. In fact respondents have no objections to this course. The question of encashment of leave salary in the second case C.W.2866/94 will also be reconsidered. List the matters on 29th September, 1997.