

(2007) 04 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) 6015 of 2003

Ex. Major R.S. Budhwar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Army Act, 1950 — Section 71
Constitution of India, 1950 — Article 20, 20(2), 22
Penal Code, 1860 (IPC) — Section 109, 302, 34
Pension Regulations for Army, 1961 — Regulation 16, 2A(4)

Citation : (2007) 140 DLT 626

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Deepak Anand Maish and Anish Shreshtha, for the Appellant; Rajesh Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner has assailed the legality of an order dated 03.03.1994 for featuring his pensionary benefits in the backdrop of the following facts:

2. The petitioner was commissioned in the Indian Army in June 1974. He was tried by a General Court Martial along with two other Army personnel for committing murder of Colonel S.S. Sahota and Major Jaspal Singh of their unit. He was convicted by the Court Martial for offences punishable u/s 302/109/34 of the IPC and sentenced to be cashiered and to suffer imprisonment for life. The conviction and sentence was confirmed by the General Officer Commander in Chief, Eastern Command on 08th September 1990.

3. Some time after the promulgation of the sentence and the pensionary benefits due to the petitioner were forfeited after affording to the petitioner an opportunity to show cause against the same. Nine years after the issue of the forfeiture order, the petitioner filed the present petition in which a Division Bench

of this Court had by an order dated 19th September 2003 issued notice to the respondents only in so far as the forfeiture related to the gratuity amount payable to the petitioner. This implied that in so far as the forfeiture of the pensionary benefits were concerned, the court did not see any reason to interfere with the forfeiture order. The only aspect that the court proposed to examine was whether forfeiture of "pensionary benefits" would include the amount of gratuity payable to the petitioner.

4. The respondents have, in response to the notice issued by this Court, filed a counter affidavit in which they have placed reliance upon the definition of the term "pension" as appearing in Regulation 2A(4) of the Pension Regulation for the Army, 1961. They have also pointed out that looking into the gravity of the offence committed by the petitioner, the entire pensionary benefits which included gratuity payable to the petitioner stood forfeited vide Ministry of defense Letter No. B/42092/165/AG/PS-4(C)/172/A/D(Pen/Sers) dated 2nd February, 1994. According to the respondents, since the petitioner had been cashiered and the offence of murder, which he had abetted was heinous, he was not entitled to claim any retiral benefits including gratuity.

5. We have heard learned Counsel for the parties and perused the record. The short question that falls for our consideration is whether forfeiture of pensionary benefits ordered by the President would include forfeiture of gratuity also. The answer to that question is provided by Regulation 2A(4) of the Pension Regulation for the Army, which defines the term pension as under:

Pension shall include gratuity except when it is used in contradistinction to the term gratuity.

6. A plain reading of the above would leave no manner of doubt that forfeiture of pension within the contemplation of Regulation 16(a) of the Pension Regulations for the Army (Part-I), 1961 would include forfeiture of gratuity also. The petitioner's grievance that the forfeiture order would not disentitle him to receive the gratuity amount, Therefore, is without any legal basis.

7. The question whether payment of pension to a person who has been dismissed or cashiered consequent upon a trial by General Court Martial is permissible and whether denial of the same would amount to double jeopardy has been authoritatively answered by the Supreme Court in Union of India and Anr. v. P.D. Yadav 2002 SCC 149. Repelling the contention that the forfeiture order would amount to double jeopardy, the court in that case observed as under:

25. A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed u/s 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 u/s 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 contest curiae quod sit prouna et sadem 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 or 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 u/s 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.

8. The court also declared that in view of the Regulation 2-A (4) of the Army Pension Regulation, pension would include gratuity also. This is evident from the following passage:

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.

9. The only other aspect that requires to be examined is whether the authority competent to direct forfeiture had applied its mind before doing so. The answer to that question can be provided by the contemporaneous official record. That is precisely the view taken even in P.D. Yadav's Case (Supra) by the Supreme Court. In the instant case also like in Yadav's case, the petitioner had been given a show cause notice and an opportunity to explain why forfeiture should not be

ordered. It is a different matter that the petitioner had not availed of the said opportunity. The fact remained that the competent authority had examined the serious nature of the charges framed and proved against the petitioner while denying him the pensionary benefits. The records on the file sufficiently show that the forfeiture orders have been passed after due and proper application of mind, leaving little room for this Court to interfere with the order of forfeiture. The Apex Court had also declined to interfere with a similar order of forfeiture of pensionary benefits in Yadav's case in the following words:

We have perused copies of the records of the Ministry of defense 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.

10. In the light of the settled legal position on the subject, Therefore, and in the absence of any perversity in the order passed by the respondents, we see no reason to interfere with the forfeiture. This writ petition accordingly fails and is hereby dismissed but in the circumstances without any order as to costs.