

(1981) 08 DEL CK 0035
In the Delhi High Court
Case No : Civil Writ Appeal No. 1129 of 1979

Hazar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-08-1981

Acts Referred:

Air Force Act, 1950 — Section 10
Constitution of India, 1950 — Article 31(1)

Citation : (1981) 21 DLT 35 : (1982) 1 ILR Delhi 232 : (1982) ILR Delhi 220 : (1981) 2 SLJ 517

Hon'ble Judges : Sultan Singh, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : P.N. Lekhi, E.X. Joseph and Rekha Sharma, for the Appellant;

Judgement

Sachar, J.

(1) This writ petition challenges the impugned order of the President conveyed to the petitioner by memo of 4-6-1979 by which the President has been pleased to forfeit the pension that would have been admissible to him" under the Pension Regulations had he retired from service in the normal course. The petition was heard along with the L.P.A. 94/1975. That Letters Patent Appeal challenged the impugned order dated 21-9-1971 passed by the President in exercise of powers u/s 18 of the Air Force Act by which the petitioner was dismissed from service with immediate effect. We have by a separate judgment dismissed that appeal and have held that the impugned order was passed in the exercise of Presidential pleasure as envisaged in Article 310(1) of the Constitution and Section 18 of the Air Force Act, notwithstanding the use of the Word "dismissal".

(2) The petitioner was given a memo of 27-4-1979 asking him to show cause why the pension should not be forfeited under Regulation 16(a) of Pension Regulations. The petitioner in Regulation 16 (a) should be interpreted in the same manner showed cause giving his reasons as to why there could be no forfeiture of pension after a lapse of so much time and also challenging the

competency of the authorities to make any forfeiture and also pointing out how in other similar cases no forfeiture had taken place even though those people had also been dismissed. The President did not accept the said representation because by the "When an impugned order of 4-6-1979 the petitioner's pension has been forfeited."

(3) Now Regulation 16 (a) Section 1 Chapter II of the Pension Regulations for Air Force 1961, Part I reads as under:

"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 pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he would have otherwise qualified, had he retired on the same date."

It is apparent that the Regulation 16 (a) would only apply in a case where an officer is given any of three punishments, namely cashiered or dismissed or removed from service. That is why much effort was made in the connected appeal to persuade us to hold that the order passed on 21-9-1971 was in fact a dismissal order as contemplated by Section 19, of the Air Force Act; the further contention being that as it was passed without complying with the procedure laid down in this Act and the Rules the order of dismissal was void. Had we so accepted this contention it cannot be disputed that the order of forfeiture of pension which is consequential to the order of dismissal would automatically have fallen. But we have rejected that contention as in our view the order has been passed in exercise of the "pleasure" envisaged in Article 310 of the Constitution and Section 18 of the Act.

(4) The next contention urged by Mr. Lekhi the learned counsel for the petitioner was that the impugned order of 4-6-1979 suffered from the infirmity as it was passed without complying with the principles of natural justice. In this connection reference was made to *S.L. Kapoor Vs. Jagmohan and Others*, to emphasise the ever expanding width and applicability of principles of natural justice. There can be no quarrel with the principle; only in our view we do not accept that there has been any denial of reasonable opportunity to the petitioner in this regard. A reference to the memo dated 27-4-1979 will show that the petitioner was told that as he was dismissed from service by an order of 21-9-1971 it was proposed to proceed against him under Regulation 16 (a) and asking him to show cause against the said action. We do not appreciate what more opportunity could have been given to him considering that the petitioner did represent against the said action by his reply of 9-5-1979 and it was only thereafter on a consideration of the same that the impugned order of 4-6-1979 was passed. What Mr. Lekhi however, seeks to urge is that it was not sufficient to tell the petitioner that action was being taken because he had been dismissed, by an order of 21-9-1971 but that it was essential that he should have been supplied the reasons for which the impugned order of dismissal was made. We find this argument another way of urging that the dismissal order of 21-9-1971 was bad

because it was not preceded by an enquiry under the rules. But we have already negated this contention. We cannot appreciate that useful purpose can be served by giving the reasons for the dismissal order when the petitioner was being asked whether his pension should be forfeited or not. If it is to be held that reasons for the dismissal should have been supplied to the petitioner it must necessarily follow that it should be open to the petitioner to show cause and explain why those reasons should not have led to his dismissal and to ask for the same to be set aside. But such a course "would amount to requiring the President to exercise his pleasure u/s 18 of the Act only after holding an enquiry, which is not the requirement u/s 18 of the Act. We cannot import a requirement of an enquiry which is directly opposed to the Statute. Surely if, as we have held, the President is not required under law to give any reasons for dismissing the petitioner because he was exercising his constitutional right under Article 310 of the Constitution, there is no logic in saying that still reasons for the dismissal must be" supplied when action to forfeit pension is taken under Regulation 16 (a). We find this argument unacceptable and must reject it.

(5) The next contention was that an order forfeiting pension- must have been preceded by a court martial trial which should have imposed a punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose as mentioned in Section 73(1) of the Air Force Act. Mr. Lakh; Would have it that unless such a punishment had been awarded by a court martial the resort to Regulation 16(a) could not be made. We do not agree.

(6) Section 73 provides for various punishments which are awardable by court martial. Clause (1) empowers the court martial to award a punishment of forfeiture of service for the purpose of..... pension. This clause provides for one of the punishments which can be given When a court martial is held, that is to say that it may order that out of 20 years" service 2 years service may be forfeited for the purpose of increased pay or pension. Clause (1) of Section 73 is dealing with a very different situation from those contemplated by Pension Regulation 16 (a), Which does not require as a condition precedent that there should have been held a court martial trial. These two provisions are independent of each other. The argument, Therefore, that in the absence of punishment under Section 73(1) of the Act resort could not have been made to Pension Regulation 16 (a) is misconceived and must be rejected.

(7) In the connected appeal we have held that notwithstanding the use of the word "dismissal" in the order of 21-9-1971 action must be deemed to have been taken because the petitioner held his tenure at the pleasure of the President vide Section 18 of the Act. This finding is of course a sufficient answer to the challenge made to the termination of his service by the petitioner. But the question is whether that is valid answer, as pleaded by the respondent to their action in forfeiting the pension. This will depend on the answer to the question as to what meaning is to be given to the words "cashiered, dismissed or removed" which we find in Pension Regulation 16 (a). Now Section 73(e)(f)

empowers the court martial to award punishments of cashiering and dismissal. Sections 19 & 20 of the Act empower the Central Government and the Chief of Staff to pass an order of dismissal or removal, but subject to rules. Rule 16 provides that before doing so the officer will be given the opportunity of being heard. It is common case that the provisions of Rule will not be followed.

(8) The real question that calls for determination is whether Regulation 16 (a) will apply to the case of a person against whom dismissal or removal order is not passed as a measure of punishment as provided in the Act but he is dismissed from service under the pleasure doctrine of the President. It is true that the impugned order does use the word "dismissed". But then as we have held in the connected appeal, the word "dismissal" has been used loosely to denote termination of service simpliciter and not by way of penalty because the President could terminate the tenure of the petitioner at pleasure any time. Now the word "dismissed" is a technical word and has been broadly interpreted in the service jurisprudence to mean termination of a person's service by way of punishment, vide *M. Ramanatha Pillai Vs. The State of Kerala and Another*, and *Workers Employed in Hirakud Dam Vs. State of Orissa and Another*. Amongst civil service employees it cannot admit of any doubt that the use of the word "dismissed" in any impugned order would make the order bad unless it was preceded by an enquiry as contemplated under Article 311 of the Constitution read with Service Rules. Though we are not finding any fault with the impugned order of 21-9-1971, for the reasons mentioned, we see no reason not to interpret and give meaning to the words "dismissed or cashiered" used in Regulation 16 (a) other than in the technical sense of meaning of termination of service by way of punishment. We feel that it would be stretching the language of Regulation 16 (a) which are not a facet of pleasure doctrine but are regulations framed in exercise of power under Article 309 of the Constitution and the Act to interpret these words other than in this technical and strict sense, as they should be interpreted in Sections 19 and 20 and 73 of the Act and the Rules. We feel that it will be in accordance with the principles of harmonious construction that the meaning of the words "cashiered" and "dismissed" used in Regulation 16 (a) should be interpreted in the same manner as they would be when interpreting Sections 19, 20 and 73 of the Air Force Act and the Rules. Under the Air Force Act and Rules the words "dismissed", "removed" or "cashiered" are associated with when action is taken against an officer as a measure of punishment, either at a trial by court martial or in pursuance of procedure provided by Sections 19 & 20 read with Rules. We are of the view that when regulation 16 (a) talks of the President forfeiting the pension of an officer who has been dismissed, or cashiered it covers a case only if an officer has been dismissed or cashiered as a measure of punishment under the Act. After all an order forfeiting pension is a serious matter and has far reaching consequences. It is now well settled that pension is not bounty payable at the sweet will and pleasure of the government and that, on the other hand, the right to pension is a valuable right vesting in a government servant. Not only that but

the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim-is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it-follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable. Vide Deokinandan Prasad Vs. The State of Bihar and Others, .

(9) Now it would be understandable if as .a consequence of court martial of the enquiry under the Act and Rules a person is dismissed or cashiered, where he has had full opportunity to meet the charge and to prove his innocence, but has failed and thereafter an order forfeiting pension is made. In such a course the officer would know the reasons for proceeding against him and could in answer to proceedings under Regulation 16(a) show that no order of forfeiture or total forfeiture of pension should be made. But where, as in the present case dismissal is in exercise of Presidential pleasure under Article 310 of Constitution read with Section 18 of the Act, it is apparent that no reasons will be told or known to the officer. in such a case if Regulation 16 (a) could be invoked it would virtually amount to condemning and depriving a person of his pension without giving him an opportunity because in such a situation what could, an officer say, in his defense, when he does not know the reason why Presidential pleasure has been withdrawn from him. These considerations lead us irresistably to the conclusion that resort could only be had to Regulation 16(a) if it had been preceded by an order of dismissal, or cashiering either in pursuance of a -court martial trial or in pursuance of an action taken under Sections 19 and 20 of the Act and the rules. As admittedly none of the eventualities were present the condition precedent to taking action under pension Regulation 16 (a) were lacking. The respondents seek to justify the action under Regulation 16 (a) on the sole ground of use of the word "dismissed", even when the order of 21-9-1971 is passed u/s 18 of the Act. Though the pleasure doctrine is quite all embracing still we must not forget that our constitution abhors arbitrariness, and proclaims clearly that it is a government of laws and not "of men that we are having, so that interpretation which permits an unfettered sway of arbitrary action must necessarily receive short shrift when interpretation of statute is given by, the courts. We are of the view that the jurisdiction to take action under Pension Regulation 16 (a) arises only when an officer has been dismissed or cashiered, as a measure of punishment. Admittedly that is not the case in the present instance. Thus the President lacked the jurisdiction to proceed against the petitioner under Pension Regulation -16 (a). The impugned order of 4-6-1979 is, Therefore, without authority of-law and- deserves to be- quashed. Miss Rekha Sharma had urged that if we were to come to the conclusion that Regulation 16(a) is not applicable a mandamus should not issue because the competent authority could under Regulation 3 still make such reduction in the amount of pension as it thinks proper. In the normal course we might have given more consideration to this

argument and might have limited the relief to only issuing a mandamus directing the respondents to determine "afresh the case of the petitioner with regard to pension ; but we find that in the circumstances peculiar to this case it would be too harsh and inequitable to so limit the relief. The petitioner was proceeded against and dismissed from service as far back as 21-9-1971. No action was taken to process his pension papers as normally it should have been done. No good reasons have been given by the respondent for this .indifferent attitude, apart from urging that some formalities of obtaining information had to be done. This excuse is not correct because if a reference is made to Table I, Clause 5 of Regulation 16 of Pension Regulations for Air Force, Part II, it will show that no formal application is necessary for retiring pension. The department itself should have processed his case, as even in the normal course the petitioner would have superannuated by 1975. But in the present case over a period of 7 or 8 years had to pass before the department took up the matter of pension of the petitioner. As the petitioner had challenged his dismissal he naturally did not pursue it. But there is no doubt that the petitioner has been undergoing strain and agony during all these years. Notwithstanding this the authorities did not preceed to do their part which was-incumbent on. them i.e. to process the case of the petitioner's pension. We cannot see our way to now permitting the authorities to reopen the matter and purporting to take action under Regulation 3 when for all this period they have not so chosen to act. The respondents chose to proceed against the petitioner under Pension Regulation 16 (a). We have already held that this provision is inapplicable because unless the petitioner had been dismissed by way of penalty the said regulation 16 (a) could not be invoked. Thus the foundation for proceeding against the petitioner being dismissal by way of punishment and that being absent in the present case the impugned order by which his pension was forfeited has to be quashed and is hereby quashed. As the order was without authority of law the result is that as the Supreme Court has said in Civil Writ 55311972 Lt. Col. (T.S.) Harbans Singh Sandhu v. Union of India & Others (6) decided on 22-11-1978. "pension is property and could not be taken away except by due process of law". The impugned order passed by the President lacked the authority of law and, Therefore, must be quashed. The inevitable consequence is that the petitioner is entitled to be paid his entire pension under the Rules. We would, Therefore, issue a mandamus directing the respondents to pay the said sum within 3 months from today. The writ petition is allowed as above. There will be no order as to costs.