

(1997) 03 DEL CK 0062

In the Delhi High Court

Case No : Civil Writ Appeal No's. 402 of 1993 and 4584 of 1994

P.D. Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Navy (Pension) Regulations, 1964 — Rule 15(2)

Citation : (1997) 2 AD 901 : (1997) 66 DLT 832 : (1997) 41 DRJ 172 : (1998) 1 ILR Delhi 30

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

Bench : Full Bench

Advocate : Sanjeev Ralli, Harish Uppal, E.X. Joseph and Jyoti Singh, for the Appellant;

Judgement

This Judgment has been overruled by : Union of India and Another Vs. P.D. Yadav, (2001) 9 AD 30 : (2001) 91 FLR 961 : (2001) 8 JT 617 : (2001) LabIC 4014 : (2001) 7 SCALE 270 : (2002) 1 SCC 405 : (2001) 4 SCT 1002 : (2002) 1 SLJ 299

M. Jagannadha Rao, J.

(1) These two writ petitions arising under the Navy Act, 1957 have been referred to a Full bench for being disposed of Along with Cwp 2813/94, 2866/90 and 4706/94 arising under the Indian Army Act, 1950. We have today delivered one judgment in Cwp 2813/94 and another judgment in Cwp 2866/90 and Cwp 4706/94 taken up together. Those cases arose under the Army Act. As the points in these two writ petitions before us arise under the Navy Act, 1957, we are delivering a separate judgment.

(2) We shall briefly refer to the facts in each of these two writ petitions.

(3) In Cw 402/93, the petitioner is Ex-Lt. P.D. Yadav. He joined the Navy as a

Sailor in April, 1965, and was commissioned in October, 1980. He was charge-sheeted in January 1990 and tried by a General Court Martial on 5 charges under Sections 43, 47 and 48 of the Navy Act, found guilty of the 2nd, 3rd, 4th and 5th charges and given a sentence of dismissal on 26.2.90. One year and 4 months later, he was given a show cause on 21.6.91 under the statutory Regulations 1964 namely, Regulation 15(2), as to why his pensionary benefits should not be forfeited. Petitioner sent a reply on 24.7.91. The residents sent a letter on 18.11.91 asking for copies of certain judgments of the Supreme Court. On 10.2.92, petitioner submitted copies of the same. On 7.5.92, petitioner was informed that the action will be taken soon on the show cause notice. As no action was taken, petitioner filed writ petition on 20.1.93. After the filing of the writ petition, an order was passed on 28.3.1994 forfeiting 50% of the pensionary benefits. The said order is questioned before us.

(4) In Cwp 4584/94, the petitioner is Ex-Commander S.P.S. Dhindsa, NM. The petitioner was selected by the Upsc for the National defense Academy (then known as Joint Services Wing). He was commissioned in the Executive Branch of the Navy on 1.1.58 at the age of 21 years. He participated in the 1965 and 1971 wars. He had also received commendation from the Flag officer, Bombay in 1960. Petitioner received "Nav Sena Medal" in 1975 and "Videsh Seva Medal" and other medals. He was promoted to the rank of Commander and commanded several ships. He was even sent to Nigeria to train the Nigerian Navy Personnel. The petitioner applied for premature retirement in 1979. But in the same year he was charge-sheeted and Court Martialed, found futility of 7 charges out of 20 charges. He was awarded a sentence of dismissal u/s 81(1)(E) of the Navy Act on 5.11.80. The order was confirmed with modification by the Chief of Naval Staff on 18.8.81. But, in proceedings u/s 160 of the Act, acquitted of charge No. 20, which according to the petitioner was a more serious charge. According to petitioner, the lapses proved under charges 7,9,15,16,17,18 and 20 are technical and do not involve any moral turpitude. Petitioner had completed 20 years and is eligible for pension. The petitioner filed writ petition Op 12/82B in the Kerala High Court, questioning the punishment and the same was dismissed on 9.3.88 and the judgment has become final. While petitioner was expecting payment of pensionary benefits, he got a show cause notice "dated 27.8.91 for showing cause as to why his pensionary benefits should not be forfeited. According to petitioner, he suffered 17% physical handicap on account of the strain due to the Court Martial Proceedings. He could send a reply on 5.9.91. Petitioner sent number of reminders but there was no disposal of the matter till 26.7.94 when the impugned order was passed forfeiting the pensionary benefits, fully. That letter is questioned in the writ petition filed on 7.11.94.

(5) Learned counsel for the petitioner in Cw 402/93 Sri Sanjeev Ralli and learned counsel for the petitioner in Cw 4584/94 Sri Harish Uppal have contended before us that inasmuch as the Court Martial imposed a punishment of dismissal without imposing any further punishment of forfeiture of pensionary benefits, it was not open to the competent authority under Regulation 15(2) to exercise any further

power of forfeiture of pensionary benefits. These Regulations must be deemed to be vocative or ultra virus of Section 81(1) of the Act. In any event, when in respect of the petitioner in Cw 402/93, 50% of the pensionary benefits were decided to be forfeited and when in Cw 4584/94 the entirety of the pensionary benefits were decided to be forfeited, the competent authority had not applied its mind to the question whether, but for the charges proved in the Court Martial towards the fag end of the career, the other service of the petitioner was satisfactory. In other words, the satisfactory service was not taken into account. The competent authority proceeded on the assumption that because of the sentence imposed by the Court Martial, there must necessarily be a forfeiture of the pensionary benefits. In any event, there was unwarranted delay in the issuance of the show cause notices or in the passing of Final orders under Regulation 15(2).

(6) On the other hand, it was contended by learned senior counsel Sri E.X. Joseph that the provisions of the Regulation 15(2) are not in conflict with the provisions in Section 81(1) of the Act and were valid. Therefore even in cases where the Court Martial has not thought fit to impose the punishment of forfeiture of pensionary benefits, it is still open to the competent authority to forfeit the pension. On facts, it was contended that while the punishment imposed by the Court Martial was taken into consideration, it is not as if the satisfactory service was ignored. So far as the delay in the issuance of the notice under Regulation 15(2) or in the passing of the orders, the same can be properly explained from the records of these two cases. The writ petitions are liable to be dismissed.

(7) On the basis of the above contentions, the following points arise for consideration:

"1. Whether the provisions of Regulation 15(2) of the Navy Regulations is ultra virus of Sections 81, 82, 47, 27 of the Navy Act. 2. Whether in cases where the Court Martial has not thought it fit to forfeit the pensionary benefits, but only imposed a punishment of "dismissal", it is still open to the competent authority to invoke .Regulation 15(2) and deny the pensionary benefits in whole or in part? 3. Whether the proceedings under Regulation 15(2) are liable to be quashed on the ground that they were initiated, after unreasonable delay, and in particular in Cw 4584/94? 4. Whether, in any event, the impugned orders of forfeiture of pensionary benefits to an extent of 50% in Cw 402/93 and 100% in C.W.4584/94 are liable to be quashed on the ground that the period of satisfactory service was not taken into consideration ?"

(8) Points 1 And 2 Before we go into the legal issues involved, it is necessary to set out the provisions of Sections 81(l),(c),(e),(k) and (m) of the Navy Act, 1957 and Sections 82(2), (3), (4), (6), (12), (16), (17), (21), Section 49(2) and Section 27 are also relevant.

"81.Punishments- (1) The following punishments can be inflicted under this Act

namely:- (c) dismissal with disgrace from the naval service * * * (e) dismissal from the naval service (k) mulcts of pay and allowances. * * * (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 clothes and effects left by the deserter in the ship to which he belongs; 82. Provisions as to award of punishment * * * (2) except in the case of mutiny in time of war or on active service, the punishment of death shall not be inflicted on any offender until the sentence has been confirmed by the Central Government. (3) The punishment of imprisonment for a term exceeding two years shall in all cases be accompanied by a sentence of dismissal with disgrace from the naval service. (4) The punishment of imprisonment for a term not exceeding two years may in all cases be accompanied by a sentence of dismissal with disgrace or dismissal from the naval service: Provided that in the case of officers, unless the sentence of dismissal with disgrace is also awarded, such sentence of imprisonment shall involve dismissal from the naval service. (6) The sentence of dismissal with disgrace shall involve in all cases forfeiture of all pay, head money, bounty, salvage, prize money any allowances that have been earned by and of all annuities, pensions, gratuities, medals and decorations that may have been granted to the offender and in incapacity to serve Government again in a defense service, or a civil service, or to hold any post connected with defense or any civil post under the Government : Provided that the forfeiture of moneys shall not apply, except in the case of deserters, to moneys which should have been paid on the last pay day preceding conviction. * * * (12) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pay, pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pay, pension, gratuity and promotion and other purposes depend upon such service. * * * 16. Mulcts of pay and allowance shall be awarded in accordance with the regulations made under this Act on conviction of offences u/s 51. 17. Mulcts of pay may also be awarded to make good any proved loss or damage occasioned by the offence on which there is a conviction, and for the offence of drunkenness by sailors. 21. Subject to the provisions of foregoing sub-sections, where any punishment is specified by this Act as the penalty for an offence and it is further declared that "such other punishment as is hereinafter mentioned" may be awarded in respect of the same offence, the expression "such other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale of punishments laid down in sub-section (1) of section 81. 49. Desertion (2) Every person who deserts shall,- (a) if he deserts to the enemy, be punished with death or such other punishment as is hereinafter mentioned; or (b) if he deserts under any other circumstances, be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned and in every such case he shall forfeit all pay, head money, bounty, salvage, prize money and allowances that have been earned by him and all

annuities, pensions, gratuities, medals and decorations that may have been granted to him and also all clothes and effects which he may have left on board the ship or the place from which he deserted, unless the tribunal by which he is tried or the Central Government or the Chief of the Naval Staff, otherwise directs. 27. Deductions from pay, etc., not to be made unless authorized No deductions other than those authorised by or under this or any other Act shall be made from the pay, pensions, gratuities, allowances and other benefits due to officers and sailors under any regulations for the time being in force."

(9) We shall also now quote Regulations 4,5,15(1) and (2) of the Pension Regulations, 1964 issued u/s 184 of the Navy Act, 1957.

"REG.4:Implied condition of gratuity pension etc; Future good conduct shall be implied condition of every grant of pension or any other allowance under these regulations and its continuance. Reg.5: Full rates not always admissible: The full rate of pension or gratuity under these regulations shall not be granted to a person unless the service rendered by him has been satisfactory. Reg. 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 such pension, if granted shall not exceed the rate which would have been admissible to him if he had retired on the same date."

(10) A reading of the provisions of the Navy Act, 1957 reveals the following. Section 81(1) lays down the punishments that may be inflicted in Court Martial proceedings. Section 81(1)(c) refers to the punishment of dismissal with disgrace, Section 81(1)(e) with dismissal and Section 81(1)(m) with forfeiture of pensionary benefits by the Court Martial. Section 81(2) states that each of the punishments specified in sub clause (1) shall be deemed to be inferior in degree to every punishment preceding it in the scale mentioned therein. Section 82(1) prescribes that the punishments that may be inflicted under the Act, shall be awarded in accordance with the provisions of the sub-sections of the Act. u/s 82(3), the punishment of imprisonment for a term exceeding 2 years shall, in all cases, be accompanied by a sentence of dismissal with disgrace from naval service. Section 82(6) stipulates that sentence of dismissal with disgrace shall involve, in all cases, forfeiture of all pay, head money, bounty, salvage, prize money and allowances, annuities, pensions, gratuities, medals, decorations etc. The proviso to Section 82(4) prescribes that the punishment of imprisonment shall involve dismissal from naval service. The punishment of imprisonment and detention, inter alia, shall involve reduction in rank in the case of a petty officer or a person holding a leading rank. Section 82(12) says that punishment of forfeiture of seniority shall involve the loss of benefit of service included in the seniority forfeited for purposes of pay, pension, gratuity promotion etc. The deduction in pay u/s 81(l)(k) can be awarded only as provided in Sections 82(16)

and 82(17). Again Section 82(21) provides that, subject to the foregoing provisions, where any punishment is specified in the Act as the penalty for an offence and it is further declared that "such other punishment as is hereinafter mentioned" may be awarded in respect of the same offence, then the expression "such other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale of punishments laid down in sub-section (1) of Section 81. Again Section 49(2) stipulates that in addition to the punishment of desertion, in every such case, the individual shall forfeit all pay, head money, bounty, salvage, prize money and allowance, annuities, pensions, gratuities, medals, decorations etc. Section 27 of the Act states that no deductions other than those allowed by or under this or any other Act, shall be made from the pay, pensions, gratuities, allowance and other benefits due to officers and sailors under any regulations for the time being in force.

(10) It will be seen that Section 81(e) contemplates the punishment of dismissal from naval service, while Section 81(l)(e) contemplates the punishment of forfeiture of pay, pension etc. to be awarded in cases of dismissal with disgrace, or upon desertion.

(11) We shall assume, as contended for the petitioners, that if a simple punishment of dismissal alone is imposed, it is not permissible for the Court Martial to deny the pensionary benefits like pension, gratuity etc. The question arises whether the Regulations, and in "particular, whether Regulation 15(2) which permits forfeiture of pensionary benefits "in the case of any officer who is dismissed otherwise than with disgrace", is vocative of the provisions of Sections 81, 82, 47, 27 of the Act ?

(12) No doubt, unlike the provisions of the Army Regulations regarding pension which are mere executive instructions, the provisions of the Navy Regulations of 1964 governing pension are statutory and are issued u/s 184 of the Act. But that in our opinion makes no difference while deciding the question whether these statutory regulations are in conflict with Sections 81, 82 and other Sections.

(13) The scheme of the Act shows that Chapter Viii deals with offences and Chapter IX deals with the punishments that can be imposed by the Court Martial. On the other hand, Chapters IV and V deal with the recruitment etc. and service conditions. These service conditions obviously include retirement and grant of retirement benefits. It may be that in certain situations, the Court Martial may be entitled to levy the punishment of forfeiture of pensionary benefits and that in a case of simple dismissal, the Court Martial cannot forfeit the pensionary benefits for it is not equivalent to dismissal with disgrace, which involves a 2 year imprisonment. But, when the Court Martial is imposing punishment of dismissal or dismissal with disgrace, the Court is acting as a Court of Criminal jurisdiction. It is considering the question whether the offences proved to have been committed must be visited by punishments of various types, one of the punishments being denial of the pensionary benefits also. In our view, the fact

that in a particular case the Court Martial has not imposed the punishment of forfeiture of pensionary benefits only means that the Court thought the offence was not such as would require something more than dismissal. It was not one where, in addition, the Court Martial thought that the pensionary benefits must also be denied.

(14) It will be noticed that the power to pass an administrative order granting pension to a Navy personnel on the basis of his satisfactory service belongs to the Central Government as the employer and does not belong to the Court Martial. Such a power is vested in the Government under Regulation 5. This power to grant pension under Regulation 5 or to deny it in part or whole is one vested in the Central Government as an employer. On other hand, the Court Martial while awarding a sentence to an Navy personnel in respect of a criminal offence is acting as a Criminal Court and not as an employer. In other words, the power under Regulations 5, 15(2) in regard to grant of pension or denial thereof in part or whole belongs to a field other than the field relating to punishments for offences. The authorities vested with these powers are different; one is the Court Martial and the other is the employer, namely, the Central Government. Powers which belong to different fields cannot be treated as being in conflict with each other.

(15) The field theory above referred to is clearly laid down by the Supreme Court in Brig. Union of India (UOI) and Others Vs. Brig. P.K. Dutta (Retd.), . Again the Supreme Court has also stated in Pahwa's case that the Pension Regulations which deal with the grant of pensionary benefits can also say when the benefits can be denied in part or in whole. (See Maj. (Retd.) Hari Chand Pahwa Vs. Union of India (UOI) and Another, followed in Union of India vs. R.K.L.D. Azad 1995 (5) Slr 225 (SC).

(16) PETITIONER'S counsel relied upon F.R. Jesuratnam v. Union of India, 1990 (Supp) SCC 640. , Lt. Col. (TS) Harbans Singh Sandha vs. Union of India (WP 553/72 dated 22.11.78), Major G.S. Sodhi Vs. Union of India (UOI), , Religious Teacher Ex. N. Sub. R.K. Sharma vs. Chief of Army Staff (dated 29.4.80) (SC) for contending that in the above cases where u/s 71 of the Army Act, a punishment of dismissal was imposed by the Court Martial without, in addition, a punishment of forfeiture of pensionary benefits, and there was no order passed under Regulation 16(a) of the Army Regulations, the Supreme court ordered grant of full pension and gratuity. We are of the view that these cases are not applicable.

(17) We do not propose to repeat what we have laid in our Judgment in Brig A.K. Malhotra (Retd) vs. Union of India (CWP 2813/94). After a full discussion, we have said that the above rulings are not attracted and that the ratio laid down in Birg. A.K. Dutta's case and in Pahwa's case applies. For the reasons given therein, we reject the contention of the petitioners based on the above line of cases.

(18) We, Therefore, hold that provisions of Regulation 15(2) of the navy Pension

Rules 1964 are not ultra virus of the provisions of Sections 81, 82, 47 or 27 of the Navy Act, 1957 and also that where the Court Martial has imposed a punishment (like dismissal) which does not entail forfeiture of pensionary benefits, it is still open to the competent authority under Regulation 15(2) to forfeit a part or whole of the pensionary benefits by following the due procedure and acting in pursuance of Regulations 4 and 5. Points 1 and 2 are decided accordingly.

(19) Points 3. The facts of the two cases before us show that after the completion of the Court Martial proceedings, the Central Government did not initiate proceedings under Regulation 15(2) of the Navy Regulations, 1964 for forfeiture of part or whole of the pensionary benefits. In Cw 402/93, the orders of the Court Martial are dated 26.2.90, but the show cause notice under Regulation 15(2) was issued on 21.6.91 and petitioner submitted reply on 24.7.91 and no orders were passed and Therefore the Cwp was filed on 20.1.93. Long thereafter, the order imposing a cut of 50% in pensionary benefits was passed on 28.2.94. Similarly in Cwp 4584/94, the Court Martial passed orders on 5.12.80 and the Chief of Naval Staff on 18.8.81 but the show cause notice under Regulation 15(2) was issued on 17.8.91 and, petitioner sent a reply on 5.9.91 and sent reminders later. Final orders under Regulation 15(2) were passed on 26.7.94, forfeiting all pensionary benefits. The writ petition was filed on 7.11.94.

(20) So far as unreasonable delay in the initiation of proceedings under Regulation 15(2) and passing final orders - after conclusion of Court Martial proceedings, - we have dealt with that question elaborately in Lt. Col. B.S. Ahluwalia vs. Union of India (CW2866/90) and Lt. Col. E.K. Sugathan vs. Union of India (CW 4706/94) in which we have delivered another judgment today, we do not propose to repeat the conclusions arrived at in that case. The principles mentioned therein equally apply here.

(21) We hold that in future, proceedings under Regulation 15(2). should be initiated, preferably within 6 months of cessation of service (the passing of the orders of the Court Martial), provided at the time of termination of the services, petitioner had the necessary qualifying service for grant of the pensionary benefits. Otherwise, it would be open to the officer to approach the High Court which could consider whether there were justifiable reasons for the delay or whether the authorities should be directed to release the pensionary benefits in full or direct that the matter be disposed of within a particular period.

(22) In the same judgment in Sri B.S. Ahluwalia's case & Sugathan's case, we no doubt stated that inasmuch as orders were passed under Regulation 16(a) of the Army Regulations during, the pendency of the writ petition, we were not striking down the proceedings on the ground of delay.

(23) But in Cwp 4584/94, relating to Ex. Commander Sps Dhindsa, the delay in passing the order under Regulation 15(2) is 10 years after the conclusion of the Court Martial proceedings. However indulgent we could be, still we are of the

view that there is no justification whatsoever for such a belated action. Even the Judgment of the Kerala High Court confirming the sentence awarded by the Court Martial was given in 1988. There is no Explanation whatsoever for the delay after 1988. We are Therefore of the view that the Regulation 15(2) proceedings in Cwp 4584/94 are liable to be struck down on the ground of gross and inexcusable delay. In view of the gross & unexplained delay, it is not necessary to go into the additional ground of non consideration of the period of satisfactory service. We strike them down and direct payment of full pensionary benefits to the petitioner there with interest at 12% per annum from 19.2.1982 on the amounts that became payable. The respondents shall compute the amount payable within 4 weeks and file the computation in Court. The matter be listed before the Joint Registrar, to receive objection, if any, of the petitioner on the computation so filed. In case of any dispute on the computation of the amount payable, the same shall be listed before the single Judge for orders/decision.

(24) So far as Cw 402/93 is concerned, we shall deal with it under Point 4 separately. Point 3 is decided accordingly.

(25) Point 4 The point here is confined to Cw 402/93 where the forfeiture of pensionary benefits was up to 50% by an order under Regulation 15(2). We have already stated under Point 3 that, inasmuch as the order of forfeiture of 50% of pensionary benefits has since been passed during the pendency of the writ petition, we are not inclined to quash it on the ground of delay alone.

(26) Then the question is whether the order dated 28.3.94 in Cw 402/93 is liable to be quashed on the ground that the 50% forfeiture was based mainly upon the punishment of dismissal passed by the Court Martial. We have perused the record of the case furnished to us by the respondents. It appears that the Naval Headquarters recommended grant of 90% pensionary benefits but the Government decided to grant only 50%.

(27) The records, in our opinion, prima facie show that the forfeiture of 50% was based mainly on the punishment awarded by the Court Martial. Further, the satisfactory service of the petitioner which ought to have been considered has not been considered. We have referred to the judgment of the Supreme Court in AIR 1997 565 (SC) wherein Kirpal, J. observed that even in cases of punishment of dismissal or cashiering awarded under the Army Act by the Court Martial, normally pensionary benefits are liable to be paid (vide our judgment in A.K. Malhotra's case. delivered today.) The authorities are bound to consider the satisfactory service of the officer also and cannot merely decide to forfeit pensionary benefits because of the punishment awarded by the Court Martial. Non consideration of relevant factors is a ground for quashing an order of the Central Government. As we are satisfied that the satisfactory service has not been taken into account, the impugned order in Cw 402/93 dated 28.3.94 is quashed to the extent of forfeiture of 50% of the pensionary benefits.

(28) The respondents will give a supplementary show cause to the petitioner in

Cw 402/93, receive the reply of the petitioner and pass final orders, in accordance with the law, within 4 months from today. Thereafter, if the order goes in favor of the petitioner, no question arises. But in case there is forfeiture of the benefits to the extent of 50% or for any other percentage below 50% the petitioner can file objections in this writ petition and then the matter will be decided in Cw 402/93. We are adopting this course to avoid further delay in these old pension matters.

(29) In the result Cw 4584/94 is allowed directing full payment of pension benefits with interest at 12% on the amounts that became payable commencing 19.2.1982 Cw 402/93 is partly allowed and remanded as per directions given hereinbefore. List Cw 402/93 on 29.9.1997.