

(2004) 10 DEL CK 0024

In the Delhi High Court

Case No : Writ Petition (C) No. 4534 of 2002

R. Santosh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Army Act, 1950 — Section 80, 91, 92, 93, 94
Defence Service Army Regulations, 1987 — Regulation 51
Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2004) 115 DLT 279

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Bhupesh Narula, for the Appellant; Vivek B. Saharya, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1.This writ petition is filed by the petitioner seeking for a direction to the respondents to pay to the petitioner pay and allowances for the period during which the petitioner was in police and judicial custody and under suspension, along with interest at the rate of 18% p.a for the delayed payment of the same.

2.The petitioner while working as L/Hav was implicated in a criminal case under Sections 498A/302/34 of the Indian Penal Code, which was registered on the basis of FIR No.159/1997 P.S. Delhi Cantt. The petitioner was taken into custody on 6.6.97. He was released on parole for six months w.e.f 19.7.98 to 15.12.98 when he rejoined his duties. For the aforesaid period of six months, the petitioner was paid his full salary and allowances. The petitioner thereafter surrendered and was again taken into custody w.e.f 16.12.98 and continued to remain in custody till 28.1.2003 when he was again released on bail by the appellate court. The petitioner was convicted by judgment and order dated 30.4.2002 and has been sentenced to undergo life imprisonment. An appeal

against the conviction having been filed by the petitioner herein, the same was admitted and sentence imposed on the petitioner was suspended and he was released on 28.1.2003. The sentence remains suspended and the petitioner has now filed this petition praying for release of his pay and allowances for the period from 6.6.97 to 18.7.98 and from 16.12.98 to 28.1.2003. In that regard, the petitioner also submitted a representation before the respondents, which was considered by the respondents and the same was rejected. A communication thereof was sent to the petitioner by letter dated 8.6.2001 intimating the petitioner that he was not entitled to any pay and allowances and that he was holding a debit balance in his account.

3. In the present writ petition the respondents have taken a plea that the petitioner is not entitled to be any pay and allowances for the aforesaid period from 6.6.97 to 18.7.98 and from 16.12.98 to 28.1.2003 in view of the provisions of Section 91(a), (b) of the Army Act and Note 2 thereto as appears in the Manual of Indian Military Law read with Section 93 of the Army Act, 1950. According to the respondents the claim of the petitioner for payment of pay and allowances could be conveniently divided into following three parts:-

(i) The first part would pertain to the period when the petitioner was in judicial custody w.e.f 6.6.97 to 18.7.98 as he was released on parole on 19.7.98.

(ii) The second part pertains to the period when the petitioner was on bail from 19.7.98 to 15.12.98; and

(iii) The third part would pertain to the period from 16.12.98 to the date of passing of the order of conviction and sentence dated 30.4.2002 and thereafter till 28.1.2003 when the sentence was suspended.

4. In order to appreciate the aforesaid contentions raised by the petitioner as also the respondents in their counter affidavit, it would be appropriate to extract herein the relevant provisions of Section 91(a) and (b) of the Army Act, 1950 and the Note 2 mentioned below Section 91 in the Manual of Indian Military Law:-

91. Deduction from pay and allowances of persons other than officers. - Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than a officer, that is to say:-

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of (imprisonment for life) or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority u/s 80, or of field punishment awarded by a court-martial or such officer;

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority u/s 80.

xx xx xx"

NOTES

"2. Penal deductions under clauses (a), (b), (c) and (f) of this section have been made mandatory: see Rule 51 of P & A Regs (OR). In cases falling under clauses (a), (b) and (c) the pay and allowances are to be forfeited automatically and no discretion is given to the CO to decide whether or not to enforce wholly or partially the forfeiture, but as to remission of such deduction: see AAs. 97 and AR 195.

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5. In this regard, reference may also be made to the provision of the regulations dealing with forfeiture of pay and allowances. Regulation 51 thereof deals with the aforesaid provision. Relevant portion of the same, having bearing to the facts of the present case, is extracted hereunder:-

FORFEITURE OF PAY AND ALLOWANCES

"51 A person, subject to the Army Act, 1950, will forfeit his pay and allowances (including expatriation allowance) for every day (as defined in Section 92 of that Act) of:-

xx xx xx

(e) Imprisonment awarded by a criminal court, or imprisonment or field punishment awarded by a court-martial, or an officer exercising authority u/s 80 of the Army Act, 1950;

NOTE:- In case the sentence of imprisonment or punishment is suspended, the individual will be entitled to draw full pay and allowances from the date of such suspension.

(f) Confinement on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority u/s 80 of the Army Act, 1950.

NOTE:- J.C.Os and N.C.Os under "close arrest", but not in confinement, will incur no forfeiture of pay and allowances. For persons below N.C.O. Rank "close arrest" is the same thing as "confinement" and they will forfeit pay and allowances for every day of "close arrest".

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6. The petitioner herein was arrested by the civil police for commission of an offence under Sections 498A/302/34 of the Indian Penal Code and a trial was conducted. He was convicted in the said case. The petitioner, however, is at liberty after the sentence against him was suspended by the High Court on the appeal filed by him against his conviction and sentence. The petitioner has been

found guilty and convicted by a criminal court and, Therefore, at this stage, we cannot say that the petitioner was falsely implicated in the case under Sections 498A/302/34 of the Indian Penal Code. His appeal as of date before the criminal court is pending. The appellate court would examine the order of conviction and sentence passed by the criminal court in the light of the evidence on record and thereafter come to a conclusion as to whether or not the petitioner is guilty of the offence and whether or not the order of conviction is liable to be upheld. The respondents, in exercise of the power u/s 93 withheld his pay and allowances pending the result of his trial on the charges against him in order to give effect to the provisions of Clause (b) of Section 91 of the Act. After his conviction, the respondents have proceeded for penal deductions from his pay and allowances for everyday of his custody in accordance with the provisions of Section 91 of the Army Act.

7. So far the period when the petitioner was on bail i.e 20.7.98 to 15.12.98 his pay and allowances were duly deposited in his account. Therefore, so far the pay and allowances for the said period is concerned, there is admittedly no dispute. Dispute is sought to be raised only for the period of 6.6.97 to 18.7.98 and from 16.12.98 to 28.1.2003. A bare perusal of the provision of Section 91(a) & (b) would make it explicitly clear that respondents are vested with the power of making penal deductions from the pay and allowances of a person on his imprisonment awarded by a criminal court for every day of absence. It also empowers the respondents to make penal deductions from the pay and allowances of a person like the petitioner herein for every day of absence while he was in custody on a charge for an offence of which he is afterwards convicted by a criminal court. Therefore, the respondents are empowered to make such deductions.

8. The aforesaid position is also reiterated by the provisions of forfeiture of pay and allowances, which find place in the Army Regulations and the provisions of which are extracted hereinabove. It is provided therein that a person, subject to the Army Act, 1950 will forfeit his pay and allowances on imprisonment awarded by a criminal court and on confinement of a charge for an offence of which he is awarded imprisonment by a criminal court. It is also provided in the note appended to clause (e) thereof that in case the sentence of imprisonment or punishment is suspended, the individual will be entitled to draw full pay and allowances from the date of such suspension. There is no denial of the fact that for the period for which the petitioner was on bail and subsequently for the period when his sentence/imprisonment was suspended, he is being paid full pay and allowances in the light of the aforesaid provisions. We find no infirmity in the action of the respondents in making penal deductions and forfeiting his pay and allowances for every day of absence for the period during which he was in custody and also for the period during which he was in imprisonment awarded by the criminal court. The writ petition has no merit and is dismissed.