

(2003) 01 AHC CK 0104
In the Allahabad High Court
Case No : C.M.W.P. No. 25006 of 2001

Ramesh Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Army Act, 1950 — Section 39
Constitution of India, 1950 — Article 226

Citation : (2003) 1 AWC 536

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Party in Person and P.S. Pandey, for the Appellant; A.K. Sinha and K.K. Parikh, Addl. SC, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—This writ petition was filed through a counsel of this Court. The petitioner, however, has chosen to argue it in person. He has prayed for a writ in the nature of mandamus directing the respondents to grant pension of Havaladar Group "A" with arrears and medical disability pension of real condition of his knee and soldier and C.B.I., Investigation to give all the correct report and representation dated 23.9.1998 and further to grant any writ, or direction as this Hon"ble Court may deem fit and proper in the circumstances of the case.

2. Sri A.K. Sinha, standing counsel was heard for Union of India.

3. The facts in brief are that petitioner Ex-Havaladar No. 14675948 Ramesh Kumar Mishra was enrolled in the Army on 25.9.1976 in the apprentices category. He was transferred to men"s service on 30.8.1978 in the trade of instrument mechanic group "B", and promoted to the rank of N.K., Group "B" with effect from 1.1.1988. He passed diploma upon which he was re-mustered from Group "B" to "A" and appointed to the rank of H.M.T. in Group "A" from his initial rank of Naik on 22.1.1990 and subsequently promoted to the substantive rank of Havaladar in Group "B" with effect from 1.11.1994. He was admitted in

Base Hospital for medical recategorisation. After discharge from the hospital, he absented himself without leave w.e.f. 26.10.1996 to 1.12.1996. Due to his absence without leave, his appointment of H.M.T. was relinquished on 26.10.1996 and he was awarded punishment, "severe reprimand" and 14 days pay as fine u/s 39(a) of the Army Act. He was discharged from service on 31.8.1997 on the ground of his medical category lower than "AYE" and not upto prescribed medical military physical standard under item III (V) of table annexed to Rule 13 (3) of Army Rules, 1954. At the time of his discharge, he was holding substantive rank of Havaldar in Group "B". The Audit Authority granted him pensionary benefit In the rank of Naik by P.P.O. dated 12.2.1998. His case was referred to P.A.O. (OR) E.M.T. with revised L.P.C.-cum-Date Sheet for grant of pensionary benefit in the rank of Havaldar Group "B". The Authority returned the case un-attended stating that the Individual was reverted to the rank of Naik on 26.10.1996 from H.M.T. In addition to service pension. the petitioner was also granted disabled pension by P.P.O. dated 14.12.1998.

4. Petitioner filed Writ Petition No. 33682 of 1998, which was disposed of by this Court on 23.10.1998 with a direction to decide petitioner's representation within two months. In compliance, Ministry of Defence, Government of India vide its letter dated 7.1.1989 addressed to petitioner with copy of E.M.E. Record rejected the representation. The Government of India, Ministry of Defence reverted to each of his grievance as follows :

"(a) Discharge from service by cheating.--On being down graded to permanent Low Medical Category, your Officer Commanding had not recommended your further retention in service based on your day-to-day performance. While not recommending your retention in service, your Officer Commanding had stated that you had lost the will to work and refused to do even light duties. He had also stated that you had become mentally weak and unable to take even normal pressures. Hence, you were discharged from service being placed in Medical Category lower than "AYE" and not up to the prescribed Ministry Physical standard. Hence no injustice/ cheating has been done to you.

(b) Non-endorsement of qualification in D.C.--As per procedure, civil education qualification recorded in service documents can only be endorsed in the discharge certificate (D.C.). Since as per service documents, your qualification was matriculation and no record of your passing intermediate/B. A. classes is available with the Government, your qualification was endorsed as Matric in your discharge certificate. Moreover, diploma in Computer Programming and Instrument Mechanic Technical were obtained by you through Army Institutions and as such, the same cannot be recorded as civil education qualification.

(c) Less disability percentage.--Degree of disablement was assessed by a duly constituted medical board of doctors after physically examining you. Hence your alleged grievance on this aspect is misconceived.

(d) Award of punishment/ hard punishment.--On being discharged from Base

Hospital, Delhi Cantt, you remained absent from 26th October, 1996 to 1st December, 1996. For this you were tried by your Commanding Officer under Army Act Section 39(a) and awarded punishment of "Severe Reprimand" and "14 days pay fine" which is one of the minimum punishments awarded to an N.C.O. However, due to your absence without leave from duty, your paid acting rank of H.M.T. was automatically relinquished in terms of Army Instruction 84/68.

(e) Non-Payment of daily allowances.--As per procedure, the person proceeding on discharge/retirement are sent home after finalising their accounts. The same procedure would have been followed in your case also. However, if you think that some dues have not been settled, you are advised to forward the details of the same along with copy of Part II order to enable us for taking up the case with audit authorities.

(f) Non-Disposal of complaints repeated physical assault (sodomy).--Complaint made by you against physical and mental harassment seems to be a wild allegation. The factual position of the allegation cannot be proved at this belated stage without medical examination report. Hence your allegation appears to be afterthought.

(g) Non-provision of police protection.--Allegations made by you regarding provision of police protection seems to be wild allegations. For personal relationship/enmity with some relatives, it is neither desirable nor possible that military should be involved. However, if you have some fear of anti-social elements, police authorities may be approached.

(h) Non-payment of due pension/arrears and A.C.I. disability benefit.--Concerned audit authorities have been approached for early settlement/ finalization of your claim vide Army Headquarters letter No. B/12048/584/LN/EME Pers dated 30th October, 1998. Payments will be made to you once the claims are adjudicated by the audit authorities."

5. Petitioner filed second Writ Petition No. 29347 of 1999, which was again disposed of with the direction to decide petitioner's statutory complaint within three months time. The said statutory complaint was decided for and on behalf of Director General, E.M.E. by its letter dated 29.9.1999, addressed to petitioner. A decision was taken and communicated in the same terms as above by the Government of India in its letter dated 7.1.1999, except on the complaint of non-payment of daily allowance and other dues and nonpayment of due pension/arrears and A.G.I. disabled benefit. In respect of these two matters, the Director General, E.M.E. took the following decisions :

"(e) Non payment of daily allowance and other dues.--The details of outstanding dues are as under :

(i) Amount on account of 30 days leave encashment for the year 1989 being released in consultation with audit authorities.

(ii) Daily Allowance (Defendant No. 1/Appellant) for 56 days being released in

consultation with audit authorities.

(iii) Amount on account of ration money and C.I.L.Q. with effect from 10th March, 1995, being released in consultation with audit authorities.

(iv) A sum of Rs. 9,684 and Rs. 2,265 on account of 1st and 2nd instalment of Vth Pay Commission have been remitted to you through money order.

(v) Rest of the entitled dues being released in consultation with audit authorities.

(h) Non-payment of due pension/arrears and A.G.I. disability benefits :

(i) Service pension of the rank of Naik has already been granted to you vide Pension Payment Order No. S/011691/98 dated 12 February, 1998. The case for grant of pension to the rank of Havaldar to you is under consideration with audit authorities. The same will be granted to you once the final decision in this regard is taken.

(ii) Disability pension @ Rs. 90 per month with effect from 1st September, 1997 to 30th July, 2002, has been granted to you vide C.C.D.A. (Pension) Allahabad Pension Payment Order No. D/E/451/98 as per recommendation of the Release Medical Board.

(iii) A sum of Rs. 37,206 (Rupees thirty seven thousand two hundred six only) on account of Army Group Insurance Maturity Benefits has been paid to you vide cheque No. 065059 dated 4th February, 1998.

(iv) A sum of Rs. 35,494 (Rupees thirty five thousand four hundred ninety four only) on account of disability cover under Army Group Insurance Scheme has been paid to you vide cheque No. 63117 dated 10th November, 1998."

6. From the aforesaid decision on representation in para (d) of the C.A. of Lt. A.K. Bhosle, A.R.O. E.M.E. Records, Secunderabad, it appears that his matter with regard to pension to the rank of Havaldar was not finally decided as the matter was pending with the Audit Authorities. This case was resubmitted to P.A.O. (O.R.) E.M.E. for the third time vide letter dated 14.10.2000 for rendering their audit report and onwards submission to E.M.E. Records. The P.A.O. (O.R.) E.M.E. has transmitted the case to C.D.A., Secunderabad on 24.10.2000 along with audit report which has in turn forwarded the matter to Army Headquarters vide letter dated 20/21.11.2000. However, a decision has not been taken in the matter so far.

7. Additional standing counsel for Union of India was granted time on 15.3.2002, 8.4.2002, 4.9.2002 and 20.9.2002 but he has not been able to produce the decision taken by Army Headquarters with regard to the award of pension applicable to post of Havaldar. In his written submission he stated that after award of punishment to petitioner u/s 39(a) of the Army Act, petitioner was automatically relinquished as Havaldar (H.M.T.) as per Army Instruction No. 84 of 1968, and that petitioner is not entitled to pension in the rank of Havaldar. He submits that petitioner has not challenged the order dated 7.1.1999 passed by

the Central Government and that he cannot file second petition for the same relief.

8. The Court is unable to accept the submission that after a decision was taken by the Central Government and Director General E.M.E. on petitioner's representation vide letters dated 7.1.1999 and 21.9.1999, the case pleaded by him for award of pension of the rank of Havaldar has been concluded and that no further decision is required to be taken by the Army Headquarters in the matter. A perusal of the aforesaid decision, on petitioner's representation, shows that the question with regard to pension to the rank of Havaldar was reported to be under consideration with the audit authorities and that an assurance was given that as soon as final decision is taken, the petitioner shall be informed. It appears, however, that inspite of the report sent by the audit authorities, the army Headquarters has not taken decision in this regard, nor the Court was informed with any decision taken inspite of several opportunities given to the counsel for respondents.

9. Petitioner was substantively promoted to the rank of Havaldar Group "B" with effect from 1.11.1994. He was admitted for recategorisation to the Base Hospital and after discharge, remained absent without leave for 37 days for which he was awarded punishment of "severe reprimand" and 14 days pay as fine u/s 39(a). A perusal of Section 39 shows that any person, who commits any of the offence enumerated in the section shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is mentioned in the Act. Petitioner was awarded a lesser punishment of severe reprimand and fine of 14 days pay. He was not awarded any further punishment including the punishment of reduction in rank. The respondents have not denied petitioner's assertion in para 15 of his writ petition that petitioner had not been absent without leave in his entire period of service except for the aforesaid period of which he was given the punishment. The Army Instruction No. 84/68 relied upon in para 3A of the counter-affidavit as well as the letters deciding petitioner's representation have not been enclosed to the counter-affidavit. These instructions were not placed on record by the counsel for respondents. In any case these instructions, which are in the nature of instructions to the Army Officers to carry out the Act, Rules and Regulations, cannot over-ride the provisions of the Act. Reduction from the rank to which petitioner was substantively promoted, cannot be directed except by way of punishment in the absence enumerated either under Sections 34 to 70 under Chapter VI or by way of punishment awarded by court-martial in accordance with Sections 71 to 89 provided in Chapter VII of the Act. The penal reduction from pay and allowances has been provided in Sections 90 to 100 under Chapter VIII. The Act or the Rules does not give respondents any such power to automatically treat his promotion to the substantive rank of Havaldar to have been relinquished on the award of punishment u/s 39(a) of the Act.

10. The Army Headquarter has been repeatedly approaching the audit authorities

to award petitioner's pension of the rank of Havaldar but for the reasons which have not been disclosed to the Court, audit authorities have not given requisite report and that the Army Headquarters has not taken final decision in the matter so far. The petitioner was discharged from service on 31.8.1997 on account of his lower medical category. In his document relating to retirement, he was shown to have retired from the rank of "Havaldar". There is no pleading or document to show that any proceedings were initiated to revert petitioner from his substantive rank of Havaldar to the rank of Naik. He was not given any opportunity before he was sought to be relinquished from his substantive appointment of Havaldar. The respondents did not follow the procedure provided under the Army Act, 1950, and the Army Rules, 1954, to reduce him to the rank of Naik.

11. Counsel for respondents made a faint submission challenging the jurisdiction of the Court to decide the matter as the cause of action, according to him, did not arise in the territory of State of Uttar Pradesh. In *Dinesh Chandra Gahtori v. Chief of Army Staff* Supreme Court held that Chief of Army Staff may be sued anywhere in the country and thus this Court has jurisdiction to entertain, consider and finally decide the writ petition filed in the year 2001. I am unable to accept the contention that *Dinesh Chandra Gahtori* case has not taken into consideration, the earlier case of Supreme Court with regard to territorial jurisdiction of the High Court. The object and purpose of *Dinesh Chandra Gahtori* case is not far to seek. Army personnel can be posted anywhere in the country or abroad, in war or in peace time according to need of their deployment. They can be subjected to actions taken under Army Act, 1950, at any place where they are serving. They may not be able to have easy access to jurisdiction at such places where action may have been taken against them. In the circumstances, the view that the Chief of Army Staff may be sued anywhere in the country appears to be just and reasonable and cannot be said to have ignored the earlier decisions of the Apex Court.

12. Petitioner's representation with regard to lower medical category have been considered both by the Central Government as well as Director General E.M.E., where it was found that the degree of disentitlement was assessed by the duly constituted Board of Doctors for physical examination, petitioner has not challenged the finding of the Medical Board or the aforesaid letter deciding his representation. The Medical Board found him suffering from Paranoid Schizophrenia, recurrent dislocation (L.T.) Shoulder (O.P.T.D.), "and" Tear and Cruciate Ligament and Medical Meniscus (R.T.) Knee (O.P.T.D.). The first and second disabilities were considered by Release Medical Board as neither attributable to nor aggravated by military service, however, third disability was considered as aggravated due to stress and strain of service assessed compositely at 40% for two years and he was granted Rs. 90 per month as disability pension, after adjudication, for five years with effect from 1st September, 1997 and paid cheque on account of disability under A.G.I. Scheme. Petitioner was unable to point out any error in law or violation of any provision of

Act, Rules or Regulations in making the aforesaid assessment of disability pension.

13. In the aforesaid facts and circumstances of the case, the writ petition is allowed. It is declared that the petitioner has retired from the rank of Havaldar Group "A" on 31.8.1997 and is entitled to pension and other benefits as having retired from the rank of Havaldar, (M.T.) Group "A". The respondents are directed to re-fix his pension accordingly, and to pay his entire arrears, with simple interest as prevalent @ 10% per annum. The petitioner shall be entitled to cost of this writ petition.