
(1995) 09 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 1691 of 1994

Uma Shanker Bharti

APPELLANT

Vs

Chief Controller of Defence Accounts (P) and Others

RESPONDENT

Date of Decision : 08-09-1995

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 4, 4(1)

Citation : (1995) 09 AHC CK 0032

Hon'ble Judges : Shitla Prasad Srivastava, J; Paritosh K. Mukherjee, J

Bench : Division Bench

Advocate : Gajendra Pratap, for the Appellant; U.N. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This writ petition came up before us of 31.7.1995 in the presence of learned Counsel for the parties. Therefore, on August 2, 1995, and again on August 17, 1995, the case was heard in part. Learned Counsel for the Petitioner was directed to submit a written argument, and in compliance thereof, a written argument is being presented today, which may be brought on record.

2. Sri Uma Shanker Bharti, the Petitioner, has claimed retiral benefits by means of present writ petition. On January 5, 1994, a Bench consisting of Hon'ble V.N. Khare and Hon'ble S.R. Misra, JJ. had directed the senior counsel for Government of India to file counter-affidavit within six weeks. In compliance of the said direction, a counter affidavit has been filed in the present case. However, we find no factual denial with regard to conferment of retiral benefits.

3. The facts of the case, in a nutshell, are that the Petitioner is a retired Nalb Subedar from Army. He was retired from service on September 30, 1989. During service period of the Petitioner, he was involved in a crime case, punishable u/s 302, I.P.C. This happened in 1986. Sessions Trial No. 136 of 1986 was held and learned IInd Additional Sessions Judge; Ghazipur convicted the Petitioner for the

said offence. The Petitioner was sentenced for life imprisonment by judgment and order dated 22.9.1988 passed by learned IInd Additional Sessions Judge, Ghazipur. The Petitioner went in appeal and this Court, while admitting appeal No. 2177 of 1988, granted bail to the Petitioner on 23.9.1988. Since then, the Petitioner is on bail.

4. There after, retirement of the Petitioner took place on 30.9.1989. The Petitioner, however, was not sanctioned any retiral benefits. The Petitioner moved a petition of demand, dated 14.12.1992, which is contained as Annexure-2 to the writ petition, in reply whereof, the Petitioner was served with a communication dated 15.7.1993 issued by the Record Officer, Bombay Engineer Group, Kirkee, Pune. The relevant extracts of the aforesaid communication are being quoted below:

2. The detailed scrutiny of your service documents reveals that you were involved in a criminal case u/s 302, I.P.C. while in service. You were convicted and sentenced to Life imprisonment on 22nd September, 1988 by Sri B.N. Shukla, IInd Additional Sessions Judge, Ghazipur. You have preferred appeal against the said judgment. The conviction and sentence u/s 302, I.P.C. have not been given effect to during the pendency of your appeal No. 2177 of 88, with the order of Allahabad High Court dated 16th March, 1990.

Your case for grant of service pension submitted to Pension Sanctioning Authority, i.e., CDA (P) Allahabad has since been turned down for re-submission along with the Final Judgment/Decision of the court.

5. You are, therefore, advised to get the Final Decision of the Allahabad High Court on your case expedited and submit the copy of the same to enable us to process your claim for service pension.

6. It is the aforesaid circumstances, which compelled the Petitioner to invoke jurisdiction of this Court, by means of the present writ petition.

7. Having heard Sri Gajendra Pratap, learned Counsel for the Petitioner, we find, that the main attack of learned Counsel for the Petitioner is that in view of Regulation 4 of Pension Regulations for the Army, 1961, the Petitioner is entitled to retrial benefits. Regulation 4 provides that the competent authority, may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently, or for a specified period, "if the pensioned" is convicted of a serious crime. Learned Counsel for the Petitioner stressed on the point that the word "pensioner" is important appearing in Regulation 4. When the Petitioner was implicated in a case u/s 302, I.P.C, he was not "a pensioner", but he was in active service. Therefore, the pension of the Petitioner cannot be withheld.

The aforesaid contention of the Petitioner has been refuted in the counter-affidavit, mainly on two grounds, namely, in view of Para 423 of the Regulations for the Army, 1987, which has been quoted in para 10 of the counter-affidavit, the Petitioner is not entitled to retrial benefits, and secondly, since appeal against

the conviction and sentence u/s 302, I.P.C. is pending before this Court, till final decision in the said appeal, case of the Petitioner for service pension and other retiral benefits cannot be considered. This specific averment has been made in paragraph 11 of the counter-affidavit.

The expression "pensioner" has been well defined by Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , wherein it has been observed as follows:

Primary contention is that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners. The expression "pensioner" is generally understood in contra distinction to the one in service. Government servants in service, in other words, those who have not retired, are entitled to salary and other allowances. Those who retire and are designated as pensioners" are entitled to receive pension under the relevant rules. Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression "pensioners.

8. It was further observed as follows:

Is this class of pensioners further divisible for the purpose of entitlement" and "payment of pension into those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual Government servant would form a class by himself.

9. In another landmark decision, the Hon"ble Supreme Court held that pension is not a bounty payable at the sweet will or pleasure of the Government, and that, on the other hand, the right to pension is a valuable right vested in a Government servant. See Deokinandan Prasad Vs. The State of Bihar and Others, . It was also held that right to receive pension is a fundamental right under the Constitution of India.

10. Thus, in the light of what has been discussed above, we are of the view that simply because appeal against the conviction and sentence is pending in regard to a case, which took place during the service period of Petitioner, pension of the Petitioner cannot be withheld by the Respondents. The stand taken in the counter-affidavit, therefore, is not justified in view of decisions, in D.S. Nakara and Deoki Nandan cases (supra), of the Apex Court.

11. Further, we are convinced that Regulation 4(1) of the Pension Regulations for the Army, 1961 clearly lays down that the competent authority can withhold or withdraw pension, or a part thereof, in case a pensioner is convicted. Admittedly, the Petitioner was not a "pensioner", when his conviction and sentence took place. At the relevant point of time, the Petitioner was very much in active service, and, therefore, on this count also, the Respondents cannot withhold the retiral benefits of the Petitioner.

12. Now we come to the point of interest. The Petitioner has claimed 18% interest in the present writ petition. We are of the view that the Petitioner is not entitled to 18% interest. However, In view of decision In Union of India v. S. C" Sandhwalia 1994 (1) SCJ 197 of the Supreme Court, we allow 12% interest lo the Petitioner.

13. In the result, the writ petition is allowed. The Respondents are directed to finalise the pensionary benefits of the Petitioner as quickly as possible, preferably within two months from the date of production of a certified copy of this judgment and order and make payment, with an interest at the rate of 12 per cent per annum, within another period of one month after the finalization of the same. Let a certified copy of this judgment and order be supplied to the parties within 72 hours.