
(2008) 05 RAJ CK 0140
In the Rajasthan High Court

Union of India (UOI)

APPELLANT

Vs

Shiv Narain

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 3 RLW 2402

Hon'ble Judges : Shiv Kumar Sharma, J;M.C. Bhagwati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The appellants seek to quash the order dated 6.1.2005 of the learned Single Judge allowing the writ petition of the respondents and directed the appellants to make payment of service element to the respondent w.e.f. 15.9.1950 as per the instructions and regulations as applicable to such employees.

2. The respondent claimed restoration of his disability foundation which was discontinued after 15th September, 1950 as per the report of the medical board reassessing the disability as less than 20%.

3. Army Instructions No. 4/S/75 issued by notification dated December 19, 1975 provides thus:

Where an individual is invalided out of service before completion of his prescribed engagement/service limit on account of a disability which is attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183. Pension Regulations for the Army, Part I (1961), read with Appendix A to AI 1/S/75. This benefit will also be allowed in all cases where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 percent.

4. Allahabad High Court in *Ram Roop Singh v. Union of India and Ors.* 1995 (III) Current Service Journal 49, in para No. 13, 14 and 15 indicated thus:

13. I find sufficient force in the contention of the learned Counsel for the petitioner. The Supreme Court while examining the validity of Ministry of Finance Memorandum No. F-19(3). EV 79, dated 25.5.79 and Ministry of Defence Memorandum No. B/40725/AG/P34-C [18I6/AD (Pension), dated 28.9.1979 in the case of *D.S. Nakara* held that classification of pensioners who retired subsequent to that date was arbitrary and violative of Article 14 of the Constitution. It further observed that the date of retirement for the purpose of payment of liberalised pension was not a relevant factor when a revised formula for computation of pension was introduced and made effective from a particular date. It further held that there was no intelligible differential between the persons who retired prior to that date and those who retired after that date. The Supreme Court relied on its earlier judgment in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and further emphasised that the classification on the basis of the date of retirement was wholly illegal and violative of Article 14 of the Constitution.

14. The facts of the present case and those in the case of *D.S. Nakara* bear similarity. Respondents have failed to show any distinguishing feature for not giving the benefit of above mentioned Army Instruction to the petitioner which has been denied to him simply for the reason that the petitioner had retired prior to 1.1.1973. Learned Counsel too was at his wits end in finding out any distinguishing feature to support the date fixed in the Army Instruction and save it from the vice of arbitrariness and unreasonable classification, which is forbidden by the Constitution under Articles 14 and 16. In my opinion, persons boarded out of army service for reasons wholly attributable to army service prior to 1.1.1973 and those boarded out for the same reasons after 1.1.1993 do not constitute different classes so as to justify applicability of the Army Instruction No. 4.5.1975 dated 19.12.75 to only those who are boarded out from active army services after that date. The Army Instruction dated 19.12.75, therefore, must be applied to all covered by it whether retired before or after 1.1.1973.

15. All those boarded out from the service for the same reason after or before that date fall in the same class and bear similarity to each other and, therefore, their classification for the purpose of payment of pension is not justified on the basis of the date of retirement which was no relation to the object of payment of pension which is sought to be achieved in the aforesaid Army Instruction. I, therefore, hold that the date (1.1.1973) fixed for the applicability of the Army Instruction No. 4.5.1975 dated 19th December, 1975 is violative of Article 14 of the Constitution and is, therefore, liable to be quashed. I", therefore, quash the penultimate sentence in para 1 of the Army Instruction No. 4.5.75 dated New Delhi, December, 19, 1975 which is to the following effect:

These orders will take effect from 1st January 1973, i.e. These will apply to all those who were on the effective strength of the Army on that date and who

became non-effective thereafter.

and direct that the said Army Instruction shall be applicable to all army personal covered by it regardless of the date of their retirement.

5. Evidently Army Instructions 4/S/75 dated 19th December, 1975 which contain the sentence "These orders will take effect from 1st January, 1973 i.e. These will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter." was found violative of Article 14 of the Constitution and a direction was issued that the said Army Instruction shall be applicable to all army personnel covered by it regardless of the date of their retirement.

For these reasons, we see no illegality in the impugned judgment of the learned Single Judge. The appeal being devoid of merit stands dismissed without any order as to costs.