
(1998) 01 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1611 of 1991

V.B. Sali, Colonel V-138P

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Army Rules, 1954 — Rule 16A

Citation : (1998) 118 PLR 625

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.S. Randhawa, for the Appellant; S.K. Pipat, Senior Standing Counsel and S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—Is the action of the respondent-Union of India in retiring the appellant at the age of 55 years vide order dated November 4, 1988 legal and valid ? This is the short question that arises for consideration in this appeal. The learned Single Judge having dismissed the writ petition, the appellant has filed the present appeal. A few facts may be noticed.

2. The appellant was born on October 19, 1934. He was commissioned in the Indian Army on October 10, 1960. The appellant got periodic promotions. On July 18, 1986 he was promoted, as an Acting Colonel. Vide order dated November 4, 1988, a copy of which has been produced as Annexure P-3 with the writ petition, the Army Headquarters informed the appellant that he would retire on October 31, 1989 on attaining the age of 55 years. Aggrieved by this order the appellant filed the writ petition. He alleged that the provisions of the amended Rules were not applicable in his case and that in any event the action in retiring him at the age of 55 years was violative of the provisions of Articles 14 and 16 of the Constitution. The appellant maintained that he had a right to continue in service till the age of 57 years. He consequently prayed that the order dated November 4, 1988 be quashed.

3. The respondents contested the appellant's claim. They filed a written statement asserting that the appellant had been rightly ordered to be retired in conformity with the provisions of Rule 16-A.

4. After the initial pleadings both parties filed additional affidavits elaborating their respective contentions.

5. Ultimately the learned Single Judge rejected the appellant's claim. It was held that :- (1) the competent authority had the jurisdiction to reduce the age of retirement. Even though in accordance with paragraph 75 of the 1962 Regulations an officer like the appellant could have continued till the age of 57 years, by virtue of the provisions of Rule 16-A which was promulgated on June 4, 1979, the age of retirement was made 55 years. The learned Single Judge found that in view of the decision of their lordships of the Supreme Court in case K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, , "the age of retirement of government servants can be reduced". (ii) Secondly, it has been held that the case of a Colonel who had attained the age of 55 years had to be considered for retention in service upto the age of 57 years. It was found that "the case of the appellant has been duly considered".

6. On these premises the appellant's challenge to the validity of the order was negated.

7. Aggrieved by the judgment, Mr. R.S. Randhawa, learned counsel for the appellant, contends that the appellant's claim for continuance in service till the age of 57 years was rejected on the ground that he was an Acting Colonel. This, according to the learned counsel was wholly illegal as Rule 16-A does not prescribe different age for retirement in case of persons holding a rank on Acting or substantive basis. Consequently, the learned counsel urges that the action of the respondents in retiring the appellant was not in conformity with the provisions of Rule 16-A. Learned counsel has also referred to the various subsequent amendments in the Rules to point out that it was never the intention of the respondent authorities to adversely affect the conditions of service governing the Commissioner officer.

8. Mr. S.K. Pipat, Senior Standing Counsel for the respondents has appeared on behalf of the respondents to controvert the claim made on behalf of the appellant.

9. It is an admitted position that Rule 16-A was incorporated in the Army Rules, 1954 vide notification dated June 4, 1979. Different age limits for superannuation were provided for the persons working in different wings of the Armed Forces. The age of retirement was also related to the rank. The provision in respect of the number of the Remount Veterinary Services was contained in Rule 16-A(5) (g). A colonel was entitled to continue upto the minimum age of 55 years. The maximum age limit as prescribed under the Rule was 57 years. The obvious implication was that a person holding the rank of a Colonel shall be entitled to continue in service till he attains the age of 55 years. However, it was permissible to allow him to continue up to the age of 57 years. This would have, in the very

nature of things, been dependent upon his record of service and other related matters like physical fitness etc. Further more, the Rule does not make any distinction on the basis of a person holding a particular rank on Acting or substantive basis. The Rule does not suggest that the age limits are applicable only to a substantive Colonel and not an Acting Colonel. The Rule also does not prescribe different limits of age for those holding the rank of Colonel on "Acting" basis.

10. It is true that the appellant having been born on October 19, 1934 would have completed the age of 55 years in October, 1989. However, even by virtue of the provision of Rule 16-A, the appellant had a clear right to be considered for continuance in service till the age of 57 years. In the additional Affidavit filed on behalf of the respondents on August 17, 1991 (Page 122 of the appeal paper-book) it has been categorically averred that "extension of Service is granted only on the substantive rank of Colonel and there is no exception to this rule. The petitioner being A/col is not eligible for the grant of extension of service beyond the normal age of retirement (which) is 55 years." This affidavit clearly shows that the appellant's claim for extension in service till the age of 57 years was rejected only on the ground that he was holding the rank of Colonel on an Acting basis. This was not correct. It was illegal.

11. In our considered view, the respondents has erred in rejecting the appellant's claim for extension in service upto the age of 57 years only on the ground that he was not a substantive Colonel. On this ground alone the appellant's claim deserves to be accepted. In this view of the matter, it is not necessary for us to consider the effect of the subsequent amendments made to the Rules by the competent authority.

12. In view of the above, the appeal is allowed and the judgment of the learned Single Judge is set aside. It is held that the appellant had a right to be considered for continuance in service till the age of 57 years. The action of the respondents in rejecting his claim on the ground that he was not a substantive Colonel was not in conformity with the Rules. The impugned order is consequently set aside. The respondents shall now consider the appellant's claim and decide it within three months from the date of the receipt of copy of this order. Consequential relief in the event of acceptance of the appellant's claim shall follow. However, in the circumstances of the case, we make no order as to costs.