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UNION OF INDIA AND ORS.

v.

SUBEDAR RAM NARAIN ETC.

SEPTEMBER 15, 1998

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[S.P. BHARUCHA, G.T. NANAVATI AND B.N. KIRPAL, JJ.]

Army Act, 1950 : Sections 40(a), 48 and 71—Pension Regulations for the Army, 1961 (Part-I)—Regulations 113(a) and 16(a).

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Service Law—Army—Forfeiture of pension—Junior Commissioned Officer—Court Martial—Dismissal—Consequential ineligibility for pension and gratuity—Held valid—Regulation 113(a)—Held, not invalid.

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Army Law—Commissioned Officer and Junior Commissioned Officer—Provision relating to ineligibility of pension pursuant to dismissal—Regulation 16(a) and 113(a) respectively—Difference between.

Constitution of India, 1950 : Article 20(2).

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Double jeopardy—Junior Commissioned Officer—Court martial—Dismissal from service—Consequential ineligibility for pension—Held not double jeopardy.

The respondent, a Junior Commissioned Officer in the Indian Army, was charged under Sections 40(a) and 48 of the Army Act, 1950. The General Court Martial found him guilty of the offences charged and consequently dismissed him from service.

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The respondent filed a writ petition before the High Court of Delhi for the grant of pensionary benefits. Relying upon the decision of this Court in Major G.S. Sodhi's case the High Court held that as the General Court Martial has not passed an order depriving the respondent of pensionary benefits, he will be entitled to the same notwithstanding his dismissal from service.

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In appeals to this Court on the question whether a Junior Commissioned Officer would be ineligible for pension or gratuity in respect of all his previous service on his being dismissed under the Army Act, 1950 : it was contended on behalf of the Union of India that (i) the relevant

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provision with regard to eligibility for receipt of pensionary benefits by a Junior Commissioned Officer on being dismissed or discharged under the Army Act was Regulation 113(a) while the relevant provision for a Commissioned Officer was Regulation 16(a); (ii) the High Court erred in relying upon *Major Sodhi's* case as the same did not pertain to the applicability of Regulation 113(a).

On behalf of the respondent it was contended that (i) withholding the pension when the respondent had been court-martialed and dismissed would amount to double jeopardy; (ii) Regulation 113(a) was discriminatory and that pension which is earned becomes the property of the person concerned and the same cannot be taken away.

Allowing the appeals and setting aside the impugned judgment of the High Court, this Court

HELD : 1. Regulation 113 of the Army Act makes it clear that a Junior Commissioned Officer or a person belonging to other rank or a non-combatant (enrolled) would become ineligible for grant of pension or gratuity on the passing of an order of dismissal. The disentitlement to pensionary benefits is the normal result of a dismissal order. But the President may, in exceptional cases, at his discretion, order the grant of pension. Therefore, if no order is passed by the President then the result is that the dismissed Junior Commissioned Officer remains disentitled to pension or gratuity. [621-G-H]

2. The terms of Regulation 16(a) are clearly different from Regulation (113)a. According to Regulation 16(a) when an officer, as defined in Section 3(xviii) of the Army Act 1950 is cashiered or dismissed or removed from service then the President has the discretion of either forfeiting his pension or ordering that he be granted pension at a lesser rate. The dismissal, removal etc. of a Commissioned Officer does not automatically result in the forfeiture or lessening of his pension. Power is, however, given to the President that in such a case he may either direct the forfeiture of the officer's pension or reduction in the rate thereof. [622-A-B]

3. Section 71 of the Army Act provides for different types of punishments which could be inflicted in respect of an offence committed by a person subject to the Army Act and convicted by court martial. The punishments are of varying degrees, from death as provided by Section

A 71(a) to stoppage of pay and allowance as provided by Section 71(h) The punishment of forfeiture of pay and allowances provided by Section 71(j) is of a lesser nature than that of dismissal from service as provided by Section 71(e). When punishment under Section 71(j) is imposed no recourse can be had to Regulation 113(a), because the said regulation applies only if an order of dismissal is passed against the person concerned. In other words Section 71(j) and Regulation 113(a) cannot apply at the same time. On the other hand when the punishment of dismissal is inflicted under Section 71(e) the provisions of Regulation 113(a) become attracted. The result of punishment is that the benefit of pension or gratuity which is given under the regulation is taken away. The order of dismissal under the provisions of the Army Act in the case of an employee like the respondent would make him ineligible for pension or gratuity. For a person to be eligible to the grant of pension or gratuity it is imperative that he should not have been dismissed from service. The dismissal under the provisions of the Army Act, is therefore, a disqualification for getting pension or gratuity. [623-B-C-D-E]

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4. Junior Commissioned Officers and Commissioned Officers belong to different classes. They are not similarly situated. Pension is granted by the rules and regulations which can and do provide for the circumstances which would make a person ineligible to receive the same. Dismissal makes a Junior Commissioned Officer disentitled to receive pension or gratuity. Regulation 113(a) is not in any way invalid. [623-G-H]

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5. Unlike Regulation 16(a) which applies to the Commissioned Officers, in the case of non-commissioned officers other ranks and non-combatants (enrolled) the dismissal of such a person under the Army Act would *ipso facto* render him ineligible for pension or gratuity. The President, however, has a right, in the case of a person dismissed under the provisions of the Army Act but in exceptional circumstances and at his discretion to grant service pension. [624-A-B]

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Major G.S. Sodhi v. Union of India, [1991] 2 SCC 371, explained and held inapplicable.

Union of India and Ors. v. R.K.L.D. Azad, [1995] Supp. 3 SCC 426, relied on.

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Maj. (Retd.) Hari Chand Pahwa v. Union of India & Anr., [1995]

Supp. 1 SCC 221; Union of India v. Brig. P.K. Dutta (Retd.), JT (1995) 1 SC 413, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3609 of 1996 Etc.

From the Judgment and Order dated 9.8.94 of the Delhi High Court in C.W.P. No. 917 of 1991. B

With

CA Nos. 3612, 3613/96, 7467/94 and 4852/95.

N.N. Goswamy, Ashok Srivastava, Ms. Sushma Manchanda and Anil Katiyar for the Appellants. C

Prem Malhotra, Ashok Mathur and Manoj Prasad for the Respondents.

The Judgment of the Court was delivered by D

KIRPAL, J. The only question which arises for consideration in this and the connected appeals is whether the respondent who was junior commissioned officer, would be ineligible for pension or gratuity in respect of all his previous service on his being dismissed under the Army Act, 1950. E

The respondent was enrolled in the Indian Army on 17th March, 1962. He was promoted to the rank of Subedar Major with effect from 1st March, 1984. While he was serving with 75 Medium Regiment he was kept in close arrest with effect from 17th November, 1988 and was then court-martialed under the provisions of the Army Act. He was charged under Section 40(a), using criminal force to his superior officer, and Section 48 of the Army Act, 1950 for being in a state of intoxication while on duty. F

The General Court Martial found the respondent guilty and thereupon he was dismissed from service on 1st August, 1989. He filed an appeal to the Chief of the Army Staff against the decision of the General Court Martial but the same was rejected after due consideration. G

The respondent then filed writ petition No. 423 of 1989 in the High Court of Jammu and Kashmir praying for quashing of the court-martial proceedings. This petition was however, withdrawn and another writ petition No. 917 of 1991 was filed in the Delhi High Court for the grant of H

pensionary benefits. The High Court while relying upon the decision of this Court in the case of *Major G.S. Sodhi v. Union of India*, [1991] 2 Supreme Court Cases 371, came to the conclusion that as the General Court Martial had not passed an order depriving the respondent of pensionary benefits, therefore, he would be entitled to the same notwithstanding his dismissal from service.

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In this appeal by special leave the challenge is to the aforesaid conclusion of the High Court.

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On behalf of the appellant it was contended by Sh. N.N. Goswami, learned senior counsel, that the provision with regard to eligibility for receipt of pensionary benefits by the junior commissioned officer on being dismissed or discharged under the Army Act is governed by Regulation 113(a). This provision, it was contended, was different from the provision which was applicable in the case of dismissal of commissioned officers. It was submitted that the High Court, in the instant case, erred in relying upon a decision of this Court in *Major Sodhi's* case (supra) which did not pertain to the applicability of Regulation 113(a). Our attention was drawn to Regulation 16(a) which related to the payment of pension to an officer who is cashiered, dismissed, removed or called upon to retire, it was that regulation which had application in *Major Sodhi's* case.

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Chapter III of the Regulations relates to junior commissioned officers, other ranks and non-combatants (enrolled). It is not in dispute that the provisions of this chapter applied to the respondent in this and other appeals. Regulation 113 with which we are concerned reads as follows :

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"113(a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service.

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In exceptional cases, however, he may at the discretion of President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) As individual who is discharged under the provisions of Army Act the rules made thereunder remains eligible for pension or gratuity under these Regulations."

H Regulation 16(a) falls in Chapter II of the Regulations which relates to the

commissioned officers. The said regulation, in so far as it is relevant, reads as follows :

"16(a) When an officer who has to his credit the minimum period of qualifying service required to earn pension, is cashiered or dismissed or removed from service, his pension may, at the discretion of the President be either forfeited or be granted at a rate not exceeding that for which he would have otherwise qualified had he retired on the same date."

Referring to the said regulations this Court has held in *Maj. (Retd.) Hari Chand Pahwa v. Union of India and Anr.*, [1995] Supp. 1 Supreme Court Cases 221 and *Union of India v. Brig. P.K. Dutta (Retd.)*, JT (1995) 1 SC 413, that even if these regulations are not statutory the same are still binding because pensionary benefits are payable only under these regulations and, therefore, the same can be forfeited in the manner and circumstances as provided for by the said regulations.

The first sentence of Regulation 113(a) clearly provides that an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service. In other words a person like the respondent to whom Section 113(a) applies will not be entitled to receive any pension on an order of his dismissal being passed. Clause (b) of Section 113 makes a distinction in the case of a person who is discharged, and not dismissed, under the provisions of the Army Act. In the case of discharge a person remains eligible for pension or gratuity under the said regulation. The latter part of Section 113(a) provides that in exceptional cases the President may, at his discretion, grant service pension or gratuity at a rate not exceeding that for which an individual would have otherwise qualified had he been discharged, and not dismissed, on the same day. Reading Regulation 113 it is clear that in the case of a junior commissioned officer or a person belonging to other rank or a non-combatant (enrolled), he would become ineligible for grant of pension or gratuity on the passing of an order of dismissal. The disentitlement to pensionary benefits is the normal result of a dismissal order. But the President may, in exceptional cases, at his discretion, order the grant of pension. Therefore, if no order is passed by the President then the result is that the dismissed junior commissioned officer remains disentitled to pension or gratuity.

A The terms of Regulation 16(a) are clearly different from Regulation 113(a). According to Regulation 16(a) when an officer, as defined in Section 3(xviii) of the Army Act, 1950, is cashiered or dismissed or removed from service then the President has the discretion of either forfeiting his pension or ordering that he be granted pension at a lesser rate. The dismissal, removal etc. of a commissioned officer does not, in other words automatically result in the forfeiture or lessening of his pension. Power is, however, given to the President that in such a case he may either direct the forfeiture of the officer's pension or reduction in the rate thereof, *Major Sodhi's* case was one which dealt with the question of forfeiture of a commissioned officer's pension on his being dismissed from service. It is in the context of Regulation 16(a) that it was observed that as no order was passed under the said regulation, therefore, the officer concerned would be entitled to the receipt of full amount of pension or gratuity which would normally be payable to him.

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D The question with regard to forfeiture of pension in the case of a junior commissioned officer to whom the provisions of Regulation 113 applied came up for consideration before this Court in *Union of India and Ors. v. R.K.L.D. Azad*, [1995] Supp 3 Supreme Court Cases 426. After referring to Regulation 113(a), this Court at page 429 observed as follows :

E "In view of the plain language of the above regulation the respondent cannot lay any legal or legitimate claim for pension and gratuity on the basis of his previous service as, admittedly, he stands dismissed in accordance with Section 73 read with Section 71 of the Act. The second question must, therefore, be answered in the negative."

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G Sh. Prem Malhotra, learned counsel for the respondent submitted that withholding the pension when the respondent had been court-martialed and dismissed would amount to double jeopardy. It was submitted that under Section 71(j) of the Army Act one of the punishments which could be inflicted after a court martial was that of "forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service". Elaborating this contention, it was submitted that like dismissal from service as provided by clause (e) of Section 71 of the
H Army Act, forfeiture of pay and allowances was one of the punishments

which could be imposed under clause (j). If such a punishment of forfeiture had been awarded, the respondent would have continued to remain in service but by ordering the dismissal from service under Section 71(e) he is also being deprived, under Regulation 113(a), of the pension which he had earned.

We find no merit in this contention. Section 71 of the Army Act provides for different types of punishments which could be inflicted in respect of an offence committed by a person subject to the Army Act and convicted by courts martial. The punishments are of varying degrees, from death as provided by Section 71(a) to stoppage of pay and allowance as provided by Section 71(h). The punishment of forfeiture of pay and allowances as provided by Section 71(j) is of a lesser nature than that of dismissal from service as provided by Section 71(e). When punishment under Section 71(j) is imposed no recourse can be had to Regulation 113(a), because the said regulation applies only if an order of dismissal is passed against the person concerned. In other words Section 71(j) and Regulation 113(a) cannot apply at the same time. On the other hand when the punishment of dismissal is inflicted under Section 71(e) the provisions of Regulation 113(a) become attracted. The result of punishment is that the benefit of pension or gratuity which is given under the regulation is taken away. The order of dismissal under the provisions of the Army Act in the case of an employee like the respondent would make him ineligible for pension or gratuity. For a person to be eligible to the grant of pension or gratuity it is imperative that he should not have been dismissed from service. The dismissal under the provisions of the Army Act is, therefore, a disqualification for getting pension or gratuity.

It was also submitted by Sh. Malhotra that Regulation 113(a) was discriminatory and, further, pension which is earned becomes the property of the person concerned and the same cannot be taken away. But no such contention was raised before the High Court. In any case we see no merit in the said contention. Firstly, junior commissioned officers and commissioned officers belong to different classes. They are not similarly situated. Moreover pension is granted by the rules and regulations which can and do provide for the circumstances which would make a person ineligible to receive the same. Dismissal makes a junior commissioned officer dis-entitled to receive pension or gratuity. Regulation 113(a) is not in any way invalid.

- A For the aforesaid reasons we come to the conclusion that unlike Regulation 16(a) which applies to the commissioned officers, in the case of non-commissioned officers other ranks and non-combatants (enrolled) the dismissal of such a person under the Army Act would *ipso facto* render him ineligible for pension or gratuity. The President, however, has a right, in the case of a person dismissed under the provisions of the Army Act but in exceptional circumstances and at his discretion to grant service pension at a rate not exceeding that for which the individual concerned would have otherwise qualified had he been discharged on the same day.

- C In view of the aforesaid this appeal is allowed, the judgment of the High Court is set aside the result of which would be that the writ petition filed by the respondent would stand dismissed. There will be no order as to costs.

Civil Appeal Nos. 3613/94, 7467/94 and 4852 of 1995.

- D The question involved in these appeals is identical to the one in Civil Appeal No. 3609 of 1996. For the reasons stated therein these appeals are also allowed but with no order as to costs.

T.N.A.

Appeals allowed.