

(2000) 07 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 3637 of 1997

Lt. Col. Ottar Singh (Retired)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 31, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Pension Regulations for Army, 1961 - Regulation 3
- Prevention of Corruption Act, 1988 - Section 5(1)

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. B.S. Sehgal, for the Appellant; Mr. Ashutosh Mohunta and Ms. Gurveen H. Singh, AAG, for the Respondent

Judgement

R.L. Anand, J.

Ex.-Lt. Col. Ottar Singh has filed the present writ under Article 226/227 of the Constitution of India praying for a writ of certiorari for the quashment of Annexures P-6, dated 27.4.1987, P-11, dated 25.1.1994, P12, and P14 dated 20.9.1994 and P16, dated 10.3.1995, by pleading the following facts :-

2. According to the petitioner, he was born on 17.10.1921 and was granted commission in the Indian Army as Second Lieutenant on 3.10.1943. In the year 1962 he attained the rank of substantive Lieutenant Colonel and when he was enjoying the rank of Lieutenant colonel and was also in charge of certain purchases in the Army as a Chief Ordnance Officer, a criminal case was registered against him on the allegations that he had made purchases on exorbitant rates and accumulated assets beyond his known sources. He retired from service on 17.10.1973 and provisional pension was granted to him w.e.f. 18.10.1973. A charge was presented against him and the trial continued upto 7.9.1977. Thereafter he was acquitted by the trial Court. So far as the charge of local purchases was concerned, it was dropped by the

prosecution but so far as the charge u/s 5(1)(e) was concerned, the same was also dropped as the proper sanction for prosecution was not obtained by the investigating agency. The Government of India was not satisfied with the judgment of the Special Judge and it filed an appeal before the Bombay High Court. Since the petitioner was facing the harassment of the criminal proceedings, he filed an affidavit before the Bombay High Court and confessed his guilt with regard to the charge u/s 5(1)(e) of the Prevention of Corruption Act. Acting upon the confession of the petitioner, the Bombay High Court convicted and sentenced the petitioner u/s 5(1)(e) of the Prevention of Corruption Act and awarded simple imprisonment till the rising of the court along with a fine of Rs. 500/-. The petitioner was issued a memo dated 27.4.1987 by the Government of India to show cause as to how he was entitled to the pensionary benefits. The petitioner replied to the show cause notice vide Annexure P7 and vide Annexure P11 the President of India was pleased to forfeit the entire pensionary benefits of the petitioner without making any recovery on account of the provisional pension already paid to him. The Government of India informed the Treasury Officer about the passing of the order Annexure P11. Against this the petitioner made a representation which was rejected vide Annexures P14 and P16. Aggrieved by the orders Annexures P6, P11, P12, P14 and P16, the present writ petition.

3. Notice of the writ petition was given to the Union of India, which filed the written statement and denied the allegations. The stand taken up by the Government of India is that in accordance with Regulation 3 of the Pension Regulations for Army, Part-I, 1961 if the service has not been satisfactory, the competent authority may make such reduction in the amount of pension as it thinks proper. Since the petitioner has been convicted by the Bombay High Court on the allegations of effecting local purchase at exorbitant rates and possessing assets disproportionate to his known sources, therefore, the Government of India decided to forfeit his entire pensionary benefits after issuing a show cause notice to him.

4. I have heard Mr. B.S. Sehgal, Advocate, on behalf of the petitioner. Mr. Ashutosh Mohunta, Advocate, on behalf of Union of India and with their assistance have gone through the records of this case.

5. The sole point for determination in this case is whether the action of the respondent authorities in Annexures P11, P12, P14 and P16 is in accordance with the regulations or not. Regulation 3, on which the reliance has been placed by the learned counsel for the Union of India runs as follows :-

"The full rate of pension or gratuity provided for in these regulations shall not be granted unless the service rendered has been satisfactory. If the service has not been satisfactory, the competent authority may make such reduction in the amount of pension as it thinks proper."

6. Though Mr. Sehgal, the learned counsel for the petitioner tried to convince me that the service record of the petitioner was satisfactory and he made the confession before the Bombay High Court only to get rid of the harassment which he was facing for the last so many years, yet this Court is not convinced with the submission of Mr. Sehgal because conviction is a conviction. It is the admitted case of the petitioner that he was convicted and sentenced u/s 5(1)(e) of the Prevention of Corruption Act and he was awarded sentence till the rising of the court and a fine of Rs. 500/-. In (his view of the matter, it has to be treated that the record of the petitioner was stigmatic and cannot be held to be satisfactory. The ancillary point for determination is that when the record of the petitioner was not held to be satisfactory, what are the rights open to the respondents. Regulation 3 is very clear, which empowers the competent authority only to reduce the pension of an employee. It does not allow the Government to confiscate the entire pensionary benefits. There is a difference between reduction and total confiscation. The learned counsel for the respondents, faced with this difficulty, relied upon the judgment of this Court passed in C.W.P. No. 18286 of 1995 : 1999(1) SCT 817 (P&H), Ex-Nb/Sub. Sawaran Singh v. Union of India & others and submitted that when a military personnel has been dismissed from service, it is open to the Government to forfeit his entire pensionary benefits. The citation relied upon by the learned counsel for the respondents is distinguishable on the face of it. The case of the petitioner is to be governed by Regulation 3, which only empowers the competent authority to reduce the pensionary benefits. It can reduce to any extent but the confiscation is never permitted or allowed by the said regulation.

7. In this view of the matter, this writ has to be allowed by setting aside the orders Annexure P11, P12, P14 and P16. The writ petition is disposed of with the observation that it will always be open to the punishing authority to act according to Regulation 3 of the Pension Regulations for Army Part-1, 1961, of course prospectively.

There shall be no order as to costs.

8. Petition allowed.