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(1993) 09 GAU CK 0019

Gauhati High Court

Case No: Writ Appeal No. 59 of 1993

Union of India — APPELLANT

Vs

Prafulla Chandra Deka — RESPONDENT

Date of Decision: Sept. 29, 1993

Citation: (1994) 1 GLJ 257

Hon'ble Judges: R.K.Manisana Singh, J and N.G.Das, J

Bench: Division Bench

Advocate: M.Z.Ahmed, P.Roy, M.K.Choudhary, B.K.Sharma, Advocates appearing for Parties

Judgement

R.K. Manisana, J.
This is an appeal from the judgment and order of the learned Single Judge made on 29.10.92 in Civil Rule No. 1445 of 1987.

2. Facts,The writ petitioner was a Rakshak (constable) in the Railway Protection Force. A disciplinary proceeding was drawn up against him for his absence from duty without permission and occupying the railway quarters bearing No. 524 (A) at New Guwahati Railway Colony without any authority and allotment. He was found guilty of misconduct and was removed from his service by the Commandant Railway Protection Force, Lumding under his order dated 15.9.86. The petitioner challenged the order before this Court The learned Single Judge did not interfere with the punishment but he disposed of the petition directing, the respondents in the writ petition to grant pension and other pensionary benefits to the writ petitioner for the period of service he had already rendered in view of Rule 309 of the Railway Pension Rules, 1950. Hence this appeal by the Union Government against the direction.

3. The question which arises for consideration is whether a civil servant who has been removed from service for misconduct will be entitled to pension.

4. What is a pension ? Pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the Rule and a Government servant

coming within this Rules is entitled to claim pension. The grant of pension does not depend upon anyone"s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the Rules (see Deoki Nandan Prasad vs. State of Bihar, AIR 1972 SC 1409; State of Punjab vs. Iqbal Singh, AIR 1976 SC 667 and DS Nakara vs. Union of India, AIR 1983 SC 130)

5. In the above view of the matter, entitlement or disentitlement of pension depends upon the relevant Rules. The relevant Rules, in the present case are Rules 2310 (CSS. 353) and 2433 (CSR 418) of the Indian Railway Establishment Code (IRE Code, for short), and Rule 309 of the Manual of Railway Pension Rules, 1950 (MRP Rules, for short). It may be stated here that in BS Murthy vs. Union of India, AIR 1992 SC 1747, the Supreme Court held that the provisions of the MRP Rules are meant for the guidance of the staff and by themselves do not have any statutory force. However, the MRP Rules supplement the statutory rules and can be harmoniously read with the statutory provisions contained in the IRE Code. The above decision of the Supreme Court makes it clear that MRP Rules are meant for the guidance of the staff and the provisions under the IRE Code are statutes at large.

6. Rule 2310 (CSR 353) of the IRE Code provides :

"No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special, consideration; provided that the allowance granted to any officer shall not exceed two thirds of the pension which would have been admissible to him if he had retired on medical certificate." (emphasis added) Rule 309 of the MRP Rules runs as follows :

"No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant (s) corresponding to ordinary gratuity and/or deathcumretirement gratuity, and or allowancescorresponding to ordinary pension, when he is deserving of special consideration; provided that the compassionate grant (s) and/or allowance awarded to such a Railway servant shall not exceed twothird of the pensionary benefits which would have been admissible to him if he had retired on medical certificate."

Clause (a) of Rule 2433 (CSR) 418) of the IRE Code states : "Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service." (emphasis added) Under Article 353 of the Central Services Regulations (CSR), no pension may be granted to an officer removed for misconduct, but to such an officer compassionate allowances may be granted when he is deserving of special

consideration. Under Article 418, CSR, removal from service for misconduct entails forfeiture of past service. At this stage, it will be helpful to refer to a derision of the Supreme Court reported as Dayal Saran vs. Union of India, AIR 1980 SC 554. On that case the appellant was holding a post of Superintendent in the Military Engineering Service substantively. He did not comply with an order of transfer and did not join his new posting. That period was treated as period of absence from duty, and interruption in the service of the appellant. Therefore, on attaining of age of superannuation, his pension and gratuity were denied. The Supreme Court was dealing with Articles 420 and 353 of the Central Services Regulation. Article 420 provides that "an interruption in the service of an officer entails forfeiture of his past service except in the following cases," (emphasis supplied) As already stated, under Article 353, CSR, no pension may be granted to an officer removed for misconduct, but to such an officer compassionate allowances may be granted when he is deserving of special consideration. The Supreme Court held : "We think that whatever relevance forfeiture of past service under Article 429 of the Civil Services Regulations may have in connection with matters relating to advancement in service etc. it has no bearing on the question of the grant or the withholding of pension. We do not also think that an order of forfeiture of past service can be made without observing the principles of natural justice. Admittedly, disciplinary action was not taken against the appellant in connection with his absence from duty without leave. Nor was his past service was proposed to be forfeited under Article 420 of the Civil Services Regulations, and his explanation soughtWe consider that the respondents were not entitled to withhold the pension of the appellant unless the facts fell within the provisions of Articles 352 and 353 of the Civil Services Regulations ."(emphasis supplied)

7. As already stated, the appellant was removed from his services for misconduct after an inquiry, and under Article 353 (Rule 2310, IRE Code), a civil servant who has been removed from his services for misconduct is not entitled to pension. Therefore, the instant case falls within the ratio .of the decision of the Supreme Court cited above. For the reasons stated, the appellant is not entitled to regular pension and the direction of the learned Single Judge cannot be sustained. However, considering the facts and circumstances of the case, if we direct the appellant to submit a representation to the appropriate authority for compassionate allowances under Rule 2310 (CSR 353) of the IRE Code read with Rule 309 of MRP Rules, it will meet the ends of justice. For the foregoing reasons, the direction of the learned Single Judge to grant pension and other pensionary benefits for the period of service the petitioner had put in is quashed and we dispose of the writ appeal with a direction that the appellant shall make a representation to the appropriate authority, as stated above, and the appropriate authority, within three (3) months from the date of receipt of the representation shall dispose of the same in accordance with law.

8. In the result, the appeal is allowed to the extent indicated above. No costs.