

MAJOR GEN. (OLD CAPT.) VIRENDER KUMAR
v.
THE CHIEF OF ARMY STAFF & 3 PROFORMA RESPONDENTS

MARCH 11, 1994

[S. RATNAVEL PANDIAN AND R.M. SAHAI, JJ.]

Service Law

Army Rules, 1950—Discharge—Petitioner claiming to continue in service in the absence of discharge under Rule 18—Held, in view of Court's 1986 order, petitioner deemed to be discharged—No further order required.

Contempt of court—Non-payment of dues as per Court's earlier order in 1986—Held, department viewing the matter as one of false prestige—Petitioner entitled to interest.

While dismissing a contempt petition in 1986 the Supreme Court ordered that the petitioner, an Army Captain, would be treated as being discharged on February 21, 1981. The authorities were directed to pay him all benefits, retiral or otherwise, on that basis.

In the present contempt petition the petitioner contended that he continued in service since an army officer could only be discharged under Rule 18 of the Army Rules, 1950. He claimed retiral benefits higher than that recommended in the report of the Additional Solicitor General who was requested to find a solution after hearing the petitioner and the authorities.

Disposing of the contempt petition, the Court

HELD : 1. In view of the decision of this Court in 1986 directing that the petitioner shall be deemed to have been discharged from service on February 21, 1981 the respondents were not required to issue any further order. [633 H, 634 D]

2. The petitioner not having been released on recommendation of the Medical Board and not having deposited any amount nor having made any application was not entitled to any further amount under the Group Insurance Scheme. Since no contribution to the Defence Officers' Provi-

A dent Fund was made in a capacity other than as Captain, the amount determined to be payable to the petitioner under this head is correct. The petitioner is entitled to be paid terminal gratuity and disability pension as calculated by the Department. [634 G, 635 A, B]

B 3. That this amount has not been paid to the petitioner for all these years brings out fully the observation made by this Court that the Department was viewing the matter as one of false prestige. In these circumstances, there is no option but to award an interest of 14 per cent on this amount from March, 1986 to February, 1994 as well as on the pension and the Children Education Fund. [637 D]

C CRIMINAL ORIGINAL JURISDICTION : CrI. M.P. No. 5726 of 1993.

IN

D Contempt Petition No. 8 of 1992.

IN

Writ Petition (CrI.) Nos. 1741/81 1344 & 1604 or 1985.

E (Under Article 32 of the Constitution of India.)

WITH

Contempt Petition No. 8 of 1992.

F IN

Writ Petition (Criminal) Nos. 1741/81 & 1344 & 1604 of 1985.

G (Under Article 32 of the Constitution of India)

Petitioner in person.

H Altaf Ahmad, Addl. Solicitor General, A.S. Nambiar, N.C. Sikri, Ms. A. Subhashini, Mrs. A.K. Sikri, Mrs. Madhu Sikri and V.B. Saharya for the respondents.

The Judgment of the Court was delivered by

R.M. SAHAL, J. This is second application for contempt filed by the petitioner, who was a Captain in Army and was injured on war front in 1965, for implementation of the order passed by this Court in 1981 and 1986. When the first contempt application and a writ petition for habeas corpus filed by the wife of petitioner, in circumstances which are not necessary to be narrated, was decided in 1986 it was observed as under :-

"When judgment was pronounced in Civil Appeal No.475 of 1976 (*Captain Virender Kumar v. Union of India*), it was thought that an unhappy litigation had come to a happy ending. But it was not so. It appears that Civil Appeal No. 475 of 1976 was only a prelude to a long drawn out acrimonious and dogged litigation, both parties to which appeared to us to be blameworthy. On the one hand, the matter appears to be viewed by the authorities as one of prestige, that is, false prestige and hurt dignity. On the other hand, there is misplaced determination coupled with a sense of an emotional hurt on the side of the Captain."

Since then sever year elapsed and the petitioner once again approached this Court for implementation of the order passed in 1981 and 1986. It is not necessary for us to refer to various affidavits filed by parties as Shri Altaf Ahmed, the learned Addl. Solicitor General, on our request, had heard the petitioner and the Union of India, Delhi Development Authority and Mahanager Telephone Nigam Limited to iron out the differences and find out the possible solution. He filed the Report on 30th September, 1993. Relevant portions of it are extracted below :-

"I, therefore, proceeded to examine as to whether 'all benefits, retiral or otherwise' consequent upon the discharge of Capt. Virendra Kumar 'from Service on February 21, 1981' were paid to him or not. I desired the Army authorities to produce yearwise and monthwise details of payments made to petitioner in lieu of his benefits, retiral or otherwise. A statement eventually came a copy whereof was given Capt. Virender Kumar. I enclose the copy of the statement furnished to me with this report. Quite apart from the details regarding arrears of pay and allowances set out by the army authorities in the said enclosures I find that certain benefits to which Capt. Virender Kumar would be entitled in execution of aforesaid para 21 of the judgment of this Hon'ble Court have not

A been given to him. These are -

(i) *Benefit of Army Group Insurance Scheme.* - The Army authorities agreed before me that this benefit shall be extended to him from the date of his discharge *i.e.* February 21, 1981 subject to the terms of Special Army Order III/S/81. The petitioner will have to appear before the Medical Board. A cheque for Rs. 3135/- for the period prior to 21.2.1981 is lying ready with the Army Authorities under this head for being passed on to the petitioner.

(ii) *Defence Service Officers Provident Fund.* - (DSOPF) has admittedly not been paid to the petitioner. It is further admitted that an amount of Rs. 9331.00 is due to the petitioner in this behalf and a cheque is lying ready.

(iii) *The Army Authorities Children's Education Fund.*- This benefit was also agreed to be worked out in accordance with rules.

(iv) *Terminal Gratuity benefits :* This benefit has admittedly not been worked out beyond September 30, 1970. Hence in my opinion the payment of this benefit is required to be worked out and paid to the petitioner for the period from October 1, 1970 to 21st February, 1981.

(v) *Disability Pension :-* The petitioner, in my opinion, deserves to be given this benefit also provided he is so entitled in the opinion of the medical board.

The petitioner and the army authorities agreed before me to cooperate with each other for complying with the procedural requirements necessary for the purposes of aforesaid benefits.

(2) *Delhi Development Authority :*

In regard to DDA the petitioner states that the decision to allot a restaurant in Block 'E', East of Kailash to him conveyed vide their letter of May 22, 1980 was not carried out. It appears that the said decision was subsequently revoked. The counsel for DDA has vehemently argued that this dispute is beyond the scope of present proceedings. I would, therefore, not express my opinion on the grievances of the petitioner against DDA.

(3) *Mahanagar Telephone Nigam Limited* :

The petitioner desires that MTNL provide him with one Telex and one Fax machine for 35 years, rent free, at the cost of the department. I had suggested to the counsel for the department to explore the possibilities of a settlement. His instruction are that the demands of the petitioner are unacceptable".

Neither party filed any objection to the Report.

What was submitted by the petitioner can be conveniently divided in two parts, one, that he was still continuing in service and, second, that even though the amount calculated for the period in the Report was correct, the appellant was entitled to even higher amounts for reasons which shall be discussed presently.

As regards the first submission, the petitioner submitted that he was still continuing in service. He urged that the opposite parties have acted in violation of the rules in not giving him his rank and salary from 1986 onwards after the decision was rendered by this Court. In support of his submission he placed reliance on an invitation card sent to him by Sub. Major inviting him to 49th Defence Regiment programme Raising Day. According to him, this invitation card having been issued in April, much after the judgment was delivered by this Court, it should be assumed that the Department was treating him in service. Reliance was also placed on certain correspondence between the petitioner and the Department in respect of facility of air-travel concession and his filing of an application for becoming member of Defence Service Officers' Institute which was endorsed by no less a person than the personal assistant of Chief of the Army Staff. Reliance was also placed on certain letters which indicate that the petitioner was threatened that the court-martial proceedings shall be taken against him. The petitioner urged that an officer serving in the Army could be discharged only under Rule 18 and since no order has been passed till now the petitioner should be deemed to have continued in service and he is entitled to all the emoluments. We have given our anxious considerations to the arguments advanced by the petitioner, but we are not inclined to accept the same in view of the decision given by this Court in 1986 directing that the petitioner shall be deemed to have been discharged from service on 21st February, 1981. The relevant part of the judgment is extracted below :-

A "While dismissing the contempt application and the application for the issue of a writ of habeas corpus, we direct the Army authorities not to arrest or detain Captain Virendra Kumar unless he is convicted in court-martial or some other proceeding. But we do hope that the authorities will not further pursue the officer with any proceeding by way of court-martial or otherwise. We also direct the authorities to pay to Captain Virendra Kumar arrears of salary from July 21, 1998 to February 21, 1981, if not already paid. In view of the failure of the officer to accept the posting to Ambala, we absolve the Military authorities from making any further offer of appointment or posting to the officer. The officer will be treated as if he was discharged from service on February 21, 1981 and all benefits, retiral or otherwise, to which he may be entitled, may be paid to him on that basis. There will be no order as to costs in the contempt application or in the writ petition."

B
C
D In view of the Order of this Court, we do not think that the respondents were required to issue any further order. As regards the material on which reliance was placed, suffice it to say that they could not result in continuing the petitioner in service when the order passed by this Court was clear and specific. In our opinion after this order no further order or notification was required to be issued.

E
F As regards second submission, the amount determined to be payable under Group Insurance Scheme was not disputed. In fact the learned counsel for Union of India produced a cheque for the aforesaid payment. But the petitioner claimed that he was entitled for payment under this head even after release. He urged that an officer even after release could deposit certain amount and on such deposit the benefit under the scheme was available to him. He further urged that in case of officers released from the Army on account of disability on recommendation of Medical Board even this amount was not required to be deposited. We do not consider it necessary to examine the rules as the petitioner having not been released on recommendation of Medical Board and he on his own showing having not deposited any amount nor having made any application for grant of this benefit was not, in our opinion, entitled to any further amount under this head.

G
H As regards Defence Service Officers' Provident Fund, it was urged

that this amount has been calculated treating the petitioner as Captain whereas he was to be treated as an officer in the higher rank and the amount should have been calculated on that basis. Suffice it to say that provident fund is paid on contribution made by an employee. Since, admittedly, no contribution was made by the petitioner in any other capacity except as Captain, the amount determined to be payable to petitioner is correct. We have not accepted his submission that he continued in service even after 1986, therefore, he could not claim any further amount under this head.

As regards the third recommendation in the Report, it was urged on behalf of the respondents that this payment could not be calculated as the petitioner had not submitted the certificate from the Principal of the institute. We do not find any justification for such objection, after such long time, and direct the authorities to calculate the amount and make the payment within a month from today.

As regards Terminal Gratuity benefit, the learned counsel for the Union of India produced a cheque and urged that the total amount due under this head was Rs. 14000 and odd out of which payment of Rs. 5000 had been made till September, 1970. Since the amount was not disputed, we think that the petitioner is entitled to the amount as calculated by the Department which may be paid to him immediately.

As regards disability pension, the respondents have filed chart, now, showing the disability pension payable to the petitioner from 21st February, 1981 to 31st December, 1985 at Rs. 590 p.m. whereas from 1st January, 1986 to 14th November, 1995 at Rs. 1283 p.m. How this figure has been worked out is narrated thus :

"The above has been calculated by CDA(P) on the basis of that Officers of the rank of Capt. having 20 years service is entitled to Service element of Pension @ Rs. 750 per month. However, when an Officer's qualifying service is less than the standard service for his rank (20 years in this case), the amount of retiring pension is worked out by making deductions from the retiring pension which would have been admissible on retirement in the appropriate rank at double the rate as given in the Pension Regulations for the Army. Since the Officer had completed only 16 years of service four deductions at double the rate (Rate prescribed for the scale

A Rs. 601 - 750 is Rs. 20) worked out to Rs. 40x4 = 160. Accordingly the Service element is Rs. 750 -160 + Rs. 590 w.e.f. 21.2.81 to 31.12.85.

B Consequent to the recommendations of IVth Pay Commission, the service element w.e.f. 1.1.86 is required to be consolidated as follows :-

Existing Pension	—	Rs. 590
Relief	—	Rs. 538
C Difference of Relief	—	Rs. 125
Difference of existing and revised pension	—	Rs. 30

D Rs. 1283 p.m. w.e.f. 1.1.86"

No objection has been filed by the petitioner to it. It is, therefore, accepted as correct. The petitioner is entitled to this payment. The amount shall be paid forthwith.

E So far as the allotment of a restaurant in Block 'E', East of Kailash and its subsequent revocation are concerned, the matter is not very clear. According to learned counsel for the DDA, the fault was of the petitioner as he did not deposit the instalments as determined. Further, according to him, the petitioner had approached the High Court of Delhi by way of a writ petition which was dismissed. But that was contested by the petitioner and it was claimed that the allotment was in respect of a restaurant, whereas the dispute for which the petitioner had approached the High Court was in respect of a plot. We do not propose to enter into this controversy and leave it open to the petitioner to seek his remedy before the appropriate forum. In any case, this was not a dispute before this Court either in 1980 or in 1986 and, therefore, this could not be decided in these contempt proceedings.

G As regards providing of a telex and fax machine at the cost of the Department, we do not find any justification for the same. But it is undisputed that the petitioner had two telephones which were disconnected and the total outstanding is approximately Rs. 1000 and odd. The

H

suggestion made by the learned Addl. Solicitor General for exploring possibility of settlement appears to have failed. The Department is not willing to accede to the request of the petitioner. However, after having heard the learned counsel for the Department and gone through the record, we are of the opinion that if the petitioner deposits the total outstanding, *i.e.*, approximately Rs. 1000 and odd, within a period of one month from today, the Department shall reconnect one of the telephones within one month thereafter.

We hope that this order will finally bring down the curtain on the litigation which has been going on for nearly 30 years. But we are constrained to observe that the petitioner was not paid the sums which were due to him under the Group Insurance Scheme, Defence Service Officers' Provident Fund, Children Education Fund and Terminal Gratuity benefits. The total amount, excluding the amount of Children Education Fund, comes to approximately Rs. 21000 and odd. That this amount has not been paid to the petitioner for all these years brings out fully the observation made by this Court that the Department was viewing the matter as one of false prestige. In the circumstances, there is no option but to award an interest of 14 per cent on this amount from March 1986 to February, 1994. The petitioner shall further be entitled to interest @ 14% on Children Education Fund. The Department shall pay interest on same rate at the total pension from March, 1986 to February, 1994.

Before parting with this case we record our deep appreciation for the hard and sincere labour undertaken by Shri Altaf Ahmed, the learned Addl. Solicitor General.

In the result, this contempt petition is disposed of in the terms indicated above. No orders are necessary on CrI. M.P. No. 5726 of 1993. The petitioner shall be entitled to his cost which is assessed at Rs. 10,000.

S.M.

Petition disposed of.