

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2861 OF 2012  
(Arising out of SLP(C) No. 8103 of 2009)

SHILA NAND SINGH

Appellant

VERSUS

UNION OF INDIA & ORS.

Respondents

O R D E R

1. Delay Condoned

2. Leave granted.

3. This appeal is directed against the judgment and order passed by the High Court of Delhi in Writ Petition (C) No. 144/2008 dated 05.03.2008. By the impugned judgment and order, the High Court has rejected the writ petition and has confirmed the orders passed by the respondent authorities.

4. The appellant was appointed as Sepoy in the Indian Army. For his unauthorised absence, a charge sheet was issued to him and, thereafter, a Summary Court Martial was held by the respondents. Based on the findings of the Summary Court Martial, an order of dismissal dated 28.10.1999 was passed against the

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appellant. The appellant had called in question the said order before the Allahabad High Court, which came to be rejected on the ground that the High Court did not have territorial jurisdiction to entertain the petition.

5. Thereafter, the appellant had filed a petition before the High Court of Delhi. The said petition came to be disposed of on 27.4.2007 with a direction that the appellant should exhaust the

remedy provided under the Army Act, 1950 (the 'Act' for short).

6. Since the petition filed by the appellant under Section 164(2) of the Act was also rejected by the respondent authorities, the appellant once again approached the High Court of Delhi.

7. Curiously, before the High Court of Delhi, the appellant did not question the correctness or otherwise of the order of dismissal, dismissing the appellant from service. However, he claimed that since he had rendered service for more than 15 years, he is entitled to the pension, gratuity and other service benefits.

8. The primary contention of the appellant, before the High Court of Delhi was that, there is a disparity while granting pensionary benefits to the commissioned and non-commissioned officers, though both may be dismissed from service. The High

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Court of Delhi, after considering the said issue and after relying upon the judgments of this Court, has come to the conclusion that even if such a disparity exists, the commissioned and non-commissioned officers form a separate class altogether, and accordingly it sustained the claim of the respondents in not granting the pensionary benefits to the appellant.

9. Though this issue was not canvassed in the appeal filed, but in view of the permission granted by this Court, the appellant has filed an additional affidavit, inter alia, contending that Regulation 16(a) vis-à-vis Regulation 113(a) of the Pension Regulations for the Army, 1961 (the 'Army Regulations' for short) are arbitrary and, therefore, violative of Article 14 of the Constitution of India. The prayer made in the additional affidavit is replied by the respondents by filing their counter

affidavit.

10. We have heard Smt. Shyamla Pappu, learned senior counsel appearing for the appellant and Shri. H.P. Raval, learned Additional Solicitor General appearing for the respondents. We have also carefully perused the provisions of Regulation 16(a) and Regulation 113(a). We have also looked into certain observations made by this Court in the case of Union of India & Others Vs. Subedar Ram Narain & Others reported in (1998) 8 SCC 52. In the said decision, this Court, in paragraphs 14 and 15, has stated as

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under:-

"14. It was also submitted by Shri 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.

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."

11. Learned Additional Solicitor General, Shri Raval, has also brought to our notice the amended Army Regulations by substituting Regulation 16, which is relating to commissioned officers by new Regulation 29 and also by substituting Regulation 113 by Regulation 41 relating to non-commissioned officers. Now, the

Regulations make it clear, that, both the commissioned and non-commissioned officers are treated at par and if a commissioned officer and non-commissioned officers are cashiered and dismissed

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from service, they would not be entitled for the service benefits.

12. In view of the dicta of this Court and also in view of the amended Regulations, we are of the opinion that the High Court of Delhi was justified in rejecting the claim of the appellant for grant of pensionary benefits.

13. In view of the above, we do not see any legal infirmity in the judgment and order passed by the High Court of Delhi. Accordingly, the appeal is dismissed. No order as to costs.

.....J.  
(H.L. DATTU)

.....J.  
(ANIL R. DAVE)

NEW DELHI  
MARCH 15, 2012

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ITEM NO.1

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8103/2009

(From the judgement and order dated 05/03/2008 in WPC No.144/2008 of The HIGH COURT OF DELHI AT N. DELHI)

SHILA NAND SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing rejoinder and prayer for interim relief and office report)

Date: 15/03/2012 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE H.L. DATTU  
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Dr. Shyamla Pappu, Sr. Adv.  
Mr. R. Krishnaamorthi, Adv.

Mr. K.K. Singh, Adv.  
Mr. Jitendra Kumar, Adv.

For Respondent(s) Mr. H.P. Raval, ASG  
Mr. R. Balasubramanian, Adv.  
Mr. C.V. Subba Rao, Adv.  
Mr. Anand Mukherjee, Adv.  
Mrs Anil Katiyar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

Appeal is dismissed of in terms of the signed  
order.

(NAVEEN KUMAR)  
COURT MASTER

(RENUKA SADANA)  
COURT MASTER

(Signed order is placed on the file)