

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
16.

O.A. No. 321 of 2010

Ex. Nk. Hans Raj Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. M.K. Gaur, Advocate.

For respondents: Sh. Mohan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

**ORDER**  
**15.11.2011**

1. Petitioner by this petition has prayed that the order dated 27<sup>th</sup> January 2009 may be quashed and Respondents may be directed to grant a provisional pension to the Petitioner from the date of discharge of service i.e. with effect from 1st January 2000 with interests and costs.

2. This is a very peculiar case in which Petitioner and his co-accused both were chargesheeted under Section 302 IPC and trial culminated into conviction of both of them. Both of them filed an appeal against the conviction before the Hon'ble High Court of Rajasthan and sentence awarded to both of them were suspended.

3. The brief facts are that an FIR was lodged on 24<sup>th</sup> October 1992 at Police Station Kisangadh Bas (Alwar) for criminal case of suspected murder and Petitioner accused remained in Civil Jail up to 9<sup>th</sup> December 1992. The criminal case was decided by the Sessions Court Kisangadh Bas (Alwar) on 3<sup>rd</sup> November 1998 and Petitioner was awarded life imprisonment along with 9 other persons including one

Om Prakash Yadav a Sepoy of Indian Army. Thereafter an appeal was filed which came to be registered as Criminal Appeal No. 770 of 1998 along with the Bail Application No. 704 of 1998 before Hon'ble Jaipur Bench of Rajasthan High Court and the Hon'ble High Court granted the bail to the Petitioner on 29<sup>th</sup>/30<sup>th</sup> June 1999. The case is said to be still pending with the Hon'ble Rajasthan High Court. The case of co-accused of the Petitioner namely Om Prakash yadav bearing Service No. 14399456 was identically situated and his sentence was also suspended. However after conviction the Petitioner's services were discharged with effect from 1<sup>st</sup> January 2000 as he was no longer required under Section 20 of the Army Act read with Army Rule 13 (3) III (v) on the administrative grounds. The Petitioner represented before the authorities for grant of a provisional pension and on 23<sup>rd</sup> March 2004 the Records Office referred the case of the Petitioner to PCDA(P) Allahabad for grant of provisional pension under Regulation 3(B) of the Pension Regulations Part-I, 1961. However that was rejected and then Petitioner filed an appeal on 16<sup>th</sup> January 2006 before the Ministry of Defence against the rejection by the PCDA(P) Allahabad. However this was rejected by the Army HQ on the ground that Petitioner is not entitled to service pension hence the appeal is not justified. Against this, the Petitioner filed a Civil Writ Petition No. 8502 of 2007 before the Hon'ble Delhi High Court and same came to be disposed of on 19<sup>th</sup> September 2008. The Hon'ble Delhi High Court made the following observations:

"We find merit in the contentions of the Petitioner insofar as the non-decision and forwarding of the appeal to the PCDA (P) Allahabad are concerned. The Petitioner is aggrieved by the orders passed by the PCDA (P) Allahabad and thus it is the appeal authority which would have to examine the case and take a decision on the same.

We direct the competent authority to take a decision on the appeal of the Petitioner also taking into consideration the plea as set out in para 4.4 of the writ petition and a reasoned decision be communicated to the Petitioner within a period of three (3) months from today."

4. In compliance of the directions given by the Hon'ble Delhi High Court the authorities disposed of the appeal of the Petitioner by the order dated 27<sup>th</sup> January 2009 and rejected the grant of provisional pension to the Petitioner. It is alleged in para 4.4 of the writ petition that Ex. Sepoy Om Prakash Yadav was also chargesheeted along with the Petitioner and his sentence was also suspended along with the Petitioner by the Hon'ble Rajasthan High Court. The co-accused of the Petitioner was allowed to continue in service and he was discharged from service after completion of 16 years and 9 months of service on 1<sup>st</sup> May 2006 and he was granted a provisional pension. Therefore when this fact was brought to the notice of Hon'ble Delhi High Court that a person similarly situated has been transferred to Pension Establishment on fulfilling the terms and conditions and not discharged on administrative grounds as was done in the case of Petitioner, the Hon'ble High Court directed the Respondents to consider both the matters together and pass a speaking order. In pursuance of the directions given by the Hon'ble Delhi High Court on 7<sup>th</sup> January 2009 a speaking order was passed by the Records Office of the Mahar Regiment, which is now subject matter of this petition.

5. Therefore a very peculiar situation has arisen in this case. Both these accused were chargesheeted and case was committed to Sessions Court under Section 302 of IPC and the learned Sessions Court convicted both of them, both filed an appeal and sentence awarded to both the accused was suspended by the



Hon'ble High Court of Rajasthan. Petitioner was discharged on 1<sup>st</sup> January 2000 from service and he was denied the pension whereas his co-accused who was identically situated allowed to continue in service and completed 16 years and 9 months of service he was transferred to the Pension Establishment and discharged from service on 1<sup>st</sup> May 2006 with provisional pension. Therefore both are identical cases, similarly situated and similarly chargesheeted have been dealt with differently. Therefore in order to balance the equities the Hon'ble Delhi High Court remitted the matter to the Government and the Government by the order dated 27<sup>th</sup> January 2009 disposed of the petition filed by the Petitioner and distinguished on the ground that since the Petitioner was dismissed from service on 1<sup>st</sup> January 2000 whereas the Ex. Sepoy Om Prakash Yadav was transferred to Pension Establishment after completion of tenure of service i.e. he has put in 16 years and 9 months of service and discharged on 1<sup>st</sup> May 2006 with a provisional pension. Therefore both the cases were distinguish. The reasons given in the order dated 27<sup>th</sup> January 2009 distinguishing both these cases reads as under:

"(b) It is revealed from the records that you were discharged from service under Rule 13 (3) III (v) as service no longer required on administrative grounds under Section 20 of Army Act after following proper procedure i.e. serving Show Cause Notice etc., therefore you are not entitled for Service Pension as the pension is subject to good conduct as per Para 4 of the Pension Regulation Part-I, 1961 and due to cause/reason of discharge under the ibid rules.

(c) The case of No. 14399456 Ex. Sep. Om Prakash Yadav is different from your case as he was discharged/transferred to Pension Establishment on fulfilling terms and conditions and not discharged on administrative grounds by serving Show Cause Notice under Army Act Section 20 (3) Note 3. Since clause of discharge is not the same hence the case is

not identical for grant of provisional pension as you were discharged under Army Rule 13 (3) III (v) as service no longer required under administrative grounds and therefore not entitled for provisional pension under the existing rules."

6. Now in this background the question that arises for our consideration is that how to set the equities right. It is true that Petitioner when he was convicted by the trial court on 3<sup>rd</sup> November 1998 he was dismissed from service with effect from 1<sup>st</sup> January 2000 whereas a similarly situated person like Om Prakash Yadav was allowed to continue and he completed his tenure of 16 years and 9 months before he was discharged from service by transferring into the Pension Establishment with effect from 1<sup>st</sup> May 2006 with provisional pension. Therefore the discrimination in both the cases appears to be writ at large. It is true that after the orders passed by the Respondents of the dismissal of the Petitioner from service in 2000 is concerned cannot be interfered as he had been dismissed on conviction by the trial court but the fact remains that similarly convicted person whose appeal is pending in the Hon'ble High Court and whose sentence has been suspended was allowed to continue his tenure of 16 years and 9 months and discharged from service with effect from 1<sup>st</sup> May 2006 with provisional pension. The person similarly situated, has been treated dissimilarly creates a discrimination amongst the persons similarly situated which is in serious violation of Articles 14 and 16 of the Constitution of India.

7. The justification which had been given by the Respondents that since he was dismissed from service and another person who has been given discharge on completion of tenure of service, we fail to appreciate the distinction between the two. We do not want to comment on continuation of Om Prakash Yadav as he was

allowed to continue the tenure and he has been given the provisional pension but at the same time to deny a provisional pension to the Petitioner makes a heart burning and is a serious case of discrimination amongst two persons who were similarly situated. Therefore in the same criminal case with two similarly situated persons these two inconsistent orders cannot survive. Therefore in order to reconcile two inconsistent situations, we direct the Respondents to grant a provisional pension to the Petitioner under Regulation 3 (B) of the Pension Regulation for the Army, 1961 (Part-1) so that the inconsistency can be reconciled. However we condition this order that in case the conviction of the Petitioner is being upheld by the Hon'ble High Court of Rajasthan then the grant of provisional pension will discontinue and it will be open for the Respondents to pass a fresh order in accordance with law. However in order to impart justice to the Petitioner he should be treated similarly as has been done in the case of Om Prakash Yadav. Same treatment should also be given to the Petitioner as he has also put in 18 years and 12 days of service. Respondents are directed to release a provisional pension to the Petitioner from the date of this order. It will continue till the criminal appeal is decided by the Hon'ble Rajasthan High Court. The authorities should have taken into consideration the subsequent order dated 5<sup>th</sup> May 2006 passed in the case of a similarly situated person instead of driving the Petitioner to litigation. Be that as it may, the fact remains that these inconsistencies can only be ironed out by granting a provisional pension to the Petitioner from the date of this order so that the feeling of discrimination is put to rest.

8. Accordingly we allow the petition and direct the Respondents to grant the Petitioner a provisional pension till the criminal appeal filed by the Petitioner in the



Hon'ble Rajasthan High Court is decided. This exercise should be done within three months. Petition is allowed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
November 15, 2011  
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