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UNION OF INDIA AND ORS.

v.

LT. COL P.S. BHARGAVA

JANUARY 10, 1996

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[J.S. VERMA AND B.N. KIRPAL, JJ.]

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Service Law :—Terminal benefits—Entitlement to—Army Officer—Completed minimum period of qualifying service for retiring person—Subsequently, voluntarily resigned—Held : Such Army Officers who voluntarily resign could not be automatically deprived of terminal benefits—No effect need be given to Army Headquarter's letter dated 25.4.1981—Pension Regulations for the Army, 1961—Regs 3, 4, 16(a) & (b), 22, 25, 26 and 38.

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Constitution of India, 1950 : Article 136—Pleading—New Plea—Writ petition challenging acceptance of resignation rejected by High Court—Contention of entertainability of second writ petition by High Court not raised before High Court—Held : such a new contention not allowed to be raised for the first time before the Supreme Court.

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The respondent joined the Army Dental Corps and thereafter he served in different capacities and was classified as a specialist and had been promoted to the rank of Lt. Colonel. The respondent, having completed the minimum period of qualifying service for retiring pension, wrote, letter to the appellant requesting permission to resign from service. The appellant accepted the said resignation but mentioned that the respondent would not be entitled for pensionary benefits vide Army Headquarter letter dated 25.4.1981.

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Being aggrieved the respondent filed a writ petition before the High Court challenging the acceptance of his resignation. However, the High Court rejected this writ petition. Subsequently, the respondent filed a second writ petition before the High Court claiming pension and other terminal benefits which was allowed. Hence this appeal.

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On behalf of the appellant it was contended that the second writ petition should not have been entertained by the High Court because the respondent had not claimed any relief with regard to pension and other terminal benefits. However, the appellant conceded that this contention was

not raised before the High Court.

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Dismissing the appeal, this Court

Held : 1.1. It is not the case of the appellant that the respondent's service was not satisfactory. Therefore, no reduction of pension or gratuity under Regulation 3 of the Pension Regulations for the Army, 1961 could have been ordered. There is no suggestion that the conduct of the respondent was such as to deprive him of the terminal benefits under Regulation 4. [136-A-B]

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1.2. Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service for retiring pension being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignation of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, so such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits. Therefore, no effect need be given to the Army Headquarter letter dated 25-4-1981 which states that the pensionary benefits will be lost if an officer resigns from service. [136-F-H, 137-A]

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2. It will not be proper, at this late stage, to allow the appellant to raise the contention of entertainability of the second writ petition by the High Court, the same having not been raised before the High Court, for the first time before this Court. [134-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 252. of 1988.

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From the Judgment and Order dated 25.4.87 of the Assam High Court in C.R. No. 994 of 1986.

N.N. Goswami, A.K. Srivastava, Ms. Anubha Jain and P. Parmeshwaran for the Appellants.

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- A M.N. Krishnamani, Ms. Nishi Bhargav, P.N. Bhargav and P.K. Jain
for the Respondent.

The Judgment of the Court was delivered by

- B **KIRPAL, J.** In this appeal, from the judgment of the Guwahati High
Court, the question of law requiring consideration is whether an army
officer, who has earned pensionary and other retirement benefits, must
forfeit the same on his resigning the job from the Army.

- C The respondent joined the Army Dental Corps sometimes in the year
1960. He was given grading in army in 1962. Thereafter he served in
different capacities and was classified as a specialists and had been
promoted to the rank of Lt. Colonel. On 2.1.1984 the respondent wrote a
letter requesting for permission to resign from the service w.e.f. 30.4.1984
or from an early date. The said letter contained the reasons why he wanted
to resign. The said resignation was accepted by communication dated
D 24.7.1984 in which it was stated that the respondent shall stands relieved
of all army duties as early as possible, but not later than 24.8.1984. In this
letter, it was also mentioned that consequent upon his resignation the
respondent shall not be entitled to gratuity, pension, leave pending resig-
nation and travel concession.

- E On the receipt of the aforesaid letter, the respondent wrote a letter
dated 18.8.1984 stating that he was not interested in leaving the service.
This was followed by an another letter dated 22.8.1984 wherein the respon-
dent prayed for cancellation of permission to resign. It was also stated
therein that if it was not possible to cancel such permission, then his
F application may be treated as being one for release/pre-mature retirement.
These letters were presumable written because the respondent realised that
he was being deprived of pension, gratuity etc. as a consequence of his
resignation. The respondent's letters dated 18.8.1984 and 22.8.1984 were
not accepted and the respondent was "struck off" the strength on 24.8.1984.

- G The respondent soon after writing of letter dated 22.8.1984, filed a
writ petition in the Guwahati High Court being Civil Rule No. 570 of 1984.
The relief which was sought in that Civil Rule related only to the accep-
tance of his resignation. Two contentions were urged before the High
Court which were (i) the resignation was not accepted by the competent
H authority and as such the acceptance of resignation could not be given

effect to and; (ii) the letter of withdrawal should have been considered by the authority and the petitioner ought to have been allowed to withdraw the letter seeking the permission for resignation. This writ petition was, however, rejected. A

The respondent then filed a fresh writ petition being Civil Rule No. 994 of 1986 in which it was contended that he should not be deprived of pension and other benefits. It was contended that the pension was not a matter of grace and as he had completed the qualifying service, he was entitled to the pensionary and other benefits. B

The appellants, in its reply before the High Court, relied upon a letter dated 25.4.1981 of the Army Headquarter in which it was, *inter alia*, stated that if an officer was permitted to resign his commission, then he would not be entitled to any terminal benefits such as pension, gratuity and leave pending resignation. C

The Guwahati High Court vide its judgment dated 25.4.1987 came to the conclusion that it was unreasonable to deny terminal benefits like pension in cases of resignation where prior permission was necessary to resign. Without striking down the contents of the aforesaid letter dated 25.4.1981 it came to the conclusion that the conduct of the respondent showed that he did not intend to lose his pension and other terminal benefits. It held that the aforesaid Army Headquarter's letter, containing the provision of automatic forfeiture of pensionary and others benefits in case of resignation, did not appear to be reasonable and could not, therefore, be given effect to. In this connection, it observed that "as validity of this provision has not been challenged in the present proceeding, we are leaving the matter only by saying that we are not enforcing the provision". The High Court, accordingly, allowed the writ petition and directed the appellants herein to make available to the respondent all the admissible terminal benefits. D E F

On the day the judgment was pronounced, a request was made for a certificate to leave to this Court. This prayer was rejected. Thereafter the High Court *suo moto* by order dated 30.4.1987 issued a certificate Under Article 134A(a) of the Constitution observing that this was a fit case for appeal to this Court under Article 133(1) of the Constitution. Hence, this appeal. G

It has been first sought to be contended on behalf of the appellant H

- A that the second writ petition should not have been entertained by the Guwahati High Court because the respondent had earlier filed a writ petition challenging the acceptance of his resignation but had not claimed any relief with regard to the terminal benefits. It is fairly conceded by Mr. Goswami, the learned counsel for the appellant, that this contention was not raised before the High Court and, in our opinion, it will not be proper, B at this late stage, to allow the Union of India to raise the contention in this appeal for the first time.

- C It was then submitted on behalf of the appellant that according to the aforesaid letter dated 25.4.1981, there was an automatic forfeiture of the terminal benefits on the resignation of the respondent having been accepted and the High Court erred in granting relief to the respondent.

- D It will be appropriate, at this stage, to refer to the provisions regarding the grant of terminal benefits to which our attention has been invited. The grant of pension to the army personnel is governed by "Pension Regulations for the Army" (hereinafter referred to as "the Pension Regulation"). These Regulations have been issued under the authority of the Government of India and they apply to the personnel of Regular Army, the Defence Security Corps and the Territorial Army.

- E Regulation 22 of the Pension Regulations relates to the grant of pension and is as under :

- F "An officer permitted to retire from service may be granted a retiring pension or gratuity in accordance with the regulations in this chapter, provided that a retiring gratuity may be granted at the discretion of the President only in an exceptional case to an officer who is permitted to retire or whose services are otherwise terminated after completing the minimum qualifying service".

- G Regulation 25 provides for the qualifying service and is in the following terms :

- "25(a) The minimum period of qualifying service required for a retiring pension is 20 years (15 year in the case of a late entrant see regulation 15). Only completed years of qualifying service shall count.

- H (b) The minimum period of qualifying service for a retiring

gratuity shall be 10 years."

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The service which qualifies for pension is provided for in Regulation 26. Regulation 38 provides that All service which qualifies in full for retiring pension also qualifies for gratuity and on the same conditions.

It would appear from the aforesaid Regulations that on the completion of the qualifying service, an officer, like the respondent, would be entitled to get pension and gratuity. The Regulations, however, contained three provisions which specifically provide for situations where full amount of pensionary benefits need not be given. These are Regulations 3, 4, and 16 which read as under :

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"(3) 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 or gratuity as it thinks proper.

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(4) Future good conduct shall be an implied condition of every grant of a pension or allowance.

(16)(a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his/her pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise qualified, has he/she retired on the same date.

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(b) When an officer who has to his/her credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign or in the event of his/her refusing to do so is retired from or gazetted out of the service, he/she may at the discretion of the President be granted a pension at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date in the normal manner".

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The mere perusal of Regulation 3 shows that the competent authority may make a reduction in the amount of pension or gratuity if the service has not been satisfactory. The reading of this Regulation clearly shows that normally full rate of pension or gratuity is to be granted unless the service

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A which is rendered is not satisfactory. It is not the case of the appellant that the respondent's service was not satisfactory. Therefore, no reduction of pension or gratuity under Regulation 3 could have been ordered.

B Regulation 4 makes it a condition for the grant of pension or allowance that the conduct of the officer must be good. There is no suggestion that the conduct of the respondent was such as to deprive him of the terminal benefits under Regulation 4.

C Regulation 16(a) gives the President the power either to forfeit or to reduce the rate pension in the event of an officer being cashiered, dismissed or removed from the service. Under sub-regulation (b) of Regulation 16, if an officer is called upon to retire or resign, he may at the discretion of the President be granted a pension at a rate not exceeding what he would have otherwise qualified. Regulation 16 gives the power to the President to reduce or forfeit the pension of an officer who has to his credit the minimum period of qualifying service only in the event of his being cashiered, dismissed or removed from the service. Even in such a circumstance, there is no automatic forfeiture of pension or gratuity. An officer whose service is terminated by reason of his being cashiered, dismissed or removed from the service would normally be entitled to get his pension though the President has a right to forfeit or reduce the pension.

F Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits.

H The letter of 25.4.1981 issued by the Army Headquarter does state

that pensionary benefits will be lost if an officer resigns from service, but A
it has not been shown to us that this Letter, in any way, supersedes or
purports to amend or modify the aforesaid Regulations. In view of the
specific right of pensionary benefits having granted by the said Regulations
no effect need be given to the letter dated 25.4.1981.

In our opinion, the decision of the High Court under appeal, whereby B
the writ petition filed by the respondent had been allowed, calls for no
interference. The appeal is, accordingly, dismissed with costs. Counsel fee
Rs. 5,000 (Rupees Five Thousand only).

V.S.S.

Appeal dismissed.