

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).7204 of 2015

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

AJAY KUMAR

Respondent(s)

O R D E R

The respondent joined the Indian Naval Service as a Matric Entry Recruit (MER)/ direct entry Sailor in 1985. He was promoted as a Radio Operator and later as a Radio Operator I and finally to the rank of Petty Officer Radio (Telegraphic). He was due to retire on 31.07.2000. A few months before his retirement, a charge sheet was issued to him alleging involvement in espionage activities.

A summary trial was held under Section 93 of the Navy Act, 1957. After conclusion of the trial, an order of punishment was passed on 23.08.2001, dismissing the respondent from naval service. He was also reduced in rank to Radio Operator First Class. Further, he was deprived of the Third, Second and First Good conduct Badges.

The appeal filed by the respondent against the order of punishment was rejected on 21.04.2004. The respondent

made a request for grant of pension which was also rejected. Aggrieved by the rejection, he approached the High Court of Judicature at Patna by filing a Writ Petition which was transferred to the Armed Forces Tribunal, Regional Bench, Kolkata. The Tribunal allowed the transfer application on the ground that a show cause notice was not issued to the respondent and an opportunity was not given to him before any decision was taken to deny pension. The Tribunal placed reliance on its decision in TA 92 of 2010 (*Gangeshwar Baitha v. Union of India & Ors.*) decided on 10.01.2011. The Tribunal also relied on the decision of this Court in the case of *Major G.S. Sodhi v. Union of India* and also a Full Bench decision of the Delhi High Court reported in 1997(4) SLR 151 (*Brig. A.K. Malhotra v. Union of India*) in support of the finding that a show cause notice has to be issued before a person is deprived of his pensionary benefits.

We have heard the learned counsel appearing for the parties and have considered the material on record.

Regulation 69 of the Pension Regulations (Navy) 1964 is as follows:

"A sailor who is dismissed under the Act is ineligible for pension or gratuity in respect of service rendered by him before his dismissal

provided that the Central Government may, where it is satisfied that the exceptional circumstances of the case justify it grant service pension or gratuity at a rate not exceeding that for which the sailor would have been eligible had he been discharged on the date of dismissal."

It is clear from the above regulation that a person who is dismissed from service becomes ineligible for pension or gratuity. Only in exceptional circumstances, the Central Government may grant pension to a person who has been dismissed from service.

The learned counsel for the respondent submitted that the conduct of the appellants in dismissing him from service just before his retirement and thereafter, denying him pension is to be taken note of. According to him, the respondent would not have admitted his guilt if he was informed that pension would not be granted to him. We are unable to accept such a submission. In this case, we are only concerned with the point as to whether the respondent is entitled to pension and whether he was entitled to show cause notice before his request for pension was denied.

As stated above, regulation 69 provides that a person who has been dismissed from service becomes automatically ineligible for payment of pension and a person who has been dismissed from service is not entitled for any show cause notice. It is only in cases where the government intends to grant pension in the peculiar facts of the case, such benefit can be given to a person who has been dismissed from service.

For the aforementioned, the judgment of the Tribunal
is set aside and appeal is allowed.

Pending application, if any, stand disposed of.

.....J
(L.NAGESWARA RAO)

.....J
(HEMANT GUPTA)

NEW DELHI;
28th NOVEMBER, 2019

ITEM NO.103

COURT NO.11

SECTION XVII

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

Civil Appeal No(s).7204/2015

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

AJAY KUMAR

Respondent(s)

Date : 28-11-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
 HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. R.Balasubramanian, Sr. Adv.
 Mr. Rajan Kumar Chourasia, Adv.
 Ms. Priyanka Das, Adv.
 Mr. Arvind Kumar Sharma, Adv.
 Mr. Sumit Upadhyay, Adv.
 Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) Mr. C.M.Angadi, Adv.
 Mr. Rameshwar Prasad Goyal, AOR

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

The appeal is allowed in terms of the
 signed order. Pending application, if any, stand
 disposed of.

(B.Parvathi)
 Court Master

(Anand Prakash)
 Court Master

(Signed order is placed on the file)