

Capt. Rachpal Singh vs Union Of India (Uoi) on 4 December, 1986

Equivalent citations: AIR1987SC212, [1987(54)FLR30], 1987LABLC213, 1986(2)SCALE941, (1987)1SCC172, 1988(2)SLJ114(SC), 1987(1)UJ167(SC), AIR 1987 SUPREME COURT 212, 1987 (1) SCC 172, 1987 LAB. I. C. 213, 1987 (1) UJ (SC) 167, 1987 UJ(SC) 1 167, (1986) JT 966 (SC), 1987 UPLBEC 114, (1987) 54 FACLR 30, (1987) 1 LAB LN 471, (1987) 1 SCWR 127, (1987) 2 ATC 312, (1987) 1 CURLR 52, (1987) 1 SCJ 218, (1986) 4 SERVLR 258, (1987) UPLBEC 114, (1987) 1 SUPREME 163

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Bench: R.S. Pathak, V. Khalid

JUDGMENT

V. Khalid, J.

1. The appellant joined the Indian Army on 9-2-1964, as an Emergency Commissioned Officer. During his service, he was promoted to the rank of acting Captain. He was released from the Army with effect from March 30, 1970, as letter dated February 19, 1970. The appellant states that he sustained three injuries during service. The first injury was sustained while he was on patrolling duty and the second injury during military service. These two injuries were detected in time. There was a third injury linked to the first injury. It was not detected in time but was discovered subsequently. He was placed in temporary medical category 'CEE' for the first two injuries. Subsequently, on 24th April, 1969, this category was upgraded and he was placed in temporary medical category 'BEE-1'. After re-examination.

2. The appellant's case is that his release from service must be on medical grounds after complying with the procedure laid down in Army Rule-15A. This was not done. Therefore, he made various representations to the higher authorities, without success. He filed a suit in the civil Court, Gurdaspur for a declaration that his release was not valid in law. The suit, was dismissed. He then moved the High Court of Delhi in writ No. 53/82, for the issuance of an appropriate direction that his release order was unjust. The writ petition was dismissed. He then moved this Court by special leave. When the special leave Petition was pending, he received a communication dated 16th May, 1983, from the Union of India to the effect that the disability caused to him should be regarded as attributable to military service. On receipt of this letter, he requested this Court to permit him to withdraw his special leave petition with liberty to make suitable representation to the authorities

concerned. this Court permitted the request as per its order dated 9-9-1983. Thereafter he made a representation on 3-10-1983. This was rejected and he was told by order dated 3-1-1984 that he had been discharged on the basis of a phased programme. The appellant moved the Delhi High Court again challenging this order by filing a writ petition. The writ petition was dismissed in limine. Hence this appeal by special leave.

3. As stated above the appellant contends that his release should be under Rule-15A. of the Army Rules and that the order of release based on the alleged phased programme is bad because the procedure laid down in the said Rule has not been followed. According to him, this order had been so worded to escape the procedure laid down in Rule-15A. He strongly relied upon a decision of this Court under similar circumstances in the case of Virendra Kumar v. Union of India. AIR 1981 sc 947 In that case the release order was quashed as the procedure laid down under Rule-15A was not complied with and the officer was directed to be given all the benefits from the date of release to the date of Judgment. The case of the respondent as disclosed from the Counter Affidavit in this case is that the release was not under Rule-15A but under a phased programme. The Counter Affidavit is sworn to by an Assistant Military Secretary. It is stated that the appellant was granted Emergency Commission for the duration of National Emergency and for so long thereafter as his services were required. Emergency Commission was liable to be terminated at any time by the Government of India under para 15 of the Army Instruction.

4. It is further stated in the Counter Affidavit that the appellant's contention that he was at all times governed by Rule 15A of the Army Rules, 1954 is incorrect since the said provision was not applicable to him. He was released from Emergency Commissioned service as he was ineligible to apply for grant of Permanent Commission. Regarding the three injuries it is stated that the first injury was sustained "in a field area on 13th March, 1966, during the course of routine check of night picket/patrol in the camp when he slipped on the terrace at a distance of about 25 yards from the Officers' Mess and accidentally fell down to the extent of 12 feet." That he sustained the first injury while patrolling is, thus, incorrect. The second injury sustained by him on 16th July, 1967, was during organised games. Thus, in accordance with the Court of Enquiry, the first injury is attributable to military service in field area and the second injury is attributable to military service in peace area. Regarding the third injury, it was discovered during hospitalisation and was a sequel to the first injury. It was not treated as a separate disability.

5. It is further stated that the appellant was released from the Army as per Para-15A(iii) of the Army Instructions under the phased programme for release of Emergency Commissioned Officers which was approved by the Government and communicated to all Army Headquarters. The appellant had applied for grant of Permanent Regular Commission, but his application was returned to his unit as he did not fulfil the condition of acceptable medical category and hence was ineligible to apply for grant of Permanent Commission. He filed statutory appeals before the higher authorities which were all dismissed.

6. The respondent disputes that the appellant was released from Indian Army on medical grounds as his category had gone low due to injuries sustained by him during active military service. He was never told at any time that he was released on medical grounds. He takes shelter in the Ministry of

Defence letter dated 16th May, 1983, which inadvertently had mentioned "invalided out of service." This mistake was later corrected. In fact, the appellant was released not by the order dated 16th May, 1983, but under Army Headquarter's letter dated 19th February, 1970, which did not indicate that he was released on medical grounds. The letters on which the appellant relies were issued in connection with grant of disability pension for the Army service rendered by the appellant and are not relevant to the question of release which was effected under separate orders.

7. We would have straightaway allowed the appeal and directed all the benefits to be given to the appellant relying upon Virendra Kumar's case (supra) if the release order was under Rule-15A of the Army Rules. This fact is seriously disputed by the respondent. In Virendra Kumar's case, it was common ground that the release was on account of physical disability which can be seen from the following paragraph:

4. It is common ground that the appellant was released or discharged on account of physical disability. This is also vouched for by the communication from the President's Secretariat to the appellant dated 13/23 April, 1971 extracted in the paper book. Once we assume that the termination of the emergency commission of the appellant was on the basis of medical unfitness or physical disability, the procedure to be followed in releasing the officers becomes important. In Service Jurisprudence, procedural safeguards are of prime significance.

The case on hand is clearly distinguishable because it is not admitted by the respondents that the appellant's release or discharge was on account of his physical disability. Since there is this factual dispute between the parties, we will try to resolve it with reference to the facts of this case.

8. The Army Act, the Rules & Regulations and Instructions thereunder govern the service conditions of the commissioned officers including those on Emergency Commission, like the appellant before us. Termination of Emergency Commission is provided in Rule 15 of the Army Instruction. A contention was raised in Virendra Kumar's case that the Army Instruction did not have any statutory status and could not therefore bind the service conditions of the Emergency Commissioned Officer. This contention was repelled by this Court. We respectfully agree.

Termination of Commission is provided in para 15 of the Army Instruction which reads as follows:

15. TERMINATION OF COMMISSION

(a) The commission of an officer may be terminated at any time by the Government of India-

(i) For misconduct, or if services are found to be unsatisfactory; or

(ii) On account of medical unfitness; or

(iii) If his services are no longer required; or

(iv) If he fails to qualify at any prescribed test or course.

(b) An officer may on giving three months notice be permitted to resign his commission on compassionate grounds of which the Government of India will be the sole Judge. An officer who is permitted to resign his commission on compassionate grounds will not be eligible for terminal gratuity.

(c) An officer granted this commission, if eligible and suitable in all respects may be considered at the appropriate time for Permanent Regular Commission in the Regular Army.

9. The case of the appellant is that his termination was on the second ground while that of the respondent is that it was on the third ground. The appellant takes advantage of an inadvertent mistake that crept into the letter dated 16-5-1983, informing him that he was invalided out of service with 30% disability from 1-6-1970. This mistake was corrected and a letter was sent to him on 11-11-1983, informing him to read "disability from which the officer was found suffering at the time of release" for "disability on account of which the above named was invalided out of service", in the letter dated 16-5-1983. The appellant's case is that this correction has been deliberately made to deny him the benefits due to him. He went on making representations and he was ultimately told by letter dated 3rd January, 1984, that no relief could be given to him. The letter signed by the Under Secretary to the government of India reads as follows :

I am directed to refer to your representation dated 14th Nov. 1982, on the above subject, and to say that your request has been carefully considered. The provisions of Army Rule of 15A which govern invalidment from service are not attracted in your case as you were released from service as per the phased programme of release of Emergency Commissioned Officers.

2. Incidentally, it may be mentioned that this Ministry's letter No. 6 (43)78/Pcn-App. Cttee dated 16 May, 83 status amended vide Corrigendum No. 6 (43)78/Pen-App. Cttee dated 11th November 1983.

10. The appellant does not seriously dispute the case that his release would be justified if it was under the phased programme. Procedure for screening of Emergency Commissioned Officers is well known since it is given wide publicity. Emergency Commissioned Officers apply pursuant to such publication. Those whose applications are in order in all respects are called for interview by the Services Selection Board. The appellant applied for Permanent Commission as part of normal screening courses. His application was returned as he was in a medical category which was not acceptable under the eligibility criteria. He was, therefore not called for the second stage of screening, i.e. interview by the Services Selection Board.

11. The release order came thus, as per the phased programme. He belonged to EC-VII course. He was found ineligible and was released. The respondents have appended the documents showing the details regarding release of Emergency Commissioned Officers and procedure for grant of

Permanent Commission, as Annexures 1 & 2 in the second Counter Affidavit. The screening committee found the appellant ineligible and his release, therefore, followed.

12. Viewed in the light of the phased programme the released order dated 19th February, 1970, is a valid order. The appellant did not seriously press the claim that if his release was under phased programme, it was bad in law. We, therefore, do not go into the question whether the procedure adopted for release under the phased programme was proper or not on the scanty materials made available before us. We are relieved of this exercise since the appellant rested his claim largely on the violation of Rule 15-A.

13. The appellant cannot be credited with a straight case in his reliance on Rule-15A. At all previous stages he met with failure at the hands of the authorities and the High Court. Before this Court also, he did not press his case at the first instance but got the S.L.P. withdrawn, perhaps with justification, in view of a new communication from the higher authorities. In paragraph 9 of the present special leave petition, it is specifically stated that he was released from the Indian Army on 30-5-1970, on medical grounds as his category had gone low due to the injuries sustained by him during the active military service. This statement is sought to be supported with reference to Exhibits D-1 to D-6, dating from 6-4-1971 to 16-5-1983. We would refer to some of them to disabuse the impression that he attempts to create that his release was on medical unfitness. Exhibit D-1, dated 6th April, 1971 is a Certificate which reads:

Certified that Capt. RS DHALI WAL (EC-56482) was granted Emergency Commission in the Army with effect from 9 Feb 64 and released on 30 May 70 according to phased programme. His pro-commission training started on 29 Jul 63.

This clearly shows that he was released according to the phased programme. Exhibit D-2, is dated 11th August, 1972 and reads as follows:

Certified that Capt RS DHALI WAL (EC-56482) ARTY was granted Emergency Commission in the Army with effect from 9 Feb 1964 and released on 30 May 1970 according to phased programme. His pro-commission training started on 29th Jul 63. His character and conduct while in service were good.

This again shows that his release was according to phased programme. Annexure D-3 is dated 12th January, 1976. There is a slight change here which reads as follows:

Based on the entries in the Record of service (IAFZ-2041), it is certified that Shri RACHHPAL SINGH DHALI WAL was granted Emergency Commission with personal No. EC-56482 in the Indian Army with effect from 9 Feb 64. He was released from the Army in low medical category on 30 May 70. At the time of release the officer was holding the rank of A/Cpt.

Though it is stated that he was released in "low medical category" it does not show that it was not according to the phased programme. Exhibit D-4, dated 3rd June,

1976 reads as follows:

Based on the entries in the Record of service (IAFZ-2041) in respect of Ex A / Capt. Rachhpal Singh Dhaliwal (Ex 56482) it is certified that he was granted Emergency Commission in the Army with effect from 09 Feb 64 and was released therefrom with effect from 30 May 70.

2. It is further certified that at the time of release he was suffering with the following disabilities:-

*(i) Fracture lower third Tibia (RT) & Fibula (Rt) and *(ii) Fracture lateral Condyle Tibia (Rt) (*) Authority:- Govt. of India, Ministry of Defence letter No. 216371/76/Pen-C dated 3 June 76.

This also does not show that his release was not under the phased programme. All that it shows are as to what were the disabilities which the appellant was suffering at the time of release. Annexures 5 & 6 dated 3rd June, 1976 and 16-5-1983, respectively, are letters from the Government of India to the Chief of the Army Staff in relation to the appellant. The subject mentioned in both these Annexures is "claim to disability pension in respect of Capt. Section 4S. Dhaliwal." Annexure D-6 reads as follows:

In supersession of this Ministry's letter No. 219170/R-6I/Pen. A dated 24.1.78 and with reference to letter No. 216371/76/Pen-C dated the 3rd June 76 on the above subject, I am directed to say that the President is pleased to decide that the disability on account of which the above named was invalided out of service should be regarded as attributable by military service, composite assessment being 30% Pt. w.e.f. 2.6.1970.

2. The claimant's sheet Roll is forwarded herewith for necessary enforcement thereon and onward transmission to his Commanding Officer. All the other documents are also returned herewith. The receipt of the documents may please be acknowledged.

3. This letter issues with the concurrence of Ministry of Finance (Defence) vide their U.O. No. 862/s,/Pen/83.

This may in some measure support the appellant's case because it shows that the appellant was invalided out of service on account of disability attributable by military service. It is this accidental inadvertent error in this communication that was subsequently corrected by the letter dated 11th November, 1983 and reiterated in the communication dated 3rd January, 1984. The correct position appears to be that at the time of release, the appellant had some disability but the authorities never accepted the position that the appellant was invalided out of service on account of this disability though there were some disabilities which he was suffering at the time of his release.

14. It is relevant to note that most of the Annexures produced by the appellant along with his petition relate to his request for either proper treatment or to appear before a Board for Permanent Regular Commission or for suitable civil employment or for disability pension. Annexure E-4 is a letter to the President of India, written by the petitioner which reads as follows:

I have the honour to bring the following facts to your notice.

(a) I was commissioned in the Army as an EC Officer on Feb 64.

(b) On 13th Mar 66 while I was serving with 1819 PNR I sustained an injury "Fracture Lower third TIBIA and FIBULA Rt Leg." This injury was attributed to military service by a Court of inquiry. The injury was sustained by me while I was on patrolling duty in operational area.

(c) On 16th July 67 while I was serving with 19 AD Regt I sustained an other injury "LATARAL CONDYLE TIBIA Rt. Let. This was also attributed military service by a court of inquiry. I remained medical category CEE (Temporary) for both the injuries.

2. On 17th Jan 70 I was down graded to medical category BEE Two permanent by medical board held at Deolali with 20% of disability.

3. Considering the above facts I have the following submission to make.

(a) I have not so far received a copy of my medical board, held on 17th Jan. 70.

(b) Though I have been recommended for 20% of this disability I have not received any intimation about my disability portion.

(c) A certificate stating that I have served in the Army released on medical ground could have helped me to a great extent for my rehabilitation in civil.

(d) I had booked Refrigerator under indent No. 98104, 9.1.70 while serving in the Army. My money was refunded with my release from the Army.

I request your honour to direct the Army authority to take proper action at an early date.

This shows that the petitioner had himself requested for a certificate to show that he had served in the Army and that he was released on medical ground, so that he could use them for civil rehabilitation. This indicates that the petitioner knew that his release was not on medical ground and also that he was aware that it was as per the phased programme of release of Emergency commissioned Officers. Most of the representations relate to his claim for disability pension. The letter issued on 16-5-1983 also related to disability pension and it cannot have any impact on the order of release with effect from 30th May, 1970. The letter dated 16-5-1983, therefore, cannot be pressed into service for the purposes of building up a case of release on medical ground.

15. we have given our anxious consideration to the facts of this case. There is no reason to disbelieve the respondent's case that an accidental error crept into the order dated 16-5-1983. We are not satisfied that the appellant has made out a case to get any relief since it is not admitted by the respondent that his release was under Rule-15A. The appeal has, therefore, to fail and is dismissed.