

## **Maj. (Retd.) Hari Chand Pahwa vs Union Of India (Uoi) And Anr. on 26 July, 1994**

**Equivalent citations: 1995(4)SCALE552, 1995SUPP(1)SCC221, AIRONLINE 1994 SC 295**

**Bench: Kuldip Singh, S.P. Bharucha**

### **ORDER**

1. The appellant retired from the Indian Army on September 30, 1984 in the rank of Major on attaining the age of superannuation. A General Court Martial (GCM) was ordered against him in the year 1985 on charges of theft while he was in active service. The Gem acquitted him by the order dated February 14, 1985. The revisional authority reviewed the proceedings of the GCM under the Army Act and remanded the same for fresh trial. On reconsideration the GCM by its order dated July 8, 1985 held the appellant guilty and awarded six months rigorous imprisonment and also cashiered him. The punishment was promulgated and came to be effective from September 23, 1986. The conviction and sentence awarded by the GCM was not challenged before any court of law and in fact the appellant has already undergone the sentence awarded to him by the GCM. A notice dated July 16, 1990 was issued to the appellant asking him to show cause why his pension and death-cum-retirement gratuity be not forfeited. The said notice was as a consequence of his conviction by GCM. The appellant filed his reply to the notice. The President of India by the order dated June 26, 1991 ordered the forfeiture of his pension and death-cum-retirement gratuity. The appellant challenged the conviction/sentence by the GCM as well as the order of forfeiture of his pension etc. by way of a writ petition before the Delhi High Court. The High Court dismissed the writ petition in limine. This appeal by way special leave is against the order of the High Court.

2. We have in heard learned for the parties. Mr. J.S. Manhas, learned Counsel for the appellant has raised two contentions for our consideration. Inviting our attention to Section 123 of the Army Act (the Act), he has contended that even though a retired personnel who is not subject to the Act may be tried by the GCM but the punishment which can be awarded to him is only that which can be given de-hors the provisions of the Act. To be precise the contention is that the appellant could be awarded the punishment of imprisonment but the punishment of being cashiered from the Army could not be awarded to him because he had retired from the Army. The second contention raised by the learned Counsel for the appellant is that the Pension Regulations 1961 having not been notified in the official gazette, these regulations have no statutory force and as such the pension and death-cum-retirement gratuity already awarded to the appellant can not be forfeited.

3. We may notice the provisions of Section 123 of the Act and Regulation 16 (a) of the Pension Regulations for the Army, 1961 which are as under:

123. Liability of offender who ceases to be subject to Act-(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has

ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such persons shall be tried for an offence, unless his trial commences within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Which a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

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

4. A bare reading of the provision of Sub-section (1) of Section 123 of the Act makes it clear that where a person has ceased to be governed by the Army Act, he may be taken and kept in military custody and "tried and punished for such offence as if he continued to be so subject." Sub-section (2) further provides that the provisions of Sub-section (1) can be made operative within a period of six months of the person ceasing subject to the Army Act (Sub-section (2) has now been amended and the period of six months has been extended to that of three years). Though the appellant had retired from the army service, but by operation of Sub-section (1) of Section 123 of the Army Act, he could be tried by the GCM in respect of the offences committed by him during the period of his actual service and could be in convicted and punished it as if he was subject to the Army Act. The said provision clearly states that a retired person can be tried and punished for such offences as if he continued to be so subject. We, therefore, do not agree with the first contention raised by the learned Counsel for the appellant and reject the same. The GCM could award any of the punishments which could be awarded by the said court under law including to be cashiered from the Army. The provisions of Section 123 make no difference between an officer who is still in service and who was retired from service provided the GCM proceedings are initiated within the period of limitation provided under Sub-section (2) of Section 123 of the Army Act.

5. We do not agree even with the second contention advanced by the learned Counsel. The provisions of Regulation 16(a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these

regulations. It is not disputed by the learned Counsel that the pension was granted to the appellant under the said regulations. The regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds. A show cause notice was issued to the appellant His reply was considered and thereafter the President passed the order forfeiting the pension and death-cum-retirement gratuity. We see no infirmity in the order. The appeal is, therefore, dismissed. No costs.