



2025:DHC:7269-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4860/2023

SHARDA DEVI & ANR.Petitioners

Through: Mr. Himanshu Gautam, Mr. Lokesh Sharma, Mr. Kishan Gautam, Ms. Anuradha Pandey, Advocates

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Keshav Sehgal, GP and Mr. Jatin Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

21.08.2025

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C. HARI SHANKAR, J.

1. Petitioner 1 and Petitioner 2 in this writ petition are the widow and the son of one Ex. Subedar Mahendra Singh Sharma¹, who was dismissed from services of the Border Security Force and subsequently expired. The petitioners, by means of the present writ petition, sought disbursal, to them, of the retiral benefits of Mahendra.

2. During the pendency of this writ petition, Petitioner 1 has also expired and only Petitioner 2 i.e. the son of Mahendra survives to contest this matter.

3. We have heard Mr. Himanshu Gautam, learned counsel for the petitioner and Mr. Keshav Sehgal, learned Government Pleader for the

¹ "Mahendra", hereinafter



respondents.

4. Following a court martial, Mahendra, by order passed in February 1991, was punished with dismissal from service with six months' rigorous imprisonment. Mahendra challenged the said order by way of WP (Crl.) 11/1993, which was subsequently renumbered as WP (C) 6547/2002. He also filed a second writ petition, WP (C) 4263/1997, consequent to his superannuation, seeking disbursal of his retiral benefits.

5. During the pendency of the aforesaid writ petitions, Mahendra expired on 10 July 2006. This Court disposed of both the aforesaid writ petitions, i.e. WP (C) Nos. 6547/2002 and WP (C) 4263/1997 on 2 July 2008 and 5 May 2011, on the ground that as the legal representatives of Mahendra had not been impleaded, the writ petitions had abated.

6. The present writ petition has been instituted thereafter by the wife and son of Mahendra seeking disbursal, to them, of the retiral benefits of Mahendra. As noted, during the pendency of this writ petition, Petitioner 1, the wife of Mahendra, has also expired and the writ petition survives only with respect to Petitioner 2.

7. The issue in controversy is limited. All that the Court has to consider is whether Mahendra was entitled to any retiral benefits.

8. The case of the respondents is that as Mahendra was dismissed



from service, it entails *ipso facto* forfeiture of all his retiral benefits.

9. Mr. Gautam, learned counsel for the petitioner, submits that the case is fully covered by the judgment of the Supreme Court in *UOI v S.S. Bedi*². He draws our attention to the following paragraphs from the said decision:

“13. Punishments awardable by a Court Martial under Section 71 include cashiering in case of officers and forfeiture of service for the purpose of pension apart from the other penalties. Admittedly, the punishment imposed on the appellant is only cashiering from service. There is no dispute that Section 71(h) forfeiting the pension of the appellant has not been resorted to by the respondents.

14. There is merit in the submission of Mr Sridhar that in the absence of an order passed under Section 71(h), the pension of the appellant cannot be forfeited. The judgment of the Tribunal by which the punishment of cashiering from service has been altered to imposition of a fine of Rs 50,000 is subject-matter of this appeal which has been pending for the past seven years. There is nothing on record to show that proceedings have been initiated under Regulation 16(a) of the Pension Regulations.

15. By an order dated 20-1-2013, this Court stayed the execution proceedings only. There may be a justification for the respondents for not initiating proceedings under Regulation 16(a) of the Pension Regulations in view of the pendency of these appeals. The respondents are at liberty to commence proceedings under the Pension Regulations for forfeiture of the pension of the appellant, if they so desire.

16. The Tribunal converted the sentence of cashiering into a fine of Rs 50,000 by holding that the appellant has a blemishless record of service. The Tribunal found the imposition of the punishment of cashiering from service shockingly disproportionate. The Tribunal also highlighted the delay in the complaint made against the appellant. We are not convinced with the reasons given by the Tribunal for converting the sentence from cashiering to imposition of fine of Rs 50,000. We restore the punishment of penalty of cashiering by taking into account the reprehensible conduct of the

² (2020) 8 SCC 700



appellant abusing a position of trust being a doctor which is not condonable. However, we direct the respondents to consider the entire record of service of the appellant and his advanced age while taking a decision to initiate proceedings under the Army Pension Regulations. In case the respondents decide not to initiate proceedings under the Army Pension Regulations, the appellant shall be entitled for all pensionary benefits. The amount of Rs 50,000 deposited by the appellant shall be refunded to him with interest accrued therefrom.”

10. Mr. Gautam points out, quite correctly, that the relevant provisions that apply under the Army Act, which was in consideration before the Supreme Court in *S.S. Bedi* and those which apply under the Border Security Force Act, 1968³ in the present case, are more or less identical. In that case, clause (k) of Section 71 of the Army Act provided for the punishment of cashiering/dismissal whereas clause (h) of Section 71 provided for the punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose. These provisions are identical to clauses (c) and (g) of Section 48(1)⁴ of the BSF Act.

11. The Supreme Court held in *S.S. Bedi* that, as the Court Marial had the discretion to award, apart from the penalty of cashiering/dismissal, also the punishment of forfeiture of services for the purposes of pay and pensionary benefits, and has consciously chosen only to award a punishment of dismissal/cashiering, the forfeiture of the services of the employee for the purposes of

³ “the BSF Act” hereinafter

⁴ 48. **Punishments awardable by Security Force Courts.** –

(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say,—

(c) dismissal from the service;

(g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;



pensionary benefits could not sustain. It is true that, in that case, the respondent relied on on Regulation 16(a) of the Army Pension Regulations, which provided for forfeiture of the pension of an officer at the discretion of the President, and that the Supreme Court, therefore, reserved liberty with the respondents to invoke the said provision if available in law. Nonetheless, on the facts before it and in the light of Section 71 (h) and (k) of the Army Act, the Supreme Court directed that, in the event of the respondents not initiating any proceedings under the Army Pension Regulations, the respondent S.S. Bedi would be entitled to all pensionary benefits.

12. The said judgment, in our view, applies on all fours in the present case.

13. In the present case, too, the respondent consciously awarded to Mahendra only the penalty of dismissal from service envisaged by Section 48(1)(c) of the BSF Act, and did not impose the punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, envisaged in Section 48(1)(g).

14. As such applying the principles in *S.S. Bedi*, the respondent would not be entitled to forfeit the services of the petitioner for the purpose of pay, pensionary benefits or any other purpose.

15. We have also not been shown any provision in the present case, which is similar to Regular 16(a) of the Army Pension Regulations. There is no provision in the BSF Act or the BSF Rules which is



similar to the said provision. As such, we are not inclined even to reserve liberty, which was reserved with the UOI, in the case of **S.S. Bedi**.

16. Mr. Sehgal has drawn our attention to Rule 182⁵ of the Border Security Force Rules, 1969⁶ in this regard. Mr. Sehgal's contention appears to be as the Central Civil Services (Pension) Rules, 1972⁷ applied to the members of the BSF on the date when the BSF Rules came into being, they would, by operation of Rule 182, continue to apply at present. He points out that Rule 24 of the CCS (Pension) obligates the respondents to forfeit the pension of the petitioner consequent on his dismissal from service.

17. Rule 24 of the CCS (Pension) Rules, in terms, does not appear to the petitioner. We proceed, however, to examine whether it would apply by virtue of Rule 182 of the BSF Rules.

18. Rule 182 is a transitory provision and is not in any way comparable to Regulation 16 (a) of the Army Act. Rule 182 only provides that a rule or order *applicable to the BSF on the date when the BSF Rules came to effect* in February 1969 would continue to apply unless abrogated or modified by the Central Government or any other competent authority.

19. Mr. Sehgal is, however, not able to refer to any rule which

⁵ **182. Transitory Provisions.** – Any rule or order applicable to the force on the date these rules come into force will unless repugnant to these rules, continue to apply unless and until abrogated or modified by the Central Government or any other competent authority.

⁶ “the BSF Rules” hereinafter

⁷ “the CCS (Pension) Rules” hereinafter



existed in 1969 when the BSF Rules came into being as would apply to provisions of personnel of the BSF. The CCS (Pension) Rules, 1972 were promulgated after the promulgation of the BSF Rules 1969. Their application cannot, therefore, be extended to BSF personnel under Rule 182 of the BSF Rules.

20. In that view of the matter, following the decision in *S.S. Bedi*, the present writ petition is allowed. The decision to forfeit Mahendra's service for the purpose of his pensionary benefits, based on his dismissal from service, is quashed and set aside.

21. We hold that Petitioner 2, who is the only surviving petitioner, would be entitled to the retiral benefits which were payable to Mahendra by virtue of operation of the judgment of the Supreme Court in *S.S. Bedi*.

22. Let the retiral benefits of Mahendra be disbursed to Petitioner 2 positively within a period of twelve weeks from today. Failure to do so would entail interest on the retiral benefits @ 9% p.a. till the date of payment.

23. The petition is allowed in the aforesaid extent.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

AUGUST 21, 2025/yg