A KANTA DEVI

v.

UNION OF INDIA AND ORS.

SEPTEMBER 20, 1994

B [KULDIP SINGH AND B.L. HANSARIA, JJ.]

Service Law :

Army Instructions No. 51 of 1980—Para 6—Note(2)—Family—Not C *recognising marriages after retirement of army personnel—Consequent denial of family pension to widow of ex-serviceman—Held : Harsh and heartless provision and hence Note(2) struck down.*

The petitioner, a widow of an ex-serviceman, was denied family pension because Para 6 of the Army Instructions No. 51 of 1980 which D **defined "family", though includes wife, said in Note (2) that marriage after retirement would not be recognised. This was challenged by the petitioner in this Writ Petition.**

Allowing the writ petition, this Court

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HELD : 1. It cannot be said that marriages after retirement from army are performed with an eye on getting family pension. This thinking is rally abhorrent. As persons retire early from armed services, they remain of marriageable age in many cases and do not company of a consort to be with them in times of distress. As family pension becomes due on the F **death of the incumbent, the rider contained in Note(2) of Para 6 of the Army Instructions No. 51 of 1980 is indeed a harsh and heartless provision, as it denies family pension to those who shared the difficulties of the ex-servicemen faced after their retirement, and is, therefore, struck down. [711-D, E]**

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2. The respondents are directed to pay family pension to the petitioner, as if Para 6 of the Army Instructions No.51 of 1980 had not contained Note (2). [711-F]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 294 of H 1990.

(Under Article 32 of the Constitution of India.) A

A.P. Mohanty and S.K. Sabbarwal for the Petitioner.

V.C.Mahajan, Ms. Shashi Kiran and Anil Katiyar for the Respondents.

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The Judgment of the Court was delivered by

HANSARIA, J. The petitioner, a widow of an ex-serviceman, has made a grievance, and rightly, that she is not being paid family pension only because she was married to the ex-serviceman after his retirement from active service. This has come to happen because Para 6 of the Army Instructions No. 51 of 1980 which has defined "Family", though includes wife, says in Note (2)that marriage after retirement will not be recognised. C

2. The petitioner has assailed the reasonableness of this provision and we have no difficulty in agreeing with the petitioner inasmuch we cannot countenance the stand and submission that marriages after retirement are performed with an eye to get family pension. This thinking is really abhorrent. As persons retire early from armed services, they remain of marriageable age in many cases and do need company of a consort to be with them in times of distress. As family pension becomes due on the death of the incumbent, the rider contained in the Note is indeed a harsh and heartless provision, as it denies family pension to those who shared the difficulties of the ex-servicemen faced after their retirement. D E

3. In view of the above, we strike down Note (2) because of its irrationality and direct the respondents to pay family pension to the petitioner, as if the aforementioned Army Instructions had not contained Note (2). All the required actions shall be taken within three months from today. F

4. The petition is allowed accordingly. Cost assessed at Rs. 5,000.

G.N. Petition allowed.

A ALL INDIA EX-EMERGENCY COMMISSIONED OFFICERS AND SHORT COMMD. OFFICERS WELFARE ASSN. AND ANR. ETC.

v.

UNION OF INDIA AND ANR.

B SEPTEMBER 20, 1994

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Service Law :

C *Released Emergency Commissioned Officers and Short Service Commissioned Officers(Reservation of Vacancies) Rules, 1971:*

Benefits extended to holders of reserved posts and not to holders of non-reserved posts—Whether discriminatory and violative of Art. 14 of the Constitution of India—Held : No.

D

Constitution of India, 1950 :

Art. 14—Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971—Benefit

E *extended to holders of non-reserved posts—Held: Not violative of equality clause.*

The Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservations of Vacancies) Rules, 1971 were framed to compensate the Emergency Commissioned officers for the

F **chances they had lost by entering public services during the time the country needed them. The Rules applied to those who were commissioned after 1st November, 1962, but before 10th January, 1968; certain posts in Central Civil Services were reserved for them and their seniority was determined as if they entered the service at the first opportunity on or**

G **before the date of their Commission, after the training period.**

The Writ petitioners claimed that the benefit of the said Rules should be made available to those who joined the non-reserved posts also.

It was contended by the petitioners that the classification viz. holders

H **of reserved post and non-reserved posts, was violative of Art. 14.**

Dismissing the Writ Petition, this Court A

HELD : 1. A policy decision was taken to give some benefit to those servicemen who had stood with the people when the country was invaded and had rendered useful service during the emergency. How such benefit and in what shape it ought to have been given are not matters on which courts can have any say; these are exclusively for the executive to decide. The courts come into picture in such policy matters if the same be either illegal or irrational or were to suffer from procedural impropriety. There is no such infirmity in the policy at hand. [714-F-G] B

Tata Cellular v. *Union of India*, **JT (1994) 4 SC 532, relied on.** C

2. As the recruitment for the reserved post is through separate method, there is no possibility of some of the released officers obtaining reserved posts with the benefit available under the Rules, and others obtaining non-reserved posts with no benefit visualised by the Rules. So the two types of incumbents have to be taken as belonging to two different categories; the one having no clash of interest with the other; the one being denied on benefit available to the other. [714-H, 715-A-B] D

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 151 of 1989. E

(Under Article 32 of the Constitution of India.)

Along with WP (C) No. 670/93, S.L.P. (C) Nos. 9765-66/94.

R.K. Kapoor, M.K. Singh, P.Verma and Anis Ahmed Khan for the Petitioner in W.P. No. 151/89 & 670/93 Petitioner-in-person in SLP Nos. 9765-66/94. F

V.C. Mahajan, Anil Kr. Sangal and C.B. Babu for the Respondents.

S. Wasim A Qadri for the Respondent in No.2. G

The Judgment of the Court was delivered by

HANSARIA, J. The Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971 (for short, the Rules) came to be framed by the President of India to compensate the emergency commissioned officers for the chances H

A they had lost by entering public services during the time the country needed them. The Rules apply to those who were commissioned after the 1st November, 1962 but before the 10th January, 1968 and make certain percentage of reservation in all Central Civil Services and their seniority, on entering these services, is determined on the assumption that they
B entered the same "at the first opportunity they had after joining the training prior to their Commission or the date of their Commission". The prayer of the All India ex-Emergency Commissioned Officers and short service Commissioned Officers Welfare Association and other petitioners is that the same benefit should be made available to these categories of persons when they join the non-reserved posts also.

C

2. Shri Kapoor who addressed us on behalf of the aforesaid Association has streneously contended that as the object behind the framing of the Rules was to compensate for the lost opportunity there is no rational basis in classifying the aforesaid officers in two categories - holders of reserved
D posts and non-reserved posts. According to the learned counsel, such a classification is hit by Article 14 on the well accepted principle that a classification to pass the test of this Article is not only to be founded on intelligible differentia, but the same must also have a rational relation to the object sought to be achieved i.e. there must be a nexus between the basis of classification and the object behind the same.

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3. There can be no quarrel with the aforesaid legal proposition; it has become well entrenched by now. We do not, however, view this matter as one of classifying the aforesaid ex-servicemen in two categories mentioned by Shri Kapoor. According to us, a policy decision was taken to give
F some benefit to those servicemen who had stood with the people when the country was invaded and had rendered useful service during the emergency in question. How much benefit and in what shape it ought to have been given are not matters on which courts can heave any say, these are exclusively for the executive to decide. The court come into picture in such policy matters if the same be either illegal or irrational or were to suffer
G from procedural impropriety, as reiterated recently by this Court in *Tata Cellular* v. *Union of India*, JT (1994) 4 SC 532. We do not find any such infirmity in the policy at hand.

4. This is not all. As the recruitment for the reserved post is through
H separate method, as stated in para 6(b) of the reply filed on behalf of

respondents No. 1 and 2 to Writ Petition No. 151 of 1989, there is no possibility of some of the released officers obtaining reserved posts with the benefit available under the Rules, and others obtaining non-reserved posts with no benefit visualised by the Rules. So the two types of incumbents have to be taken as belonging to two different categories; the one having no clash of interest with the other; the one being denied no benefit available to the other.

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5. In view of the aforesaid, we are not in a position to concede the prayer made in these petitions. They are, therefore, dismissed. We leave the paties to bear their own costs.

G.N. Petitions dismissed.