

A UNION OF INDIA AND OTHERS

v.

COL. (TS) P. D. POONEKAR

(Civil Appeal No. 8379 of 2014)

B DECEMBER 07, 2018

**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

C *Service law: Armed Forces – Study leave – Extended – Grant of pay for extended period – Entitlement – Extension of study leave granted to respondent, a doctor in Army Medical Corps – However, he was not granted allowances for the extended study leave period – His request to authorities was rejected – Armed Forces Tribunal directed Union of India to release pay and allowance for the extended period of study leave period – Appeal by Union of India*
D *– Held: Army Instructions 13/1978 clearly stipulate that during the period of study leave, an officer shall draw full pay of the substantive rank – Clause 5(b) states that study leave will count as service for pay, promotion and pension – If the period of study leave is extended on a special dispensation by the President of India, there is no*
E *justification for the Army authorities and the Union of India to deny the benefit of pay and allowances on the same terms and conditions as was allowed during the original period of study leave – Appellants are directed to pay to the respondent all the outstanding dues – The entire period of study leave to be counted for the payment of retiral benefits.*

F **Disposing of the appeal, the Court**

HELD: There is no dispute over the fact that during the original period of twenty four months, the Respondent was granted his pay and allowances. Moreover, Clause 5(b) stipulates that study leave will count as service for pay, promotion and pension.
G Eventually, Army Instructions 13 of 1978 came to be amended on 19 May 2009 as a result of which the period of study leave for post-graduate courses of study in Health Sciences was extended to thirty six months. The original period of study leave of twenty four months was extended by twelve months in terms of the
H request which was made by the respondent. Once the period of

study leave was extended on a special dispensation by the President of India, there was no reason or justification for the Army authorities and the Union of India to deny the respondent the benefit of pay and allowances on the same terms and conditions as was allowed during the original period of study leave. The appellants are accordingly directed to pay to the respondent all the outstanding dues within a period of two months together with interest at the rate of nine per cent per annum. The entire period of study leave shall also count for the payment of retiral benefits and a re-computation as may be warranted shall be made within two months. [Paras 7, 8, 11][1271-D-G; 1272-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8379 of 2014.

From the Judgment and Order dated 11.04.2012 and 17.05.2012 of the Armed Forces Tribunal, Regional Bench at Guwahati in O.A. No. 01 of 2012 & M.A. No. 12 of 2012 in O.A. No. 01 of 2012.

S. B. Upadhyay, Sr. Adv., Ms. Sunita Rani Singh, Mukesh Kumar Maroria, Advs. for the Appellants.

Mani Bhushan Sinha, Pranab Prakash, Gopal Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Personnel belonging to the Armed Forces serve the nation in challenging conditions and inhospitable terrain. The Medical Corps attend to the sick and the wounded. A specialist in prosthetic surgery belonging to the Army Medical Corps has had to pursue his tryst with justice over a quarter of a century, denied his pay for the extended period of study leave abroad. Despite the sanction for the extended period by the President of India, the Union Government has denied him his pay. In retirement now, he defends the judgment of the Armed Forces Tribunal granting him the pay over the extended period of study leave. Justice has been delayed, inordinately delayed. That it was not denied should be a small recompense for an officer who devoted the prime years of life in service of the nation.

2. The Respondent, who is a doctor, joined the Army Medical Corps as a Permanent Commissioned Officer on 27 February 1977. He

- A completed his post graduation with an MS in Surgery and was posted to the Artificial Limb Centre at Pune. The Centre provides specialised medical services to armed forces personnel, veterans and civilians. He was granted study leave to pursue a specialization in Prosthetic Surgery for a period of twenty four months in the US at the University of Miami, Florida. The period of study leave was two years. Permission was granted
- B on 22 May 1990. On 10 March 1992, the Respondent made an application seeking an extension of twelve months to complete the course of study. As a special case, an extension was granted on 17 September 1992 for a further period of twelve months. However, on 08 April 1993, he was informed that the allowances payable to him were discontinued. On 19
- C October 2004, the request of the respondent for the grant of pay for the period of extension was rejected. Challenging it, the respondent instituted proceedings before the Armed Forces Tribunal which culminated in the impugned order dated 11 April 2012. The Tribunal, while allowing the application, directed the Union of India to release the pay and allowances to the respondent for the extended period of study leave of twelve months.
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3. Assailing the judgment of the Tribunal, the Union of India is in appeal before us.

4. Army Instructions 13/1978 govern the grant of study leave. Clause 5 of the Instructions is in the following terms :

- E “5. Pay and promotion during Study leave :
- (a) During Study Leave officers will draw full pay of the substantive rank.
- (b) Study Leave will count as service for pay, promotion and pension but not for leave. It will, however, not affect any period of qualifying service for the grant of furlough, rendered before the officer proceeded on Study Leave.
- F (c) For other purpose like allotment of accommodation etc. the officer will be treated as if he is on furlough.”

- G 5. Besides this, the attention of the Court is also drawn to Clause 5 of the earlier Army Instructions, 191/62. They read thus:

“5. Secondment

- (a) An Officer may be seconded for a period not exceeding 12 months for the purposes of attending a course in a recognized institution.
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(b) Such secondment will normally be granted in continuation of any privilege or Study Leave, provided that the total period of absence from duty will not exceed two years. A

(c) While thus seconded, the officer will not receive any pay from Government funds, but the period of secondment will be counted for purposes of increments of pay, promotion, seniority and pension but not for gratuity, subject to sub-para 4(g). B

(d) This secondment may be allowed in installments of not less than two months, at a time.”

6. The submission which has been urged on behalf of the Union of India is that in view of the provisions contained in Clause 5 of Army Instructions 191/62, an officer, on being seconded, is not entitled to receive any pay from government funds. C

7. The submission of the appellants cannot be accepted for the simple reason that Army Instructions 13/1978 which have been issued subsequently, clearly stipulate that during the period of study leave, an officer shall draw full pay of the substantive rank. Indeed, there is no dispute over the fact that during the original period of twenty four months, the Respondent was granted his pay and allowances. Moreover, Clause 5(b) stipulates that study leave will count as service for pay, promotion and pension. Eventually, Army Instructions 13 of 1978 came to be amended on 19 May 2009 as a result of which the period of study leave for post-graduate courses of study in Health Sciences was extended to thirty six months. D E

8. The original period of study leave of twenty four months was extended by twelve months in terms of the request which was made by the respondent. Once the period of study leave was extended on a special dispensation by the President of India, there was no reason or justification for the Army authorities and the Union of India to deny the respondent the benefit of pay and allowances on the same terms and conditions as was allowed during the original period of study leave. F

9. In his counter affidavit, the respondent has stated before the Court that after completing his course of studies, he returned to India and served the Army until he attained the age of superannuation on 31 May 2013. G

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A 10. The interpretation which was placed on the Army Instructions by the Armed Forces Tribunal is eminently correct and does not warrant interference in appeal.

B 11. The appellants are accordingly directed to pay to the respondent all the outstanding dues within a period of two months from today together with interest at the rate of nine per cent per annum. The entire period of study leave shall also count for the payment of retiral benefits and a re-computation as may be warranted shall be made within two months.

C 12. The Civil Appeal is disposed of in the above terms. The respondent shall be entitled to costs quantified at Rs.50,000/- (Rupees Fifty Thousand).

Devika Gujral

Appeal disposed of.