

Parker Vs. United States

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Appeal No. : 26 U.S. 293

Appellant : Parker

Respondent : United States

Judgement :

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Parker v. United States

26 U.S. (1 Pet.) 293

ERROR TO THE CIRCUIT COURT FOR THE COUNTY

OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

The Adjutant and Inspector General of the Army of the United States was not entitled to double rations from 39 September, 1818, to 31 May, 1821.

The President of the United States has a discretionary power to allow such additional number of rations to officers commanding at separate posts as he may think just, having respect to the special circumstances of each post. The law granting this authority is not imperative, and in the exercise of his discretion, the President may allow or refuse to allow additional rations as in his opinion he may deem proper.

The Secretary of War, as the legitimate organ of the President under a general authority from him, may exercise the power and make the allowance to officers having a separate command.

No officer is entitled to the additional allowance unless he be a commandant at a separate post, and then the claim must be sanctioned by the Executive. The allowance cannot be made to more than one officer at the same station.

In the discharge of his ordinary duties, the Adjutant and Inspector General has no distinct command; his duties consist in details of service, and not in active military command.

An officer may be said to command at a separate post when he is out of the reach of the orders of the commander-in-chief or of a superior officer in command in the neighborhood. He must then issue the necessary orders to the troops under his command, it being impossible to receive them from a superior officer.

The general order of the War Department of 18 March, 1818, directing double rations to be allowed to officers commanding *military departments*, is construed to relate to the geographical sections of country into which the two divisions of the army are divided and which were denominated "departments," and intended to designate the extent of actual command given to the officer commanding each department; it does not relate to the law of 3 March, 1813, "for the better organization of the General Staff of the Army."

All the material facts of the case are stated in the opinion of the Court; which was delivered by MR. JUSTICE DUVAL.

An action was commenced in the circuit court by the United States against the plaintiff in error to recover the sum of \$2,337.60 which he had received from Mr. Leslie, the paymaster, then stationed at the seat of government, on a claim for double rations due him in his capacity of Adjutant and Inspector General of the Army of the United States from

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30 September, 1818, to 31 May, 1821. On the settlement of the account of the paymaster, this item was disallowed by the second Auditor, who considered it as wrongfully paid, and the amount was afterwards directed to be charged to the personal account of General Parker.

The office of Adjutant and Inspector General of the Army, with the rank, pay, and emoluments of a Brigadier General, was created by the Act of March 3, 1813. The plaintiff in error was appointed to that office, and his commission bears date on 1 May, 1816, with the rank of Brigadier General, from 22 November, 1814.

The pay and emoluments of the officers of the army are fixed by the Act of 16 March, 1802, and the Act of 12 April, 1808. By the fifth section of the first mentioned act it is provided that the commanding officers of each separate post shall be entitled to such additional number of rations as the President of the United States shall from time to time direct, having respect to the special circumstances of each post. Under this authority, the President has, at various times, designated military posts and stations and allowed double rations to the commanding officers, and in the case of General Wilkinson, when stationed at New Orleans and commanding there in quality of a commanding officer at a separate post, he allowed that officer treble rations. It appears by the record and documents referred to in this case that on 25 August, 1812, the President ordered that generals commanding separate armies should receive double rations.

In February, 1814, an order was issued by the War Department on the subject of double rations, of which the following is an extract:

"It is ordered, that general or other officers commanding districts shall, while so doing, receive double rations, which will supersede all other grants of double rations at posts within the district."

On 6 March, 1816, a general order was issued in the words following:

"Generals commanding Divisions, officers commanding military departments, and all officers while in the command of permanent posts and garrisons separate from the stations of commandants of departments which subject them to the additional expense of independent commands are allowed double rations. No more than one officer can be entitled to double rations at the same station."

The Adjutant and Inspector General performed the duties of his office from November, 1814, and charged the compensation as allowed by law until the year 1816, when a difficulty arose on the subject of his fuel and quarters from the circumstance of there being no disbursing office in the Quartermaster's Department at the seat of government, and from the regulations

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of the War Department, then in force, prohibiting an allowance in money, to be made to officers in lieu of these emoluments. The Secretary of War then issued the following order: "A commutation of double rations, is allowed to the Adjutant and Inspector General, in lieu of fuel and quarters."

Under this authority, he claimed and was allowed double rations from November, 1814, refunding to the government the allowance he had received for fuel and quarters from the time of his acceptance until the date of the above order. He continued to receive double rations, making no charge for fuel and quarters until an order was issued by the Secretary of War on 10 August, 1818, to the following effect.

"The reason for the allowance to the Chief of the Engineers and to the Adjutant and Inspector General in lieu of fuel and quarters, no longer existing, since the establishment of the Quartermaster's Department, at the termination of the present

quarter, such allowance will cease, and the Quartermaster General will, on requisition, furnish them with fuel and quarters agreeably to their respective ranks."

The commutation of double rations ceased accordingly, and the Adjutant and Inspector General continued to charge and receive single rations only from 1 October, 1818, to 31 May, 1821, when the office was abolished.

The defendant in the court below, now plaintiff in error, in support of his claim, produced a certificate from Richard Cutts, Second Comptroller of the Treasury,

"that the senior officer of the Engineer Department, stationed at Washington, has charged and been allowed double rations since 1 January, 1818. The senior officers of the Quartermaster's, Subsistence, and Ordnance Departments, have charged and been allowed double rations since 27 July, 1821, and Major General Brown has charged and been allowed double rations since 1 June, 1821, when he was stationed in this city."

And also the following regulations: the regulation and general order of 27 July, 1821, issued by the War Department, allowing to the Quartermaster General, Commissary General of Subsistence, the Colonel of Engineers, and the Chief of the Ordnance Department (while stationed at the seat of government) double rations from the date of the said order.

The regulations or general order duly issued from the War Department, dated 31 May, 1821, addressed to the defendant as Adjutant and Inspector General, directing him, among other things, to hand over the records and files of his office to Major General Brown, on the next day, being 1 June, 1821, the said Major General having from the time he had assumed command, and had relieved the said Adjutant and Inspector General at the seat of government pursuant to the

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last mentioned order, been allowed and paid double rations, as certified by the second comptroller, which regulation or general order is in the following words:

"The Adjutant General, under the law of 2 March last, being attached to the Major General commanding the army, and now absent, you will tomorrow pass over the records and files of your office to Major General Brown, and will assume the duties of Paymaster General. Major General Brown has been advised of this order, and Colonel Towson will be instructed to hand over the papers and records of the pay department to you."

That the Brigadiers General of the Army of the United States have all been regularly allowed double rations since the said general order and regulation of 6 March, 1816. That the defendant continued at the head of the Department of Adjutant and Inspector General, and stationed at the seat of government, from the time of his appointment and commission as such until 31 May, 1821, and until he was relieved by Major General Brown as before mentioned.

The defendant then proved, by Thomas S. Jessup, Quartermaster General, that in his opinion and according to the general usage of the army, the Department of Adjutant and Inspector General was a military department, and that the defendant, whilst exercising that office, was commandant of a military department, and as such, was subject to the additional expense of an independent command.

The declaration in this cause is founded on a transcript from the Treasury, certified in the usual form, and contained a count for money had and received, and other counts not necessary to be mentioned; issue was joined on the plea of *nonassumpsit*, and by agreement of counsel, a verdict for the United States was taken for the sum claimed, subject to the opinion of the court upon the laws of the United States relative to the pay and emoluments of the officers of the army, and the regulations and orders of the executive department, issued in pursuance of those laws. The court, on consideration, gave judgment in favor of the United States, and the cause is now before this Court by writ of error for their decision.

The claim of the plaintiff in error to double rations, as charged, rests altogether upon a correct construction of the 5th section of the Act of 16 March, 1802, and of the regulations and orders of the Executive Department, issued in pursuance of that section. The President of the United States has a discretionary power to allow

such additional number of rations to officers commanding at separate posts, as he may think just, having respect to the special circumstances of each post. The law granting this authority is not imperative, and in the exercise of his discretion, the President may allow or

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refuse to allow additional rations as in his opinion he may deem just.

The reason of the authority to grant the allowance is obvious. By an independent command at a separate post, the officer is subject to additional expense, and an increase of duty. An officer may be said to command at a separate post when he is out of the reach of the orders of the Commander-in-Chief or of a superior officer, in command in the neighborhood. He must then issue the necessary orders to the troops under his command, it being impracticable to receive them from a superior officer. His authority is the source from which they must flow.

There can be no controversy about additional rations if the President makes the allowance. He may issue the order himself or it may be done by the Secretary of War with his approbation. The Secretary of War, as the legitimate organ of the President, under a general authority from him, may exercise the power, and make the allowance to officers having a separate command. The language of the law is plain and unambiguous. No officer is entitled to the additional allowance unless he be a commandant at a separate post, and then the claim must be sanctioned by the Executive. The allowance cannot be made to more than one officer at the same station.

It is not contended in the case under consideration that the grant was made by the President, but the plaintiff in error claims it under the orders which have been recited and which are spread upon the record, and because officers of equal rank and in his opinion similarly circumstanced have received the additional allowance. Double rations form no part of the regular and legal emoluments of a Brigadier General, and can only be claimed under circumstances before enumerated. The plaintiff in error seems to rely with more confidence, on the order of 6 March, 1816,

taken in connection with the opinion of General Jessup. That order directs the additional allowance to be made to generals commanding divisions, and to officers commanding military departments, &c.;, and General Jessup was of opinion that, according to the general usage of the army, the Department of Adjutant and Inspector General, was a military department, and that whilst exercising that office, he was commandant of a military department; and as such subject to the expense of an independent command.

The record contains no evidence that the Adjutant and Inspector General was ever ordered to an independent or separate command. In the discharge of his ordinary duties, he has no distinct command; his duties consist in details of service, and not in active military command. The order of

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16 March, 1816, directing double rations to be allowed to officers commanding military departments, is construed to relate to the geographical sections of country, into which the two divisions of the army are divided, and which were denominated departments and intended to designate the extent of actual command given to the officer commanding each department, and that it does not relate to the law of 3 March, 1813, for the better organization of the general staff of the army. This appears to have been the construction given to the order by the War Department, as none of the staff officers created by that act, with the exception of the plaintiff in error, ever made a claim for double rations, and the claim under consideration was disallowed by the accounting officers of the War Department.

During the time the Adjutant and Inspector General was stationed at the seat of government, comprehending the space for which double rations are claimed, it does not appear that there was any recognized commanding officer. The staff officers, then stationed at the seat of government, were subject to the authority of the Secretary of War, and under his direct and exclusive control.

It is the opinion of the Court that the claim of the plaintiff in error is not sanctioned by the Act of 16 March, 1802, nor by the regulations and orders of the executive

department, issued in pursuance of that law.

The judgment of the circuit court is affirmed with costs.

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