

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 87 of 2014

Monday, the 09th day of November, 2015

The Honourable Justice S.S.Satheesachandran
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex Sub Maj/Hony Lt Kukkala Siva Reddy
(Service No. JC 412254X)
S/o Late Venkata Subba Reddy
Hindu, aged 49 years
VPO P:atha Chirala, Chirala, Prakasam District
Andhra Pradesh – 523 165

...Applicant

By Legal Practitioners:
Mrs.Tonifia Miranda

vs

1. Union of India
Rep by its Secretary
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, DHQ PO, New Delhi – 110 011
3. The Chief Record Officer, Records
The Parachute Regiment
PIN: 90493, C/o 56 APO
4. The Principal Controller of Defence Accounts
Office of PCDA (Pensions)
Allahabad – 211 014

...Respondents

Mr.K.Ramanamoorthy, CGSC,
for Mr.M.Dhamodharan, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

This O.A. has been filed by the applicant with a request to set aside the impugned order issued by the 3rd respondent dated 17.11.2012 and to direct the respondents to consider the applicant for the grant of Honorary Commission to the rank of Hony. Lieutenant / Captain on the occasion of Republic Day on 26.01.2008 and Independence Day on 15.08.2008; to settle the AGIF amount due to him and to grant him the benefit of rounding off of disability pension from 20% to 50% in accordance with the existing instructions on the subject.

2. Briefly, the applicant would state that he was recruited in the Indian Army on 12.09.1976 and that he had served for more than 31 years in field, high altitude as well as operational areas, in India and abroad and that, he was promoted to the rank of Subedar Major on 01 August 2006. Even though his terms of engagement was upto 30.09.2008, he was prematurely discharged from service on 31.01.2008. However, consequent to judgment of the Hon'ble Supreme Court dated 07.11.2008 arising out of Civil Appeal No.6587 of 2008 in the case of UoI vs Rajpal Singh, the 3rd respondent, vide letter dated 23.12.2008 asked the applicant to give his willingness to rejoin service with all consequential benefits from the date of discharge, upto the date of rejoining. The applicant had opted for the same and rejoined at Regimental Centre, Bangalore and was deemed to have notionally rejoined duty from 01.02.2008 to 30.09.2008, i.e., till his actual due date of superannuation. The applicant would further claim that he was granted the rank of Honorary Lieutenant on 15 August 2008. Since the date of his superannuation is on 30.09.2008, he would

claim that he ought to have been granted Honorary Commission as if he was in active service and be paid pay and allowances for the period 15.08.2008 to 30.09.2008, i.e., the date of his retirement and, as also grant him pension of the said Rank. He would also claim that he was asked to refund the Army Group Insurance Fund amounting to Rs.1,12,500/- and would claim that even though he had deposited the said amount, he was not refunded the same after retirement. Further, the applicant would state that he is presently receiving disability pension in the rank of Subedar Major and not as Honorary Lieutenant and that the element of disability has been assessed at 20% for life. He would plead that this ought to be broad-banded to 50% as envisaged in the Gol letter dated 31.01.2001. The applicant would further aver that even though he had, on several occasions, both in person and by correspondence asked for the above reliefs, these were rejected by the respondents vide impugned order dated 17 November 2012 and hence he has no other option but to plead before this Tribunal for the said reliefs.

3. The respondents, in their reply statement, would not dispute the fact that the applicant was recruited on 12.09.1976. They would state that the applicant, during the service, was diagnosed with "Coronary Artery Disease & Diabetes Mellitus Type II" and was downgraded to Low Medical Category P2 (Permanent) with effect from 13 October 2008. They would further state that his Commanding Officer did not recommend him for retention in service due to non-availability of suitable sheltered appointment commensurate to his disability and, accordingly, he was boarded out from military service by the Release Medical Board in medical category P2 (Permanent) with effect from 31 January 2008 under Army Rule 13 (3) I (iii) (a) after having rendered 31 years, 4 months and 19 days of service. At the time of his discharge, he was granted disability element and the benefits of broad-banding as

per para 7.2 of GoI letter dated 31 January 2001, with effect from 01.02.2008 for life. Accordingly, his PPO was also issued. However, consequent to the Hon'ble Apex Court Order of 07.11.2008 and Hon'ble Delhi High Court order dated 20.11.2008, the applicant was asked to submit his willingness / unwillingness for notional reinstatement from the date of discharge to the date of retirement in the present rank. As the applicant had given his consent, he was notionally reinstated in the service from 01.02.2008 and was discharged from service on 30.09.2008. As regards the grant of Honorary Commission, the respondents would state that in conformity with policy dated 24 December 2007, JCOs who were discharged from service within 6 months due to permanent low medical category would also be eligible for grant of Honorary Commission and were to be accorded one chance as last chance provided they were on active service on the respective dates of award. Accordingly, the applicant was provided one chance, as a last chance category on active service list, for Republic Day 2008 (26.01.2008). However, he could not come in merit and, hence, was not granted Honorary rank on active service. They would further submit that subsequently his documents for Honorary Rank, after retirement, for Independence Day 2008 (15.08.2008) was submitted. The applicant was granted Honorary rank of Lieutenant after retirement, with effect from 01.02.2008, i.e., one day after his superannuation. Since the applicant was thereafter notionally reinstated in service with effect from 01.02.2008, in accordance with the directions of Army Headquarters, the applicant is assumed to have been transferred to Pension Establishment on completion of service with effect from 30.09.2008. As regards his Honorary Rank of Lt., the Army Headquarters vide their letter dated 25.02.2009 clarified that *"those JCOs who are reinstated, their Honorary rank will be effective from the next day of their superannuation and interim period from date of discharge*

to date of reinstatement should be treated as normal service and not as Honorary Commission". In view of the foregoing instructions, the applicant is entitled for monetary benefits for the Honorary rank and not for Honorary Commission on active service. Accordingly, grant of Honorary rank was amended to read as 01 October 2008 (i.e., one day after superannuation on 30.09.2008), instead of 01 February 2008 and a Corrigendum Gazette Notification was issued on the subject. The revised PPO for the rank of Honorary Lieutenant has not been issued to the applicant as no financial benefits are entitled to him on the grant of honorary rank after retirement.

4. In view of the foregoing, the respondents would plead that the case lacks merit and substance and merits dismissal.

5. We have heard the arguments of Mrs.Tonifia Miranda, learned counsel for the applicant and Mr.K.Ramanamoorthy, CGSC for Mr.M.Damodharan, learned Central Government Standing Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents and perused all the documents placed before us.

6. Flowing from the above pleadings, the following issues merit consideration:

- (i) *On reinstatement, whether the applicant is entitled for a fresh consideration for grant of Hony.Commission in the rank of Hony. Lt / Captain on active service, as on 15.08.2008? Is the order of the 3rd Respondent dated 17.11.2012 is liable to be set aside?*
- (ii) *Whether the applicant is entitled to the provisions of broad-banding of the disability pension from 20% to 50% in accordance with MOD letter dated 31.01.2001, on his retirement from service?*
- (iii) *Whether the applicant is entitled to refund of Army Group Insurance Fund (AGIF) of Rs.1,12,500/- as claimed by the applicant?*

7. Point 1: The fact that the applicant was recruited in the Army on 12.09.1976 and that he was promoted as Subedar Major on 01.08.2006 and that he was prematurely released from service on 30.01.2008 even though, as per the terms of engagement, he was to serve till 30.09.2008 and that consequent to the judgment of the Hon'ble Delhi High Court in the case of Nb.Sub.Raj Pal Singh vs Uol and others in CW No.2745/2003 dated 07.10.2005, and subsequently upheld by the Hon'ble Supreme Court *vide* judgment dated 07.11.2008 arising out of Civil Appeal No.6587 of 2008, he was asked to rejoin duty to which he duly reported and that he was notionally reinstated in service for the period 01.02.2008 to 30.09.2008 are not disputed. The Learned Counsel for the applicant would state that the applicant ought to have been screened for the grant of Hony. Commission of Lt / Captain on 26.01.2008 and 15.08.2008. *Per Contra*, the Learned Counsel for the respondents has stated that the applicant was considered for the Hony. Commission of Lt on 26.01.2008 and that he did not make it on merits and, therefore, he was not granted the same. Further, they would submit that since the applicant was retired on 31.01.2008, he was considered for the grant of Hony. Rank of Lt. on 15.08.2008 and having been found to be in the merit for the Hony. Rank of Lt., the said rank was granted to him with effect from 01.02.2008 and, subsequently, amended to read as 01.10.2008 as he was notionally reinstated in service till 30.09.2008. They would further submit that even though the applicant had been deemed to have been reinstated in service notionally, he was not entitled for the grant of Hony. Commission as he was found to be low in merit and hence did not make the grade. The respondents have not produced any documents to substantiate this claim.

8. On the other hand, the Learned Counsel for the applicant while accepting the fact that the applicant was considered for the grant of Hony. Commission on one occasion, i.e., on 26.01.2008 would contend that the applicant ought to have been given the second opportunity for consideration for Hony. Commission prior to retirement on 30.09.2008, i.e., on 15.08.2008, on active service, as per existing instructions on the subject. The Learned Counsel for the applicant would further submit that the applicant was only considered for the grant of Hony. Rank of Lt., on 15.08.2008 as if he had retired from service. Since the Hon'ble Apex Court had held that such discharges were illegal, the applicant ought to have been deemed to be in service for all purposes and, therefore, he is entitled to all benefits of being in service. This has also been buttressed by the judgment of the Hon'ble Delhi High Court, in its judgment dated 20.11.2008 in the case of Subedar (SKT) Puttan Lal and others, which held that the persons who have retired prior to the judgment of the Hon'ble Apex Court, *would be entitled to only the benefits of pay and allowances for the differential period after adjusting any additional benefit arising from the premature discharge.*

9. We have perused the judgment of the Hon'ble Delhi High Court in the case of Rajpal Singh vs UoI and subsequently upheld by the Hon'ble Apex Court (Supra) which had reinstated the petitioner. The operative part of the judgment of the Hon'ble High Court is as follows:

20. *Since we have already held that the discharge of the petitioner could be pursuant to the opinion of the Invalidating board under Army Rule 13 (3) I (ii) that he has been found to be unfit for further service, we do not dwell as to who was the competent authority as the respondents themselves have taken conflicting stand regarding competent authority in their counter affidavit.*

21. *Consequently, for the reasons aforesaid, we are of the opinion that the impugned order of discharge of the petitioner without the opinion of Invalidating Board that the petitioner is medically unfit for further service is not in accordance with Army Rules, 1954. He could not be discharged from the service and the order of his discharge cannot be sustained. Resultantly, the impugned order discharging the petitioner from 31st August 2002 is, therefore, set aside.*

22. *The writ petition is, therefore, allowed and the petitioner is directed to be reinstated in service. Parties to bear their own costs.*

The above judgment is squarely applicable to the instant case as the applicant was also released from service without an Invaliding Medical Board, a fact conceded by the respondents as well and in deference to the above judgments have reinstated (notionally) the applicant. Since the applicant is deemed to have been in service till 30.09.2008 and, therefore, we are of the considered opinion that he is entitled to all monetary and other additional benefits that accrue to him which would, *inter alia*, include his entitlement to a second opportunity for grant of Hony. Commission on 15.08.2008, on active service. In view of the foregoing, the order of the 3rd respondent dated 17.11.2012 is liable to be set aside and is accordingly quashed.

10. Point (ii): The learned counsel for the applicant has stated that the applicant has only been granted 20% of disability element of pension and it was not broad-banded to 50% as per Gol letter dated 31.01.2001. On the other hand, the respondents have stated that as per para 8.1 of MOD letter dated 31.01.2001, Armed Forces personnel are not entitled to broad-banding benefits if retired or discharged on completion of terms of engagement. They would aver that since the applicant was discharged from service on 30.09.2008 on completion of terms of engagement, he is also not entitled to broad-banding of disability pension. We have examined the rival claims on the subject. The Hon'ble Apex Court, in the case of *UoI and Ors vs Ram Avtar & Ors (Civil Appeal No.418 of 2012 etc batch, dated 10th*

December 2014) held that all personnel retiring on completion of terms of engagement are also eligible for the benefit of broad-banding of disability pension. Accordingly, the applicant is also entitled to the benefit of broad-banding. As his disability has been assessed at 20% for life, he is entitled to broad-banding of disability pension to 50% as envisaged in the GoI letter dated 31.01.2001. However, in accordance with the principle laid down by the Hon'ble Apex Court in the case of Union of India and Others v. Tarsem Singh reported in (2008) 8 SCC 648, the entitlement is restricted to three years from the date of filing of this O.A.

11. Point (iii): The applicant has claimed that he has deposited a sum of Rs.1,12,500/- of AGIF benefits on the instructions of Respondent No.3. On examination of the records placed before us, it is observed that the applicant has not deposited all the amounts due to him through AGIF, but only the portion of disability element of benefits amounting to Rs.1,12,500. Since the applicant has subsequently been retired on completion of service on 30.09.2008 and, therefore, he is deemed to have completed his terms of engagement, he cannot claim a benefit due to a person invalided out of service. We have examined Army Order 23/2002/AGI which governs the Army Group Insurance Scheme. Para 59 of the said order deals with grant of disability benefit scheme for those personnel whose service was cut short and were invalided out of service in Medical Category. For a better understanding, extracts of para 59 is reproduced below:

59. The objective of AGIF Disability Scheme is to provide financial benefit to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement or service applicable to that rank. The disability benefit is paid as a lumpsum benefit based on initial assessment by Invaliding Medical Board or Release Medical Board before completing the contractual period of service for the rank and meeting the

eligibility conditions. The disability benefit admissible is 50 per cent or as specified of the prevalent insurance cover for 100 per cent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20% or as specified. However, the following categories of personnel are NOT eligible for disability cover:

(a) Personnel whose disability is detected and are awarded disability pension element at the time of proceeding on normal pension/discharge/release on completion of terms of engagement or service limits for the rank/age of superannuation.

(b)-(d) xx xx xx
xx

(e) The career of an individual should be cut short which implies that any one who serves upto the laid down age of retirement or service limit for the rank even though with disability (20% and above) is not eligible.

xx xx xx

From the above, it is clear that the said disability benefit scheme is applicable only to those whose service has been curtailed due to medical reasons. In the instant case, the applicant has been deemed to have retired on completion of terms of engagement and he was accordingly given the benefit of pay and allowances for the said period. Therefore, the applicant is not eligible for disability benefits under the AGIF and the order of the Respondents instructing the applicant to remit the disability benefits of AGIF is legally tenable.

12. In sum, the applicant is entitled to consideration for the Hony. Commission of Lieutenant / Captain on 15.08.2008 pm active service, as second chance.. The respondents are hereby directed to consider the applicant for the grant of Honorary Commission of Lieutenant / Captain as on 15.08.2008, through a Screening Board,

especially constituted for this purpose. The results of the said Screening Board along with comparative merit of JCOs who have been granted Hony. Commission on 15.08.2008 shall be placed before us within a period of 6 weeks from the date of this order. The applicant is also entitled to broad-banding of his disability element of pension from 20% to 50% for life with effect from 25.09.2010, i.e., three years prior to the filing of the O.A. Arrears shall be paid within a period of three months or else an interest of 9% *per annum* on the arrears shall be paid from that date.

13. The respondents are directed to place the aforesaid Screening Board proceedings before this Bench on 20.01.2016.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice S.S.Satheesachandran
Member (Judicial)

09.11.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, DHQ PO, New Delhi – 110 011
3. The Chief Record Officer, Records
The Parachute Regiment
PIN: 90493, C/o 56 APO
4. The Principal Controller of Defence Accounts
Office of PCDA (Pensions)
Allahabad – 211 014
5. Mrs.Tonifia Miranda
Counsel for the applicant
6. Mr.M .Dhamodharan, SCGSC
Counsel for the respondents
7. Officer in-Charge
Legal Cell, HQ Dakshin Bharat Area
Chennai-600009.
8. Library, AFT, RB, Chennai.

Hon'ble Justice S.S.Satheesachandran
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.87 of 2014

Dated :09.11.2015