

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

CIRCUIT BENCH AT HYDERABAD

O.A.No.45 of 2015

Tuesday, the 15th day of September 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Ek-L/Nk, Name-HY Venkata Rao
Service No.15321892-P
S/o Shri Neduri Appala Narasayya
aged about 33 years
Door No.8/63/186, Village-Chillapeta
Post-Rayapalem, Bheemunipatnam
District-Visakapatnam
Pin-531163(AP).

...Applicant

By Legal Practitioners:
M/s. M.K. Sikdar, D.Eswara Rao
& S.Biju

vs.

1. Union of India,
rep. by The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post-DHO, New Delhi-110 011.

3. The Officer-in-Charge
Record Office, Madras Engineer Group
Pin-900 453, C/o 56 APO.

4. The PCDA (P), Draupadi Ghat
Allahabad (UP), Pin-211 014.

...Respondents

By Mr. K.Ramanamoorthy, CGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiyah, Member (Judicial))

1. This application is filed by the applicant seeking for grant of disability pension rounded off to 50% for life from the date of his invalidment dated 04.06.2010 or in the alternative to direct the respondents to grant invalid pension for life to the applicant with effect from 04.06.2010 after setting aside the impugned order dated 01.09.2014 passed by the 3rd respondent and for other reliefs and costs.

2. At the time of hearing the case on 05.08.2015, the learned counsel for the applicant sought permission to make an endorsement on the application to the effect that the applicant was not pressing the main relief and he wanted to pursue the alternative relief. Accordingly, he was permitted to make an endorsement and he has made the same accordingly.

3. The brief facts of the applicant would be as follows:

The applicant was enrolled in Indian Army on 29.07.2000 as Sepoy and served in the Army for 9 years 10 months and 5 days. The

applicant was invalided out from service on 04.06.2010 (mistakenly mentioned as 02.06.2010) for the disability of "*Alcohol Dependence Syndrome (F 10.2)*" which was treated in MH, Bangalore till 12.03.2009. The said disability was still considered by the respondents, despite the fact that the applicant had stopped consuming alcohol and he was placed in Low Medical Category for the disability. The applicant was invalided out from service with effect from 04.06.2010 under Rule 13 (3) III (iii) of the Army Rules, 1954 on the basis of the opinion of the Invalid Medical Board constituted for that purpose. The claim of the applicant for the grant of disability pension was rejected through the letter dated 05.05.2011 against which the applicant could not file an appeal within six months, since he was not served with Medical Board proceedings. The applicant represented through his lawyer in the form of First Appeal during November 2013, but no reply was received by him. The subsequent notice sent on 01.08.2014 to consider his disability/invalid pension was also not considered. However, the claim for disability pension was rejected on 01.09.2014 by the 3rd respondent as the disability was neither attributable to nor aggravated by military service. His claim for invalid pension was also rejected on the ground that the applicant had not completed 10 years of service. The applicant submits that the respondents had not condoned the shortfall of 56 days to the pensionable service nor applied the policy of the Government to compute

the period of pensionable service of more than 9 months of a year be treated as completed year was not followed. Therefore, the applicant would seek for the grant of disability pension or in the alternative to grant invalid pension with effect from 04.06.2010, after setting aside the order passed by the 3rd respondent on 01.09.2014. Thus, the application may be allowed.

4. The objections raised by the respondents in the reply statement would be as follows:

The applicant was enrolled in the Army on 29.07.2000 and was invalided out from service on 03.06.2010 on medical grounds for the diseases, "*Alcohol Dependence Syndrome (F 10.2)*" and "*Alcoholic Psychosis (F 10.50)*" after completion of 9 years, 10 months and 05 days of embodied service. Constitution of Invalid Medical Board and the opinion given by IMB and the other proceedings taken for invaliding him from service are true. The claim of the applicant for disability pension was not sustainable since the disability is "*Alcoholic Dependence Syndrome*" was not attributable to or aggravated by military service. It is also contended that the individual cannot be granted invalid pension, since he did not complete 10 years of embodied service. Invalid pension cannot be granted to him, in view of the fact that Invalid Gratuity to the tune of Rs.1,62,600/- (Rupees one lakh sixty two thousand and six hundred only) was already given to the applicant. As per Rule 59 of

Pension Regulations for the Army, 2008, Part-I, 10 years of service is mandatory for the grant of invalid pension and since the applicant had not completed 10 years of service, he was not granted invalid pension. Therefore, the claim of disability pension as main relief and invalid pension as alternative relief are not sustainable and accordingly, the application may be dismissed.

5. On the above pleadings and in view of the endorsement made by the learned counsel for the applicant withdrawing the main relief, we have framed the following points for consideration:

(1) Whether the applicant is entitled for invalid pension, as prayed for?

(2) To what relief the applicant is entitled?

6. We heard the arguments of Mr. M.K. Sikdar, learned counsel for the applicant and Mr. V.Balasubramanian, learned SPC representing Mr. K.Ramanamoorthy, learned CGSC assisted by Col SK Varshney, Legal Cell, HQ, Dakshin Bharat Area, Chennai, appearing for the respondents. We have also perused the documents produced on either side.

7. We have given anxious thoughts to the arguments advanced on either side.

8. The main relief sought for by the applicant for the grant of disability pension was not pressed by the applicant and therefore, the question of granting the main relief will not arise.

9. **Point No.1:** The facts as put forth by the applicant with regard to his enrolment, service and nature of disability caused to him are all admitted by the respondents. The present claim of the applicant is towards the grant of invalid pension with effect from 04.06.2010. The claim of the applicant was rejected in respect of invalid pension only on the ground that the applicant did not complete 10 years of service as required in the Pension Regulations for the Army, 2008 Part-I. The relevant governing the invalid pension are Regulations 58 and 59 of Pension Regulations for the Army 2008, Part-I. According to the said provisions, we find that the minimum period of qualifying service required for the grant of invalid pension is 10 years or more. According to the respondents, the applicant was granted invalid gratuity since his service was below 10 years and therefore, invalid pension was not granted in his favour. The respondents have categorically admitted in the reply statement as well as in the letters dated 05.05.2011 and 30.11.2011 that the applicant had completed 9 years 10 months and 05 days and he was only eligible for invalid gratuity only. Therefore, it is quite clear that the applicant served in the Army for 09 years, 10 months and 05 days.

10. The learned counsel for the applicant would submit in his argument that the shortfall of 53 days could be condoned by this Tribunal, since the respondents have not condoned the same for the grant of invalid

pension as ordered in **Rahmatullah's** case in this Tribunal in O.A.No.49 of 2014, dated 23.09.2014. He would also request that the said shortfall of 53 days is condoned, the applicant would be eligible for the grant of invalid pension as per the provisions of Regulation 58 of Pension Regulations for the Army, 2008 Part-I.

11. On considering the submission of the learned counsel for the applicant, we find that the request of the applicant for condonation of shortfall in service could be considered, if the actual service of the applicant was found less than 10 years. According to the policy letters issued by the Government of India followed by a Circular of PCDA dated 19.12.1984, the period of 9 months or more than 10 months in a year could be considered as completed one year while calculating the period of pensionable service for the grant of pension. The said letter was given effect from 28.06.1983. Since the applicant was invalided out from service with effect from 04.06.2010, the ingredients of the said letter could be applied to applicant also. When the said principle is applied to the case of the applicant, the period of service completed at 9 years 10 months 5 days could be computed as 10 years of service when the last one year of service, viz., 10 months 5 days is deemed to have been considered as one year as per the provisions of the said letter dated 19.12.1984. Therefore, the applicant is deemed to have completed 10 years of pensionable service as he had served in the Army

for 9 years 10 months 5 days in the service. Therefore, the applicant ought to have been sanctioned invalid pension, instead of invalid gratuity. The grant of invalid gratuity and invalid pension are alternative. Therefore, while granting invalid pension, the applicant should surrender the benefit of invalid gratuity already received by him.

12. From the discussion held above, the impugned order passed on 01.09.2014 is liable to be set aside, in respect of the non-grant of invalid pension. Thus, the applicant is found to be entitled to invalid pension with effect from the date of his invalidation out of service. Accordingly, this point is decided in favour of the applicant.

13. **Point No.2:** In view of the finding reached in Point No.1 that the applicant is entitled for the alternative relief and the main relief was not pressed by the applicant, the application is allowed in respect of alternative relief of invalid pension, as prayed for by him. The invalid gratuity received by the applicant shall either be surrendered or be adjusted in the invalid pension to be granted in his favour. The respondents are directed to issue PPO for invalid pension to that extent from the date of invalidment of the applicant from service till this date, after adjusting the invalid gratuity amount of Rs.1,62,600/- (Rupees one lakh sixty two thousand and six hundred only). In default to comply, the applicant is entitled for the arrears, if any, with interest at 9% p.a. till the date of payment.

14. In the result, the application is allowed in respect of the alternative relief as indicated above. The claim of the main relief is dismissed, as not pressed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

15.09.2015
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.
2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post-DHO, New Delhi-110 011.
3. The Officer-in-Charge
Record Office, Madras Engineer Group
Pin-900 453, C/o 56 APO.
4. The PCDA (P), Draupadi Ghat
Allahabad (UP), Pin-211 014.
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5. M/s. M.K. Sikdar
D.Eswara Rao and S.Biju
Counsel for applicant.
6. Mr. K.Ramanamoorthy, CGSC
Counsel for respondents.
7. OIC, Legal Cell,
DAKSHIN BHARAT AREA, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
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Dt:15.09.2015