

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 90 of 2014

Monday, the 7th day of September, 2015

The Honourable Justice V.Periya Karuppiah
 (Member-Judicial)
 and
 The Honourable Lt Gen K Surendra Nath
 (Member-Administrative)

Ex Sepoy Dudekula Moulali, S/o D.Himnm Saheb
 (Service No.6493081N)
 Village: G.Kothapalli, P.O. Gude Metla
 Tehsil: Racherla, District: Prakasam
 Pin: 523356

... 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 HQ, DHQ PO
New Delhi – 110 011
3. Sena Seva Cops Abhilekh
(Pashu Parivahan)
ASC Records (AT), Pin: 908763
C/o 56 APO
4. Principal Controller of Defence Accounts
Office of PCDA (Pensions)
Allahabad, Uttar Pradesh
Pin: 211 014

... Respondents

Mr.V.Balasubramanian, SPC

ORDER

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

The applicant, Ex Sepoy Dudekula Moulali requests for the production of documents relating to the impugned order dated 24.08.2011 rejecting his plea for disability pension and also requests condonation of 5 months shortfall in qualifying service of 15 years enabling him to become eligible for pension.

2. Briefly, the applicant states that he was enrolled in the Army on 26.08.1996 and had served in various postings as a Sepoy (Animal Transport). The applicant would state that his family problems and environmental factors caused him to have the disability of Alcohol intoxication and psychiatric observation. He would also state that he was punished for overstaying of leave on 7 occasions. The applicant would claim that his entire service was in field areas which was a reason for his extended leave without authorization. The applicant made a representation that he ought not to be discharged prematurely since he was the sole bread winner to his family; however, the respondents did not accept his plea and discharged him from service with effect from 31.03.2011. At the time of discharge, a Release Medical Board was held which placed him in Low Medical Category S2 (P) for intoxication and psychiatric observation with a composite assessment of 20% for life. The applicant would claim that the said disability was due to service conditions and, therefore, he ought to have been granted disability element of pension. The applicant would further claim that since he has served for 14 years and 7 months, he is entitled to condonation of shortfall in qualifying service for pensionary benefits in accordance with Regulation 44 of Pension Regulations for the Army, 2008 (Pt I). In view of the

foregoing, the applicant would request the Tribunal to grant him disability pension as well as grant him service pension by condoning the shortfall in service for eligibility to receive pension.

3. The respondents in their reply statement would not dispute the fact that the applicant was enrolled in the Army on 26.08.1996 and was discharged from service on 01.04.2011 under Army Rule 13 (3) III (v) after rendering approximately 14 years and 07 months of service which included 146 days of non-qualifying service. The respondents would state that the applicant had been a habitual offender and since 2004, he had 2 Black Ink entries and 5 Red Ink entries in his conduct sheet and he was also in the habit of consuming excessive liquor. He was placed in Low Medical Category S2 (P) for alcohol intoxication and psychiatric observation. They would further state that the averment of the applicant that throughout his service, he was posted in the field and hardship areas are totally incorrect and they would state that he had alternate postings in peace and field areas as per his profile. They would submit that the applicant had served in Gaya, Patiala and Allahabad which are peace areas for more than 7 years. Being a habitual offender, he was issued a Show Cause Notice under Army Rule 13 (3) III (v) dated 21.11.2010 and the applicant had replied to it on 15.12.2010. The Show Cause Notice and the reply to the Show Cause Notice were considered by the General Officer Commanding, 33 Corps and, thereafter, he was ordered to be discharged from service for being a habitual offender under Army Rule 13 (3) III (v). All procedural formalities were followed and adequate opportunities were given to the applicant. At the time of his discharge, a Release Medical Board was conducted and the applicant was assessed for his disabilities 'alcohol dependence syndrome' and 'psychiatric observation'. The disability was assessed at 20% composite for life and the doctors had opined

that the disability was neither attributable to nor aggravated by military service. The respondents would also contend that in view of the foregoing, the applicant is not entitled to any disability pension. The applicant had a total service of 14 years and 7 months of which 146 days are non-qualifying service and hence he had a total of 14 years, 2 months and 9 days qualifying service at the time of discharge from service. According to Pension Regulations for the Army, a minimum of 15 years qualifying service is required for service pension and, therefore, the applicant is not entitled to any service pension. In view of the foregoing, the pleadings of the applicant for disability element of pension and service pension lacks substance and merit and, therefore, requests the Tribunal to dismiss the O.A.

4. We have heard the arguments of Mrs.Tonifia Miranda, learned counsel for the applicant and Mr.V.Balasubramanian, learned Senior Panel Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents and perused all documents placed before us.

5. From the pleadings on either side, the following questions emerge for consideration:

- (a) Whether proper procedures were followed by respondents while discharging the applicant from service as 'habitual offender'?
- (b) Is the applicant entitled to disability pension for the ID 'Alcohol Dependence Syndrome' and 'Psychosis Observation'?
- (c) Is the applicant entitled for condonation of shortfall of service for being eligible to receive service pension?
- (d) What relief, if any, the applicant is entitled to?

6. Points a, b, c & d: The fact that the applicant was enrolled in the Army on 26.08.1996 and that he was punished for overstaying of leave on 7 occasions and that he was discharged from service under Army Rule 13 (3) III (v) with effect from 31.03.2011 and that at the time of discharge, he was suffering from alcoholic intoxication and psychiatric observation are not disputed by either side.

7. The learned counsel for the applicant would state that domestic problems, combined with environmental issues owing to his continuous postings in field, have caused the applicant to overstay leave and get addicted to alcohol. Therefore, the said ID ought to have been considered as attributable / aggravated by military service and that since the applicant had a service of 14 years and 5 months at the time of discharge, he ought to have been permitted to complete his pensionable service prior to his discharge from service.

8. *Per contra*, the counsel for the respondents would state that the applicant was a habitual offender and the submission of the counsel for the applicant that the applicant was always posted in field areas is completely false as he had served for about 7 years in peace stations. We have examined the records placed before us and are inclined to agree with the learned counsel for the respondents that the applicant had several postings in peace areas which were more than 7 years of approximately 14 years he had served in the Army. Therefore, the claim of the applicant that he was perpetually in the field areas and because of the environmental conditions he got addicted to alcohol appears to be misleading and false. Further, we have examined the Show Cause Notice issued to the applicant under Army Rule 13 (3) III (v) dated 21.11.2010. The Show Cause Notice would show that the applicant had overstayed leave / absent without leave on seven occasions, the last occasion for which he was punished for the said offence being 08.05.2010. The

applicant had 5 Red Ink entry punishments and 2 Black Ink entry punishments. Further, the operative paragraph of the Show Cause Notice issued to the applicant reads as follows:

[illegible]

2. From your record it is evident that your discipline is far below the expected standard of serving personnel. The offences committed by you repeatedly, indicate that you are not amenable to service discipline. Your retention in service is detrimental to the interest of this highly disciplined organization”

9. The applicant had replied to this Show Cause Notice on 15.12.2010 with a plea to retain him in service and stated the following:

“I No.6493081N Sep/ASH Dudekula Moulali will not commit any offence in future. I have completed 14 years and four months service and I wish to continue my remaining two years service.”

10. In the meanwhile, the applicant was admitted to Base Hospital, Barrackpore and was diagnosed with Alcohol intoxication syndrome and Psychiatric Observation. From the summary of the opinion of the Senior Advisor (Psychiatry), it appears that the soldier has been consuming alcohol for the past 6 years and was habituated to consuming liquor 2-3 days a week since then. *"The physical examination revealed reeling gait, slurred speech, disorientation and alcoholic breath at the time of admission"*. Further, the doctor would state that the applicant *did not show any psychiatric illness and his drunkenness appears part of an overall maladjustment that is not due to any mental illness*. The applicant was accordingly placed in low medical category S2 (T-24) with effect from 18.02.2011.

11. The Show Cause Notice and the reply thereto were placed before the Competent Authority who, after having examined them, had sanctioned discharge of the applicant with all financial benefits as per service rendered by the individual. The operative part of the Speaking Order is as follows:

"1. XX XX XX XX

2. The individual has not brought any facts which contradict the offences committed by him in last seven years. The plea of the individual to retain him in

service considering, conditions of his family and length of service is not justifiable in law. It merely seems to be have taken as an after-thought to cover his wrong deeds on humanitarian grounds. The individual has been punished for illegal absence on seven occasions in last seven years. It indicates that individual is a habitual offender and is not amenable to discipline. The past record of the individual reveal that many opportunities were given to him but he did not show any sign of improvement. There is no sign of any reformation in the individual and accordingly his retention in the service is considered undesirable.”

12. Consequent to the discharge order, the applicant was brought before Release Medical Board and the Release Medical Board opined that the said IDs, Alcohol Intoxication and Psychiatric Observation are not attributable to nor aggravated by military service stating that Alcohol Intoxication is an “*individual trait for substance abuse*” and Psychiatric Observation is a “*complex interplay of exogenous and endogenous factors*”. The applicant was given a composite assessment of 20% for life and net assessment for qualifying for disability pension as Nil for Life.

13. We have examined the Categorisation as well as Release Medical Board proceedings placed before us and we are inclined to agree with the opinion of the Release Medical Board that the said IDs are neither attributable to nor aggravated by military service. In view of the foregoing, the applicant is not entitled to disability pension for the said IDs.

14. The next question to be answered in this case is whether the applicant is entitled to alternate remedy of invalid pension. In accordance with Pension Regulations for the Army, 2008 (Part I), persons invalided out of service on medical grounds are entitled to invalid pension / gratuity. Relevant para 58 on Invalid Pension and Invalid Gratuity reads as follows:

WHEN ADMISSIBLE

58. (a) *An invalid pension or invalid gratuity in accordance with the Regulations in this Section may be granted to Service personnel invalided out of service on account of a disability incurred in the circumstances mentioned in Category A of Regulation 82 of these Regulations.*

(b) *A low medical category personnel who is retired/discharged from service for want of alternative employment compatible with his low medical category shall also be eligible for invalid pension or invalid gratuity.*

(c) *Personnel below officer rank who is invalided out of service in consequence of any disorder (including sanity) resulting from indulgence in drugs or drinks which was within his control will be eligible for invalid pension/gratuity. Orders of the competent authority under Regulation 8 of these Regulations shall be obtained in each case.*

15. In the extant case, the applicant was discharged from service for being a habitual offender under Army Rule 13 (3) III (v) and not invalided out of service due to disability and comes under Army Rule 13 (3) III (iii). Since the applicant has not been invalided out of service under the said clause (i.e., having been found medically unfit for further service), he is not entitled to Invalid pension / gratuity.

16. The counsel for the applicant has pleaded that the applicant is entitled to service pension after condonation of shortfall of seven months service to complete 15 years of qualifying service.. As we have already noted, the competent authority, while sanctioning discharge considered the Show Cause Notice and the reply by the applicant wherein he had pleaded that he had more than 14 years of service and he may be allowed to stay in service to enable him to get service pension. However, the competent authority, in his Speaking Order had observed that his wrong deeds

cannot be covered up on humanitarian grounds and that the individual is a habitual offender and is not amenable to discipline.

17. The question before us is whether the competent authority, considering the fact that the applicant had already completed 14 years, 2 months and 9 days of qualifying service ought to have considered the plea of the applicant while discharging him as a habitual offender. Both the Hon'ble High Courts and Apex Court in several judgments have observed that discharge on the basis of Red Ink entries is not mandatory and the competent authority has to bear in mind the nature of offences and the likely injustice and harshness that may be caused to such discharge when individuals are about to complete pensionable service.

18. The Hon'ble Delhi High Court had, in the case of Ex-Sepoy Sube Singh vs Union of India and Ors [140 (2007) DLT 26] observed the following:

“9. In the case of discharge proposed on the basis of red ink entries, the competent authority has also to bear in mind that such discharge does not become mandatory merely because of such entries having been made. Nature of the offences for which such entries have been awarded has also to be considered by the competent authority. More importantly, the authority has to keep in mind that in the case of individuals who are about to complete their pensionable service, there is no injustice or harshness caused because of discharge. It is obvious that injustice would be more in cases where the person being discharged was about to complete pensionable service than those who have yet to put in the requisite number of years. All told, the competent authority has an onerous duty to perform while deciding whether or not to discharge an individual from service. The least that he must, therefore, do is to ensure that he applies his mind to each one of the factors that are made relevant by the circular and which even independent of the circular appear to be relevant to a proper exercise of power vested under Section 22 Rule 13 of the Army Act and the Rules.”

19. The applicant had, no doubt, earned five Red Ink entries and, therefore, would be categorized as habitual offender. However, as noted earlier, discharge

need not be ordered merely because of five Red Ink entries. The seriousness of the offence and the effect of such discharge would have on the individual's eligibility for service pension should be some of the considerations while such discharges are made. In the instant case, the fact that the applicant is about to complete his pensionable service was an important factor for consideration. We also observe that the fact that the applicant was suffering from Alcohol Dependence Syndrome was not brought to the notice of the Competent Authority either through the Show Cause Notice or in reply thereto. Personnel suffering from said disease, i.e., Alcohol Dependence Syndrome are prone to erratic behavior and need medical treatment. We are certain that had the Competent Authority been aware of the said illness / disease of the applicant, he would have taken a more favourable view on the plea of the applicant and permit him to complete minimum pensionable service as well as enable him to get treatment for the said illness/disease.

20. In view of the foregoing facts and circumstances, we find the Judgment of the Hon'ble Delhi High Court (Supra) fits squarely in this case also. The applicant had 14 years, 2 months and 9 days of service on the date of his discharge and, therefore, there is a shortfall of 9 months and 21 days of service for him to be eligible for qualifying pension. We are inclined to condone the shortfall of qualifying service in respect of the applicant so as to enable him to earn minimum service pension. Accordingly, all the points are answered.

21. In fine, the shortfall of service of 9 months and 21 days in respect of the applicant is condoned to enable him to complete 15 years of qualifying service for eligibility for grant of service pension. The applicant is entitled to service pension and all other attendant benefits including gratuity and DCRG, if otherwise eligible.

Arrears shall be paid within three months from the date of this order. Failing to do so, an interest at 9% shall be paid on the arrears.

22. The O.A. is allowed to that extent. No costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

07.09.2015
[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 HQ, DHQ PO
New Delhi – 110 011
3. Sena Seva Cops Abhilekh
(Pashu Parivahan)
ASC Records (AT), Pin: 908763
C/o 56 APO
4. Principal Controller of Defence Accounts
Office of PCDA (Pensions)
Allahabad, Uttar Pradesh
Pin: 211 014
5. Mrs.Tonifia Miranda
Counsel for the applicant
6. Mr.V.Balasubramanian, SPC
Counsel for the respondents
7. Officer in-Charge
Legal Cell, ATNK & K Area,
Chennai-600009.
8. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

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

O.A.No.90 of 2014

07.09.2015

