ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI
O.A.NO. 3 OF 2012
WEDNESDAY, THE 9TH DAY OF JANUARY 2013/19TH POUSHA, 1934
CORAM:
HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM,MEMBER (A)

APPLICANT:

ANILKUMAR.B. AGED 42 YEARS,
(EX NO.13975167 F NAIK OF ARMY),
S/O.LATE SHRI.T.N.BALAKRISHNAN PILLAI,
TIRUNELLUR KIZHAKKETHIL,
KANJAVELI.P.O., KOLLAM DISTRICT,
KERALA – 691 602.

BY ADV.SRI.T.R.JAGADEESH.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE ,
SOUTH BLOCK, NEW DELHI – 110 011.

2. THE CHIEF OF THE ARMY STAFF,
INTEGRATED HEADQUARTERS (ARMY),
SOUTH BLOCK, NEW DELHI – 110 001.

3. OIC RECORDS, ARMY MEDICAL CORPS RECORDS,
LUCKNOW, UP – 226002.

4. PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), OFFICE OF THE
PCDA (P), DRAUPADI GHAT,
ALLAHABAD – 211 014.

BY ADV.SMT.E.V.MOLY, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. We have heard Mr. T.R.Jagadeesh for the applicant and Smt.E.V.Moly for the respondents and perused the record.

2. The applicant Anil Kumar B. Ex No. 13975167 F has instituted the instant Original Application for the disability pension with effect from the date of his discharge.

3. The relevant facts are that the applicant joined the Indian Army on 17th December 1987 at AMC Centre, Lucknow in the trade of Nursing Assistant. When the applicant was posted at Military Hospital, Cannanore, he developed 'Essential Hypertension' and was referred to INHS, Sanjivani, Kochi for treatment. The Medical Board at INHS, Sanjivani placed the applicant in Low Medical Category BEE (Temporary). The applicant was, thereafter posted to Military Hospital Gurudaspur. After a gap of

certain period, the applicant was again medically examined and was placed in medical category CEE (Temporary). Around two years thereafter, the applicant was placed in the medical category CEE (Permanent). Due to medical problems the applicant was unable to perform his duties effectively. So he requested for his release on compassionate ground. It is also alleged that the applicant was required to state whether he wished to continue in Low Medical Category or opted for unwillingness for further service. According to the applicant, he exercised the option to submit unwillingness for further service. Under these circumstances the applicant was released from the Army service with effect from 1st July, 2005. Before the release, a Release Medical Board was held at 151 Base Hospital on 29th April 2005 which recommended the applicant's release in low medical category S1H1A1P2 (Permanent)E1 for 'primary hypertension' and further opined that the disability had aggravated due to stress and strain of military service and assessed the same at 30% for life. The applicant's request

for disability pension was turned down on the ground that he was discharged at his own request. Another ground of the refusal of the disability pension was that the applicant had, while seeking the discharge, furnished the undertaking that he would not claim any disability pension.

4. The learned counsel for the applicant submitted that no doubt the applicant was discharged on his own request but he had a disability which was aggravated due to the military service, therefore, his request for the disability pension was tenable as per the judgment of the Delhi High Court in **Mahavir Singh Narwal v. Union of India and Others (2004 (74) DRJ 661).** It was also submitted that the judgment of the Delhi High Court remained in tact even before the Apex Court, as the Special Leave Petition filed by the Union of India and others was dismissed.

5. Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter referred to as 'the Regulations'), which deals with the disability pension of P.B.O.Rs, being relevant in the present case, is reproduced as follows:

> *"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.*
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> *The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

6. A perusal of the aforesaid Regulation 173, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by military service and assessed at 20% or more. The question whether the disability is attributable to or aggravated by military service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty Pensionary Awards, 1982 as amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty

Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, being relevant on the point, is re-produced as follows:

> *"4. Invaliding from service is a necessary condition for grant of disability pension.* ***An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service.*** *ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service."*

The aforesaid rule 4 *inter alia* provides that an individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in

which he was recruited, will be treated as invalidated from service. It may not be out of context to mention that a similar provision had been incorporated even in the Entitlement Rules for Casualty Pensionary Awards, 1948 as rule 1. Therefore it is crystal clear that rule 1 of the Entitlement Rules for Casualty Pensionary Awards, 1948 was in pari materia with rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982. The case of **Mahavir Singh Narwal** (supra) had arisen under the aforesaid 1948 Entitlement Rules. The Division Bench of the Delhi High Court examined the extent and scope of Regulation 173 of the Regulations as also rules 1 and 2 of the Entitlement Rules for Casualty Pensionary Awards, 1948 and held as follows:

> " *6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he*

was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary (sic) to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the petitioner on 11th April 1979 it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category. Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner ....."

(emphasis supplied)

7. The Delhi High Court further held that merely because a person has been discharged from service on

compassionate ground, although his disability has been acquired on account of his stress and strain of military service, will not be a ground to reject the claim of disability pension, if he has been invalidated as per the Appendix II of Entitlement Rules for Casualty Pensionary Awards, 1948.

8. The aforesaid view of the Delhi High Court which was affirmed by the Apex Court still holds good on the point.

9. In our view, invalidment from service is one of the main conditions for grant of disability pension. According to the rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 if an individual, at the time of his release, was in a low medical category than the medical category he had been placed at the time of his recruitment, it is to be treated that the individual was invalided out of service. In such matters the disability pension cannot be denied on the ground that the individual himself requested for his discharge. Invalidment from the service cannot be

inferred only when the individual is discharged by the authorities due to the disability. It can also be inferred in a case where discharge is sought for by the person suffering from the disability. What is material in such matters, is to see as to what was the medical category of the person at the time of his entry and also at the time of his discharge. If the medical category which was at the time of the recruitment, is found downgraded at the time of the discharge, it is to be treated that the person was for invalidated from the service and in such matter the question whether the discharge was granted by the authorities themselves at their own or it was granted due to the request made by the concerned person, does not appear to be material at all.

10. We are therefore of the view that the denial of disability pension to the applicant only on the ground that he was discharged on his own request was not proper at all.

11. The learned counsel for the respondents tried to submit that the applicant had furnished, while claiming the

discharge on compassionate ground, the written undertaking that he would not claim any disability pension, a copy of the undertaking is on record as Annexure R2, which may be re-produced as follows:

> " *Certificate*
>
> *I, No.13975167 F NK/ORA Anilkumar.B of 151 Base Hospital, C/o. 99 APO am seeking discharge at my own request and I will not claim the disability pension at the time of med exam prior to my discharge if I am found suffering from disability attributable to or aggravated by service."*

The learned counsel for the respondents submitted that the applicant could not be permitted to set up a claim against the aforesaid undertaking.

12. The learned counsel for the applicant, on the other hand, submitted that the undertaking was obtained by the respondents under pressure and it was not in any way voluntary. The learned counsel for the applicant further submitted that the pension, being a legal right could not

be taken away due to the undertaking furnished by the applicant.

13. We have considered the rival submissions regarding the relevancy of undertaking. The sole question that arises for our consideration is whether the undertaking debars the applicant from claiming the disability pension. In order to answer this question, it is to be kept in mind that the pension is not a charity or bounty depending on the sweet will of the employer. It is granted as of right in lieu of past services rendered by the employee. If any person is entitled to any type of pension under law, his entitlement cannot be taken away by the employer, nor the employee can be required to give up his right of pension unless it is permitted in law. The Regulations nowhere provide that as and when any armed forces personnel seeks premature discharge on any ground, may be personal or otherwise, he has to give an undertaking that he would not claim any pension. The Regulation 173 of the Regulations also does not provides any such impediment or condition.

We are failing to understand as to how the respondents required the applicant to furnish the undertaking that he would not receive pension. Further, his request for premature discharge was accepted. In our view, it was open to the authorities to refuse the request for premature discharge but it was not at all desirable to put a condition that the discharge was to be granted only on furnishing an undertaking not to claim pension (disability pension). In our view the undertaking was not only contrary to law but was also made to operate as an impediment on the applicant's right to receive disability pension. More so, the undertaking cannot operate as estoppal as there cannot be any estoppal against law.

14. In view of the aforesaid, denial of disability pension to the applicant on the ground of the undertaking furnished by him cannot be said to be justified.

15. It is also relevant to mention that the Release Medical Board assessed the applicant's disability at 30% for life but in view of the Government letter

No.1(2)/97/1/D(Pen - C) dated 31st January 2001 the percentage of the disability is liable to be rounded off to 50% with effect from the date of discharge, i.e., 1st July 2005. Accordingly the Original Application is liable to be allowed.

16. The Original Application is allowed. The respondents are directed to pay the disability pension to the applicant for life at the rate of 50% disability with effect from the 1st July 2005. They are further directed to pay the entire arrears of the disability pension to the applicant within four months from today. In case the arrears of disability pension is not paid within the said period of four months, the unpaid amount will carry a simple interest at the rate of 7% per annum to be paid by the respondents to the applicant.

17. There will be no order as to costs.

18. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW
MEMBER (A)

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

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