

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A No. 8 OF 2011

(Writ Petition No.15148 of 2008 OF THE HIGH COURT OF KARNATAKA, AT BANGALORE),

TUESDAY, THE 24TH DAY OF SEPTEMBER, 2013/2ND ASWINA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:-

EX-NO.14531967/CFN THAMMAIAH.K.A,
S/O K.T.APPAIAH, AGED 49 YEARS,
KOLAKERI VILLAGE & P.O MADIKERI TALUQ,
COORG (DT) KARNATAKA – 571214.

BY ADV. SRI. M.P.G.MENON.

Versus

RESPONDENTS:-

1. UNION OF INDIA, (REPRESENTED BY ITS SECRETARY),
MINISTRY OF DEFENCE,
DHQ POST, NEW DELHI-110011 .
2. THE CHIEF OF THE ARMY STAFF, ARMY HEADQUARTERS,
DHQ POST, NEW DELHI, 110011.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT, UTTARPRADESH.
4. CHIEF RECORDS OFFICER, EME RECORDS,
SECUNDERABAD – 21 (A.P)
5. GCDA, WEST BLOCK, R.K.PURAM, NEW DELHI-66.

ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

ORDER

SHRIKANT TRIPATHI, MEMBER(J):

1. Rejoinder filed on behalf of the applicant is taken on record, subject to the condition that the copy of the ruling annexed therein is taken back by the learned counsel for the applicant. The Registrar is directed not to entertain any application or affidavit in which a copy of a ruling is annexed.

2. The applicant Thammaiah.K.A, Ex cfn.No.14531967 filed Writ Petition No.15148 of 2008 in the Hon'ble High Court of Karnataka at Bangalore, for a direction to the respondents to sanction and pay him invalid pension with effect from the date of his discharge.

3. After the establishment of the Armed Forces Tribunal, Regional Bench, Kochi, the matter was transferred by the Hon'ble High Court of Karnataka to this Bench under Section 34 of the Armed Forces Tribunal Act and is registered here as T.A No.8 of 2011.

4. The facts relevant for the decision of the instant matter are that the applicant was enrolled in the Indian Army on 27th January 1979 and was invalided out of service with effect from 31st of October, 1988 due to being in low medical category "CEE (permanent)", as he had the disability "generalised seizure", which was assessed by the Medical Board at 20% for two years. In view of the fact that the applicant had no

requisite length of service to earn pension, he was denied service pension. As the disability was found by the Medical Board as constitutional disorder, the applicant's claim for the disability pension was also denied. The applicant then filed Writ Petition No.24955 of 1991 before the Hon'ble High Court of Karnataka at Bangalore, for grant of disability pension, which was dismissed on 25th June 1999 on the ground that the disability was neither attributable to nor aggravated by the military service. The applicant then filed Writ Appeal No. 6574 of 1999 before a Division Bench of Hon'ble High Court of Karnataka at Bangalore, which was also dismissed by the Division Bench on 29th November 1999.

5. After the dismissal of the claim for the disability pension by the Hon'ble High Court of Karnataka at Bangalore, the applicant started to claim the invalid pension in terms of Regulations 198 of the Pension Regulations for the Army, 1961 along with a prayer for condonation of the deficiency in service in terms of Regulation 125 of the aforesaid Regulations. The claim for the condonation of the deficiency in service and invalid pension was denied by the PCDA(P), Allahabad mainly on the ground that the deficiency could not be condoned, as the applicant had shown unwillingness to serve and in such matters the condonation of deficiency in service was not permissible under Regulation 125 of the Pension Regulations for the Army, 1961. It is however significant to

state that in terms of Regulation 125 read with Regulation 198 of the Pension Regulations for the Army, 1961, the EME records condoned the deficiency in service to the extent of 88 days vide Noting Sheet No. 14531967/DP-2/Pen dated 13th July 2006 along with sanction order dated 18th July 2006. When the claim was forwarded to the PCDA (P), Allahabad for issue of a PPO, the PCDA(P) rejected the claim mainly on the ground that provisions of Regulation 125 of the aforesaid Regulations were not attracted in the matter of invalid pension. The PCDA(P) further opined that if the deficiency in service was required to be condoned for sanctioning service pension/reservist pension, then and then alone, the deficiency in service could be condoned under Regulation 125 of the aforesaid Regulations. It is also relevant to state that the EME records had made various representations to PCDA(P), Allahabad for re-considering the issue, but the same were turned down. So the applicant filed the writ petition before the Hon'ble High Court of Karnataka which has been received here on transfer.

6. Mr.M.P.G.Menon appearing for the applicant submitted that in the matter of **Kamala Devi vs. Union of India and Others (S.B.Civil W.P.No.3854/2002)** the Hon'ble High Court of Judicature for Rajasthan at Jodhpur allowed the condonation of deficiency in service even in the matter of the claim for invalid pension, so the stand of the PCDA(P), Allahabad that condonation was not permissible in such mater was not

acceptable. The observations of the Hon'ble High Court of Rajasthan at Jodhpur, being relevant, are re-produced as follows:

“The controversy involved in the instant case stands squarely covered by the decision of this Court in Ex-Constable Sukh Ram Vs. Union of India, SBCWP No.902/1993 decided on 1-4-1997 and a Division Bench judgment of this Court in Union of India & Ors. Vs. Ex-Constable Sukha Ram, DBCSA No.614/1997 decided on 16-7-1997. In Sukha Ram's case, the employee had rendered 9 years 9 months and 20 days service and was refused the benefit of pension. The Division Bench held that in view of the Government of India decision, three months and above but less than 6 months are treated as “half year” and the period of nine months would, therefore, be two “half years”. The Division Bench further held that “since it is a matter concerning the interpretation of the CCS matter (Pension) Rules, where the main intention of the statutory rules is to give pension to the service personnel. We think that in the context of interpretation rendered by the learned Single Judge, we should not interfere in the matter.”

7. It is also relevant to state that in the aforesaid matter before the Rajasthan High Court, the husband of the petitioner had rendered only 9 year 11 months and 06 days service, even then, the Hon'ble High Court of Rajasthan allowed the benefit of condonation of deficiency in service to the petitioner which was accepted by the respondents including PCDA(P), Allahabad, therefore, there was no justification for the PCDA(P) to take a different view in the present matter as the present applicant had also rendered 9 years 9 months 04 days service

and had thus only 84 day's deficiency in service to earn invalid pension.

8. Mr.K.M.Jamaludheen appearing for the respondents submitted that in view of the Regulation 125 of the Pension Regulations for the Army, 1961 condonation of deficiency in service was not permissible in a case where the individual had shown unwillingness to serve. The provisions of Regulation 125 being relevant are quoted as follows:

“125. Except in the case of:

- (a) an individual who is discharged at his own request, or
- (b) an individual who is eligible for special pension or gratuity under Regulation 164, or
- (c) an individual who is invalided with less than 15 years service deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case.”

9. This Bench, of which one of us (Hon'ble Lt.Gen.Thomas Mathew) was a member, held, in T.A.No18 of 2009, that the provisions of Regulation 125(a) of the Pension Regulations for the Army, 1961 were invalid. The relevant observations of the Bench are as follows:

“17. The next question arising for consideration is whether the provisions of Regulation 125(a) debars the competent authority from condoning the deficiency in service of an individual who is discharged on his request is legal. If a person who is discharged on his

own request is entitled to pension, an application filed by such a person for condonation of deficiency in service also cannot be rejected on that sole ground. A request for discharge is allowed only if the authority is satisfied of the genuineness of the claim. So, it is not at all legal and proper to disallow the prayer for condonation on a ground which was found to be genuine. We hold that Regulation 125(a) is illegal and unsustainable.”

10. In view of the aforesaid observations, the PCDA(P), Allahabad could not be said to be justified in applying the aforesaid regulation 125 for refusing to condone, the deficiency in service of the applicant.

11. The next submission on behalf of the respondents was that the applicant had shown unwillingness to serve, therefore, he was not entitled to any pension. In this connection it will be mentioned that the applicant had developed the disability and was accordingly placed in Low Medical Category (permanent) and due to that disability he was to be shifted to a shelter appointment, which he declined to accept. In this view of the matter, the applicant cannot be blamed for showing unwillingness to serve. If he had been allowed to serve on the rank he was already holding, there was no question of his denial to serve. But he had option to deny to serve on a sheltered appointment. In this view of the matter, the denial ought not to have been taken as a ground to

treat him as a disqualified person for the benefit of Regulation 125, if it is taken to be a good law despite the judgment of this Bench referred to in para 9 of this order.

12. In view of the aforesaid, we consider it just and expedient to allow the Transferred Application and direct the respondents to reconsider the matter and pass appropriate order afresh in accordance with law.

13. The Transferred Application is allowed. The respondents are directed to reconsider the applicant's claim for invalid pension in the light of the observations made herein before and pass a reasoned order in accordance with law, within four months from the date of receipt of a copy of this order and communicate the same to the applicant within the same period.

14. There will be no order as to costs.

15. Issue free copy of the order to both side.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRIKANT TRIPATHI,
MEMBER (J)

an.

(true copy)

Prl.Pvt.Secretary