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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Apr-18-2011

Judge : The Honourable Justice a.C. Arumugaperumal Adityan (Member-Judicial) &Amp; the Honourable Lt Gen (Retd) S. Pattabhiraman (Member Â€“ Administrative)

Appeal No. : O.A.No.45 of 2010

Appellant : N. Babu

Respondent : The Commandant, Madras Engineering Group and Centre and Others

Judgement :

(Order of the Tribunal made by Justice ACA Adityan)

1. Even though the applicant would contend that he must be given another chance to serve in the Army by reinstating him, he has incidentally asked for the other reliefs, which the Tribunal Consider it just, reasonable, fit and proper.

2. The admitted facts of the case of the applicant is that he was enrolled in the Indian Army on 28.06.1990 and while he was undergoing training at Training Batallion I, Madras Engineer Group and Centre, Bangalore, he met with an accident and he was released from service on 28.01.1991 under the medical

category EEE on the recommendation of the Medical Board. Accordingly, he was sanctioned the pension of Rs.375/- and disability pension of Rs.90/- as per the Pension Payment Order No.D/252/93. Subsequently, during the re-assessment by the Medical Board, on the basis of the Applicants disablement which was assessed less than 20% (15 19%), his disability pension of Rs.90/- has been stopped as per Order No.G3/RA/3/95/2292/VI, Dated 10.04.1995. The applicant was receiving the disability pension of Rs.90/- through Bank from 28.05.1995 to 30.10.2003 and suddenly, the pension was reduced from Rs.2,218/- to Rs.1,218/- on 28.11.2003. The over payment was also recovered by the Bank. The applicant was receiving the service element of disability pension for a sum of Rs.3,500/- (basic) and suffering without any re-employment. The applicant was discharged from service on the medical category of EEE i.e, STRESS FRACTURE TIBIA (LT) N 823, E-88. But, the respondents have not properly assessed the exact percentage of the disability. The applicant has exhausted all the remedies available to him. Hence, the application.

3. The respondents in their joint reply statement/counter would contend that while the applicant was undergoing training after his enrolment on 28th June 1990, he met which an accident, under which he had sustained fracture of Tibia (Lt), on 17th August 1990. After continuous treatment from 18th September 1990 to 15th October 1990 under sick leave, he reported back for duty with a persistent pain at the fractured spot. Taking into consideration the fact that he was not likely to become a fit Soldier, he was brought before a duly constituted Invaliding Medical Board at Command Hospital (Air Force), Bangalore, on 26th December 1990, which had recommended the applicant to be invalided out of service in medical category EEE with 15% to 19% disability for two years due to disability Stress Fracture (Lt) Tibia N 823, E88, which was also approved by the competent authority on 8th January 1991. Accordingly, the applicant was Invalided out of service on 27th January 1991 under Rule 13(3) Item IV of Army Rules 1954 on medical grounds. The disability of the applicant viz., Stress Fracture (Lt) Tibia N 823, E88 was considered as attributable to military service by the authorities concerned. Therefore, the disability pension, consisting of service element and disability element, was granted to the applicant with effect from 28th January 1991 vide Pension Payment Order No.D/2521/993 as revised from time to time.

Disability element of pension was stopped with effect from 28th May 1995 by the competent pension sanctioning authority ie., Principal Controller of Defence Accounts (Pensions), Allahabad, based on the opinion of the Re-Survey Medical Board held on 31st January 1995. Now, the applicant is getting service element of pension at the rate of Rs.3,500/- per month for life with dearness relief as admissible from time to time. The representation dated 23rd June 2010 submitted by the applicant through his advocate for re-instatement into service and received in Record Office Madras Engineer Group on 25th June 2010 was promptly replied vide Record Office, Madras Engineer Group letter No.15308408/LIB/48/PC, dated 2nd July 2010. Therefore, the said letter dated 2nd July 2010 cannot be treated as an order as alleged by the applicant. No cause of action has been accrued to the applicant to file the present Original Application before this Tribunal. The payment of disability element of pension was stopped with effect from 28th May 1995 vide Chief Controller of Defence Accounts (Pensions), Allahabad, letter No.G3/RA/3/95/2292/VI, dated 10th April 1995. There is no provision existing for re-instatement of personal, who were invalided out of service on medical grounds. Hence, the application is liable to be dismissed.

4. The applicant has filed a reply statement to the counter reiterating the pleas raised in his application.

5. We heard the learned counsel Mr.R.Thanjan appearing for the applicant and the learned Senior Panel Counsel for Central Government Mr.M.Devendran appearing for the respondents and considered their respective submissions.

6. Now the point for determination in this application is whether the applicant is entitled to the relief of re-instatement or any other suitable orders from this Tribunal as prayed for?

7. THE POINT:- The main grievance of the applicant is for restoration of his disability pension, which was originally granted to him, but was subsequently stopped through the impugned order No.G3/RA/3/95/2292/VI, dated 10.04.1995. AFMSF-16 reads that the applicant while doing physical training had sustained Stress Fracture (Lt) Tibia N 823, E88 on 17th August 1990. After completion of sick leave he reported back for duty with a complaint of pain in fractured spot and

was again admitted in the hospital on 16.10.1990. Thereafter, he was recommended for discharge from service under medical category EEE. The opinion of the Invaliding Medical Board is that the disability is attributable to service. At page 3 of AFMSF-16 under Para 3 the definite opinion of the Medical Board for the disability Stress Fracture (Lt) Tibia N 823, E88 is attributable to service. The Medical Board has assessed the disability as less than 20% (15 - 19%). But, the Chief Controller of Defence Accounts (Pensions), Allahabad, has sanctioned disability pension at the rate of Rs.90/- with effect from 28.01.1991, which is against the dictum in (2009) 8 MLJ 1475 SC, Secretary, MoD and Others Vs. Damodaran A.V. (Dead) through LRs and others. As per AFMSF-17, Re-survey Medical Board proceedings, the disability pension was not recommended. Accordingly, the impugned order No.G3/RA/3/95/2292/VI, dated 10.04.1995, was passed by the Chief Controller of Defence Accounts (Pension), Allahabad, discontinuing the disability pension for the applicant from 28.05.1995. Admittedly, the applicant has been discharged on medical ground EEE under Rule 13(3) Item IV of Army Rules holding that the applicant being a recruit was considered unlikely to become an efficient soldier. The applicants appeals to the competent authority have been rejected on the ground that since he has been discharged under medical category EEE, he can not be reinstated into service, and his claim for restoration of disability pension was also rejected on the ground that even though the disability was considered as attributable to service, since the percentage of the disability is below 20% as per AFMSF-16, under Regulation 173 of the Pension Regulations for the Army the applicant is not entitled to the disability pension. But, in accordance with the march of law and as per the G.O.No.1(2)/97/D (pen-C), Government of India/Bharat Sarkar Ministry of Defence/Raksha Mantralaya, New Delhi, dated 31st January, 2001, the percentage of the disability has been modified under Para 7.2 as follows-

Where an Armed Forces personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing the disability Element-

Percentage of disability as assessed by invaliding medical board	Percentage to be reckoned for computi disability element
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

Para4.1 of the said GO, reads as follows-
For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows:-

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accident while not on duty.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:-

(i) Accidents while travelling on duty in Government Vehicles or public/private transport

(ii) Accidents during air journeys

(iii) Mishaps at sea while on duty

(iv) Electrocution while on duty, etc

(v) Accidents during participation in organised sports events/adventure activities/expeditions/training.

Category D

Death or disability due to acts of violence/attack by terrorist, antisocial elements, etc whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc, would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

Death or disability arising as result of-

(a) Enemy action in international war.

(b) Action during deployment with a peace keeping mission abroad.

(c) Border skirmishes.

(d) During laying or clearance of mines including enemy mines as also minesweeping operations.

(e) On account of accidental explosions of mines while laying operationally oriented mine-filed or negotiating minefield laid by the enemy or own forces in operational areas near international borders or the line of control.

(f) War like situations, including cases which are attributable to/aggravated by-

(i) Extremist acts, exploding mines etc, while on way to an operational area.

(ii) Battle inoculation training exercises or demonstration with live ammunition.

(iii) Kidnapping by extremists while on operational duty.

(g) An act of violence/attack by extremists, anti-social elements etc while on operational duty.

(h) Action against extremists, antisocial elements, etc. Death/Disabiltiy while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.

(i) Operations specially notified by the Government from time to time.

But, the said GO specifically says that it will come into effect only from 01.01.1996 as per para 2.1. But, in the latest judgment of the Honourable Apex Court in K.J.S.ButtarVs. Union of India and another in Civil Appeal No.5591 of 2006, the benefits conferred under G.O.No.1(2)/97/D (pen-C), dated 31.01.2001, have been given retrospective effect after referring to the earlier judgments of the Apex Court in Union of India and Anr Vs. C.S.Sidhu [2010(4) SCC 563], Union of India and Anr Vs. Deoki Nandan Aggarwal [1992 Suppl (1) SCC 323], State of Punjab Vs. Justice S.S.Dewan [(1997) 4 SCC 569] and Union of India and Anor Vs. S.P.S. Vains (Retd) and Ors. The Honourable Apex Court has also extracted the observations made by the Apex Court in D.S.Nakaracase in Union of India and Anr Vs. S.P.S. Vains (Retd) and Ors as follows:-

The said question was taken up by a Constitution Bench in D.S.Nakarawhere in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cutoff date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it

would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects ought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

The impugned order has been passed, before the said judgment of the Honourable Apex Court in Civil Appeal No.5591 of 2006 dated 31.03.2011 was pronounced. Under such circumstances, the principle laid down in Civil Appeal No.5591 of 2006 by the Honourable Apex Court will be applicable to the present facts of the case in all four corners. Accordingly, We hold that the applicant is entitled to the disability pension and the impugned order is liable to be set aside, even though he is not entitled to the relief of reinstatement into service. Point is answered accordingly.

8. In fine, the application is dismissed in respect of the relief of reinstatement into service. But, the impugned order rejecting his disability pension is set aside and the applicant is entitled to the restoration of his disability pension. But, the monetary benefits will take effect only from 01.01.1996. If any disability pension was paid to the applicant before 01.01.1996 that is to be recovered (or adjusted) from the applicant. No costs. For compliance three months. Failure in compliance will entail the applicant to claim 6% interest per annum for the arrears.

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