

S. Gaspar Versus E.M.E. Record and Another

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Jun-17-2010

Judge : A.C. Arumugaperumal Adityan (Member-Judicial) & the Honourable Lt Gen (Retd) S. Pattabhiraman (Member “Administrative)

Appeal No. : T.A. No. 18 of 2010 (W.P. No. 3956 of 2008)

Judgement :

(Order of the Court was made by Justice ACA Adityan)

1. The petitioner, who had approached the Honourable Madurai Bench of Madras High Court for disability pension, which was rejected under the impugned order, by way of filing W.P.No.3956 of 2008, which has subsequently been transferred to this Tribunal after the constitution of the same under the Armed Forces Tribunal Act, 2007 and renumbered as T.A.No.18 of 2010.

2. The short facts as narrated in the affidavit to the petition relevant for the disposal of this petition are as follows:- The petitioner was enrolled in the Indian Army on 25.05.1962 and discharged from service with effect from 19.07.1964 on medical grounds. After undergoing the required training, he was issued with a certificate of Technical Proficiency on 30.09.1963 and was boarded as black smith. During his course of employment, he got injured in his right hand middle finger. Due to the severe injury on the finger, he lost the sense of touch inspite of the treatment given at Military Hospital, Secunderabad. Thereafter, the petitioner was transferred to Tavalai, Maharastra, wherein also he had undergone the

treatment at Military Hospital, Pune. Thereafter, Medical Board invalidated out the petitioner and was discharged from service with effect from 19.07.1964. The medical test conducted before the discharge revealed that the petitioner had lost the sense of touch in his right hand middle finger.

2(a) The petitioner applied for issuance of duplicate Discharge Certificate, which was issued to him vide S.No.789/2007 on 31.08.2007. Within two weeks the second respondent asked the petitioner to surrender back the Discharge Certificate thereafter and accordingly the petitioner surrendered the same. Thereafter, through a letter dated 31.07.2007 the second respondent re-issued the duplicate Discharge Certificate. To his shock, the earlier endorsement stating pensionable case was replaced with a new endorsement as Non-Pensioner . The petitioner had filed several applications before the competent authority for grant of pension from the day one of his discharge. Through the letter dated 25.01.2008 the respondents have informed the petitioner that the connected documents relating to the petitioner have already been destroyed by burning the same under the provision DSR Para 595 being nonpensionable case. On 29.02.2008 the petitioner was informed by the respondents that the injury sustained by him his neither attributable to nor aggravated by military service. Thus the petitioner was declined the grant of Disability Pension. The Vth Pay Commission recommendations have been implemented by the Government earlier. Part-II speaks about the pensionary benefits on Disability in Attributable/Aggravated cases. Para 4.1 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 categorized as follows:-

Category-A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by 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, accidents 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 sea while on duty
- (iv) Electrocution while on duty, etc.,
- (v) Accidents during participation in organized sports events/adventure activities/expectations/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 etc.

2(b) The petitioner was boarded out due to accident at military workshop. When a person is at military workshop and engaging in military work, if any accident occurs, it would be a job attributed to Army service only. But, the impugned order says that disability occurred was not attributable to military service. It has been mentioned in the impugned order that 20% disability is only eligible for grant of disability pension, but further it is noted that his service records are no more, they were burnt. Without holding his service records to escape from the liability, the

respondents had stated that disability was not more than 20%. The petitioner was left without any disability pension for the past 45 years. Hence, the petition.

3. The respondents in their joint counter would contend that since the petitioner comes under the category Old Non-Pensionary case ie., he has been discharged 25 years back, all the medical and service documents relating to the petitioner have already been destroyed by burning on 1st November 1998. The petitioner has not made any claim for Disability Pension while his service documents were in existence. Only for the first time on 13th February 2008, the petitioner had sent a representation for providing certain information, which was suitably replied vide Officer of EME Records letter No.7050192/IAFK/Gen/T-4/NE-1 dated 28th February 2008 explaining his ineligibility for grant of disability pension. Now after the lapse of 45 years from the date of discharge certificate, the petitioner has filed the WP (MD) before the Honourable High Court fully knowing that his service and medical documents would have been destroyed. At the time of the petitioners discharge, the provisions for grant of lump-sum-gratuity in lieu of pension were in force as per option of the retiring PBOR. Possibility of sanction of lump-sum gratuity in lieu of invalid pension cannot be ruled out. However, no documentary proof is available with the respondents, as service/medical documents of the petitioner have been destroyed by burning. Hence, the petition is liable to be dismissed as there is no merit in it.

4. Now the point for determination in this petition is whether the claim for disability pension by the petitioner is liable to be allowed for the reasons stated in the affidavit to the petition?

5. POINT:- We heard the learned counsel appearing for the petitioner as well as the learned JAG Officer, who represented the respondents, and considered their rival submissions. It is the admitted case of the petitioner that he was discharged from service with effect from 19.07.1964 after serving in the Indian Army for less than two years. According to the petitioner, he had sustained injury in his right hand middle finger while he was on duty and that he underwent treatment in the Military Hospital at Pune and as per the opinion of the Medical Board, he was discharged from service with effect from 19.07.1964 under the Army Rule

13(3)(III)(iii). But the claim for Disability Pension was made only in the year 2007. There is no explanation forthcoming from the petitioner why he has not preferred his claim for Disability Pension before 2007 even though he was invalided out from service as early as on 19.07.1964 itself. The learned JAG Officer would file a memo stating that all the documents relating to the petitioner both service and medical were destroyed as per the provision of DSR Para 595 since the petitioner belongs to the Non Pensionable category. Even in the reply to the claim made by the petitioner by the EME Records, Secunderabad (R1 herein), they have categorically intimated the petitioner that since the injury suffered by the petitioner is neither attributable to nor aggravated by military service as per the opinion of the Medical Board, the petitioner is not eligible for grant of Disability Pension, But he is entitled for invalid gratuity, which is Rs.99/-, which has already been paid to the petitioner. The learned JAG Officer today filed the Record Sheet of Non-Effective JCOs/OR/NCE relating to the petitioner to show that he has been granted Rs.99/- towards invalid gratuity and Rs.826/50 towards terminal credit balance at the time of his discharge. But when the petitioner, who is present today before the Tribunal, was informed about this through his counsel, the reply was that he does not remember having received either invalid gratuity or the terminal credit balance at the time of his discharge. The fact of sanctioning of invalid gratuity itself will go to show that the petitioner is not entitled to receive the disability pension. In the absence of any records in respect of the opinion of the Medical Board, only from the available records we could infer that the petitioner is not entitled to the disability Pension. The petition is, no doubt, highly belated one and it is also hit by the inordinate lapse. Hence, We are of the considered view that the petitioners claim for disability pension cannot be granted in this petition. Point is answered accordingly.

6. In fine, the petition is dismissed. If the petitioner has not been disbursed with the gratuity as per the Record Sheet for Non-Effective Personnel, he is entitled to receive the same. No costs.