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Court : Mumbai Aurangabad

Decided On : Oct-08-2014

Judge : S.V. Gangapurwala & a.M. Badar

Appeal No. : Writ Petition No. 2425 of 2000

Appellant : Satish

Respondent : The Union of India and Another

Advocate for Pet/Ap. : Shri. L.V. Sangit

Judgement :

A.M. Badar, J.

1. By this petition, the petitioner is praying for setting aside his order of termination of service and for directing the respondents to calculate his service as continuous service and to award all consequential benefits to him by holding that termination of the petitioner amounts to his release on medical ground. The petitioner is also praying for directing the respondents to give him disability pension.

2. Heard learned counsel appearing for the parties.

3. On behalf of the petitioner, Shri L.V. Sangit, learned counsel for the petitioner submitted that the petitioner joined army as a Clerk after undergoing due selection process; for a period of 16 years by executing a bond. According to the learned

counsel, in the year 1989, the petitioner suffered head as well as chest pain at Jalandhar and he was admitted at the hospital for about 5 to 6 months. On 23.1.1990, the petitioner was discharged from his duty and he was sent back to home by the Army Officer. The learned counsel for the petitioner argued that no discharge certificate was issued to the petitioner. He was not served with any show cause notice nor any reason was given for his discharge or termination. No inquiry was held prior to terminating the petitioner. Kit clearance certificate was issued to the petitioner and he was informed by the respondents that the discharge certificate will be issued on receipt of sheet roll from CCDA (P), Allahabad vide letter dated 17.3.1992. According to the learned counsel for the petitioner, ultimately the petitioner was served with a letter dated 11.10.1991 by the Record Keeper of the Army Ordnance Corps Record by informing that claim of the petitioner for disability pension has been rejected as the disability is not attributable to the military service, or that it is not established that the disability is attributed to and aggravated due to service. It is further informed that as the disability assessed is less than 20%, claim of the petitioner for disability pension is rejected. The petitioner filed an appeal but he was informed that the appeal has not been finalized. The learned counsel for the petitioner argued that the petitioner was not suffering from any medical problem such as chest pain or headache before joining the service and he joined the service after medical examination. This fact according to the learned counsel for the petitioner shows that the petitioner had not suffered any disability or ailment prior to joining of the service and, therefore, the disability suffered by him in the year 1989 is definitely attributable to the army service. The learned counsel further submitted that as per Section 23 of the Army Act, it is necessary to furnish discharge certificate on removal from service and as the same is not issued, the petitioner needs to be held as continued in service and, therefore, entitled for all benefits including the pension. According to the learned counsel for the petitioner, Rule 15A is not followed by the respondents and no provision is made by them for civil rehabilitation of the petitioner. Hence, according to the learned counsel for the petitioner, the petitioner is entitled for the reliefs claimed.

4. Learned counsel for the petitioner further argued that in the matter of Dharamvir Singh V/s Union of India (2013 AIR SCW 4236), Hon'ble Supreme Court had an

occasion to examine Pension Regulation for the Army, 1961 as well as Entitlement Rules for Casualty Pensionary Awards, 1982 found in Appendix II in order to determine whether the appellant therein was entitled for disability pension. It was held therein that in the case of an employee of the army, it is presumed that he is in sound physical and mental condition upon entering in service if there is no adverse note or record at the time of entry in service and in the event of his subsequently being discharged from service on medical ground, the same is presumed to be due to service. He further relied on Madan Singh Shekhawat V/s Union of India and others (AIR 1999 SC 3378) in order to demonstrate that benefit of disability pension cannot be denied to the petitioner for the reason that the physical disability suffered by the petitioner is not attributable to military service. In that case, an Army Personnel who had incurred disability while travelling to his home town on casual leave was granted disability pension by liberally construing the expression at public expense found in Rule 48. On behalf of the petitioner, reliance is also placed on Union of India and others V/s Rajpal Singh (2009 (1) SCC 216) for contending that the petitioner needs to be treated as continued in service because of non-issuance of discharge certificate.

5. The petition came to be opposed by placing on record affidavit of Senior Record Officer of OIG, Records. However, annexures mentioned in the said affidavit are not annexed with the same. Learned ASG appearing on behalf of the respondents argued that the petitioner was admitted to Military Hospital, Jalandhar on 8.9.1989 due to headache while serving with 23 Field Ammunition Depot. During medical investigation, it was found that the petitioner is suffering from neurosis (depressive reaction) and despite medical treatment for six months, the petitioner did not show any improvement. As such he was referred to the Invalidating Medical Board, which on 14.4.1990 recommended discharge of the petitioner invalidating him due to low medical category. Learned ASG further argued that discharge certificate was issued vide letter dated 19.1.2001 and the petitioner was invalidated keeping him out of service under provisions of Army Rule 13(3)III(iii) with effect from 7.5.1990. As such there was no question of issuance of any show cause notice. The cause of discharge was informed to the petitioner and in token thereof, his signature was obtained on case papers of Invalidating Medical Board. Photocopies of relevant papers of Invalidating Medical Board, according to learned ASG, reflect

this fact.

6. Learned ASG further argued that disability pension claim of the petitioner was forwarded to CCDA (P), Allahabad, for sanction of disability pension. However, by examining the papers and recommendation of the Invalidating Medical Board, the expert medical officers at CCDA (P), Allahabad, have not sanctioned the disability pension to the petitioner. The appeal filed by the petitioner is not finalized. However, certain benefits, such as invalidated gratuity, provident fund etc., are already granted to the petitioner. The disability pension claim of the petitioner was rejected by CCDA (P), Allahabad, vide letter dated 23.9.1991.

7. Learned ASG further placed reliance on the decisions [a] Union of India V/s Keshar Singh (2007) 12 SCC 675, [b] Secretary, Ministry of Defence and others V/s Damodaran A.V. (Dead) through L.Rs. and others (2009) 9 SCC 140 and [c] Controller of Defence Accounts V/s S. Balachandran Nair (AIR 2005 SC 4391) and contended that for awarding disability pension, it is not sufficient that invalidation is because of disease having arisen in service but it is also required to be established that the disability caused thereby is attributed to and aggravated by military service. The learned ASG has drawn our attention to Regulation No.173 of the Pension Regulations for the Army, 1961, as well as towards the Appendix II to the said Regulations.

8. The questions which are required to be answered in this petition are whether the order of invalidating the petitioner because of low medical condition deserves to be set aside or in the alternative whether the petitioner is entitled for disability pension, as claimed, on account of invalidating his services because of low medical condition.

9. It is not in dispute that the respondents have framed Regulations titled as Pension Regulations for the Army, 1961 and the parties are governed by the same. Chapter III of these Regulations is concerning Junior Commissioned Officers, Other Ranks and NonCombatants (Enrolled). The case of the petitioner is undoubtedly governed by Chapter III as he was recruited as Clerk in Army. In that context, Regulation 112 is clear. The petitioner is claiming disability pension. As such one will have to consider provision of Regulation 173, which deals with grant

of disability pension and it reads thus:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

Perusal of this Regulation thus makes it clear that disability pension in normal course is to be granted to an individual in following contingencies:

[a] If such an employee is invalidated and ousted from service on account of disability which is attributable or aggravated by military service, and

[b] The disability assessed is at 20% or over. Similarly, the question whether disability is attributable to or aggravated by military service is required to be determined under the Rules in Appendix II i.e. Entitlement Rules for Casualty Pensionary Awards, 1982. Hon'ble Supreme Court had an occasion to consider the relevant rules in Appendix II in the matter of Dharamvir Singh (cited supra) and the Rules considered in that matter can be quoted with advantage for deciding the instant petition also. Following relevant Rules are reproduced hereunder for ready reference:

Rule 5 :The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

PRIOR TO AND DURING SERVICE

(a) Member is presumed to have been in sound physical and mental condition upon entering except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Rule 7 (b) : A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service. 7.c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

Rule 9 : ONUS OF PROOF - The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Rule 14 : DISEASE

- In respect of diseases, the following rule will be observed: (a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which had led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

Rule 14(a) :For Acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously: (i) That the disease has arisen during the period of military service, and

(ii) That the disease has been caused by the conditions of employment in military service. Rule 14(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrollment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

Rule 14(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

Rules 14(a) to (c) are as amended vide Government of India, Ministry of Defence, letter No.1(1)/81/D(PenC) dated 20.6.1996; as referred to in the matter of Dharamvir Singh (supra). Similarly, Rule 423 in Chapter VIII of General Rules of Guide to Medical Officers Military Pensions, 2002, considered in the matter of Dharamvir Singh is also reproduced

for ready reference:

Rule 423(a) For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service /Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which

though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his / her favour, which can be dismissed with the sentence of course it is possible but not in the least probable the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/ Active Service areas.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board / Medical Officer will specify reasons for their/ his opinion. The opinion of the Medical Board/ Medical Officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to / aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

10. Undisputedly, the petitioner was admitted at Military Hospital, Jalandhar because of complaint of headache. The photocopy of the medical opinion furnished on record shows that upon his examination after the treatment at the said hospital, Mr.VRR Rao, Major, AMC, MO, Psychiatrist has given the opinion that the petitioner was treated on lines of NEUROTIC DEPRESSION with supportive psychotherapy, thyunleptic and anxiolytics, he had shown poor response to therapy. Hence, Dr.VRR Rao, Major, AMC, MO, recommended the petitioner to be invalidated out of service in low medical category. Mr.P.K. Chakraborty, Lieutenant Colonel, Classified Specialist (Pay) concurred with the said opinion of Mr.VRR Rao.

11. The petitioner was then required to appear before the Invalidating Medical Board on 14.2.1990. Upon examination of the petitioner, as seen from the photocopy of opinion of the Medical Board produced before us for perusal, it is clear that the Invalidating Medical Board also came to the conclusion that the petitioner is suffering from neurosis (depressive reaction) and having 30% disability. The Medical Board opined that the petitioner should be invalidated out of service because of low medical category. The Medical Board also opined that being a constitutional disorder, ailment of the petitioner is not connected with service. However, the Invalidating Medical Board also opined that the disability suffered by the petitioner did not exist before entering service.

12. From the affidavit in reply placed on record by the respondents, it is seen that the recommendations of the Invalidating Medical Board were approved by DDMS, HQ, PH and HP Area and finally the petitioner was discharged under Army Rules 13(3)III(iii) and 808 from the Army with effect from 7.5.1990. The petitioner has been issued a discharge certificate on 19.1.2001. As such it cannot be said that for want of show cause notice or reason for discharge / termination of service, the petitioner needs to be considered as continued in service. On the contrary, it is seen that because of disability suffered by the petitioner on the recommendation of the Invalidating Medical Board, he was discharged from service by the Commanding Officer as per Rules. The discharge of the petitioner because of disability incurred by him cannot be faulted with as the same is in accordance with the provision of Section 22 of the Army Act, 1950 read with Rule 13(3) of the Army

Rules, 1954. As the discharge of the petitioner was on recommendation of the Invalidating Medical Board, ruling in the matter of Rajpal Singh (*supra*) is of no assistance to the petitioner.

13. Claim of the petitioner for disability pension was forwarded to CCDA(P), Allahabad, which is the pension sanctioning authority as per the provisions of the Pension Regulations for the Army, 1961. The respondents in their reply affidavit have categorically mentioned that this claim for disability pension came to be rejected by the said authority vide order dated 23.9.1991.

However, no such order is placed on record by the respondents. The petitioner himself has placed on record a communication dated 18.10.1991 issued by Record Keeper of Army Ordnance Corps (Records) (Exh.C) addressed to him wherein this fact was communicated to the petitioner. It is seen from this communication that claim of the petitioner for disability pension was rejected as the disability was found not attributable to the military service and the same was not found to be aggravated by the military service. Similarly, it is also communicated by this letter that the disability assessed is less than 20%.

14. Perusal of opinion of Invalidating Medical Board, Jalandhar Cantonment, dated 14.2.1990 shows that the disability suffered by the petitioner is 30%. The same did not exist before the petitioner entering in service of the respondents as Clerk. As such the reasons to that extent stated by the respondent - authorities vide this communication dated 18.10.1991 appear to be incorrect.

The minimum percentage of disability required for qualifying an employee of Army to get disability pension as per Regulation 173 is 20%. The petitioner as such is certainly qualifying this criteria as he has incurred 30% disability due to ailment which was not existing at the time of entry of the petitioner in the service of respondents. However, that by itself will not make the petitioner entitled for disability pension. He will have to demonstrate that he is satisfying other conditions making him eligible for disability pension.

15. In the matter of Dharamvir Singh (*cited supra*) relied upon by the petitioner, after examining the provisions of the Pension Regulations for the Army, 1961,

Hon'ble Supreme Court in paragraph no.28 of the judgment gave its finding which can be conveniently reproduced as under in order to further examine the claim of the petitioner for disability pension :

28. A conjoint reading of various provisions, reproduced above, makes it clear that, (i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix - II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)]

iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

iv) if a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

[Rule 14(c)]0.

v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)]. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the

reasons. [14(b)]and

vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical (Military Pension), 2002 Entitlement : General Principles, including paragraphs 7,8 and 9 as referred to above.

16. Keeping in mind this interpretation of the Entitlement Rules, let us further examine whether the petitioner, who suffered Neurosis (depressive reaction) causing 30% disability to him during the military service, is entitled for disability pension. It will have to be seen, whether the conditions of military service determined or contributed to the onset of Neurosis (depressive reaction) suffered by the petitioner and that the conditions were due to the circumstances of duty in military service (Rule 7(c) and 14(c).

17. At the time of suffering illness, the petitioner was serving with 23 Field Ammunition Depot, c/o 56 APL, Jalandhar. As per Rule 14(b), a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service, if no note of it was made at the time of acceptance of service of the concerned. Rule 5 quoted above makes it clear that if a person is discharged from service on medical ground for deterioration of his health, it is to be presumed that the deterioration in his health has taken place due to service. Rule 9 makes it explicitly clear that an employee who is declared disabled from service is not required to prove his entitlement of pension and such pensionary benefits are required to be given liberally to such an employee. Rule 423 from Chapter VIII of the General Rules of Guide to Medical Officers (Military Pension) 2002, dealing with attributability to service shows that cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. The Medical Board is required to specify reasons for their opinion in respect of disability and the question whether the cause and attendant circumstances attributable to / aggravated by service for the purpose of pensionary benefits are required to be decided by the Pension Sanctioning Authority.

18. Keeping in mind this position, if one peruses the photocopy of the document titled as 'opinion of the Medical Board' produced before us by respondents then it is explicitly clear that the Medical Board has not given any reason in support of its opinion as to cause of disability or disease suffered by the petitioner. Clauses 1, 2(c) and 2(d) of the said opinion are reproduced as under :

OPINION OF THE MEDICAL BOARD

1] Did the disability/ies exist before entering service : No.

2] In respect of each disability the Medical Board on the evidence before it will express its views as to whether :

[i] It is attributable to service during peace or under field service conditions; or

[ii] it has been aggravated thereby and remains so; or

[iii] It is not connected with service.

The Board should state fully the reasons in regard to such disability/ies on which its opinion is based :

Disability	A	B	C
NEUROSIS(DEPRESSIVEREACTION)			
ICD 300.4	No	No	Yes

2 (d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

Being a constitutional disorder, it is not connected with service.

19. Neurosis - depressive reaction resulting in invalidating the petitioner as per medical science is a disease of nervous system. It is a mental illness in which insight is retained but there is a maladaptive way of behaving or thinking that causes suffering. Neurosis is a functional / psychogenic disorder consisting of symptoms caused by mental disorder. Neurosis arises as a result of stress and

anxieties in the environment of a person. Busy schedule causing intense physical and mental stress is a factor which causes neurosis. The petitioner, at the relevant time, was working at 23 Field Ammunition Depot c/o 56 APL with Army. He was not suffering from this ailment at the time when he joined military service as per opinion of the Medical Board as reproduced in foregoing para. It was incumbent on the part of the Medical Board to state reasons as to why conditions of military service did not determine or contributed to the onset of neurosis and such medical condition of the petitioner was not due to the circumstances of duty in military service. The Invalidating Medical Board was duty bound to state fully the reasons in regard to disability suffered by the petitioner and more particularly as regards the opinion arrived at by it. If in the opinion of the Medical Board, the disease and consequent disability is not connected with service, then the Medical Board is required to state exactly in their opinion as to what is the cause thereof. In the instant case, the Medical Board has failed to do so. When as per medical science, neurosis occurs as a result of intense physical and mental stress due to work pressure, then the Medical Board was supposed to rule out this contingency of causing neurosis to the petitioner because of intense stress due to work pressure while serving at 23 Field Ammunition Depot.

20. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982 - Appendix II, to the Pension Regulations for the Army 1961, the petitioner is entitled for presumption that deterioration in his health has taken place due to service (Rule 5) and benefit of presumption goes in his favour as he is not required to prove the conditions of his entitlement to disability pension (Rule 9). Onus of proof is not on the petitioner. In view of provisions of these rules, pensionary benefits are required to be given to the petitioner. As per these rules, presumption is that the disability suffered by the petitioner and his consequent invalidation certainly has connection, at least casual one with the stressful service conditions in the military service which the petitioner was performing at the 23 Field Ammunition Depot. The Pension Sanctioning Authority as such erred in relying upon the unreasoned finding of the Invalidating Medical Board and rejecting the claim of the petitioner for disability pension perversely by giving a finding that the disability suffered by the petitioner is less than 20% as well as the same is not attributable to the military service and the same is not found to be

aggravated by the military service. The decisions in Omprakash Singh, Keshar Singh, Damodaran A.V. and Controller of Defence Accounts (supra) were rendered on the facts of the individual case based on the opinion of the Medical Board. In those cases, due weight and credence was given to the reasoned medical opinion which was to the effect that disease of appellants therein was neither attributable to nor aggravated by military service. However, in the instant case, unreasoned conclusion of the Medical Board cannot be accepted for the reasons stated in foregoing paragraphs. The Pension Sanctioning Authority ought to have kept in mind that the rule makers did not intend to deprive the Army Personnel the disability pension by taking rigid view as the Rules prescribe presumption to be drawn that deterioration in health of an employee has taken place due to service if he is discharged on medical ground and burden to prove the same is not on such employee. How such beneficial rules need to be interpreted is made aptly clear by the Hon'ble Supreme Court in the matter of Madan Singh Shekhawat (supra) and paragraphs 12 to 15 of the said decision can be quoted with advantage. They read :

12. If the expression at public expense is to be construed literally then under the Rules referred to above, an army Personnel incurring a disability during his travel at his own expense will not be entitled to the benefit of rule 6(c) 48(c) (supra). The object of the rule, as we see, is to provide relief to a victim of accident during the travel. If that be so, the nature of expenditure incurred for the purpose of such travel is wholly alien to the object of the rule.

13. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

14. In Seaford Court Estates Ltd. V. Asher, (1949) 2 All ER 155, Lord Denning, L.J. (as he then was) held:

When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament - and then he must supplement the written word so as to give force and life to the intention of the legislature.... A Judge should ask himself the question.

15. This rule of construction is quoted with approval by this court in *M. Pentiah v. Muddala Veeramallappa*, (1961) 2 SCR 295 : (AIR 1961 SC 1107) and also referred to by Beg. C.J. in *Bangalore Water Supply and Sewerage Board V. A. Rajappa*, (1987) 3 SCR 207 : AIR 1978 SC 548 : (1978 Lab IC 467) and in *Hameedia Hardware Stores*, represented by its Partner *S. Peer Mohammed V. B. Mohan Lal Sowcar*, (1988) 2 SCC 513 : (AIR 1988 SC 1060).

21. In the result, the petition is partly allowed by setting aside the impugned action of respondents in rejecting the claim of disability pension of the petitioner. Respondents are directed to pay to the petitioner the benefit of disability pension and other consequential benefits, to which he is entitled to, on account of his invalidation on medical grounds. Rule is made absolute in terms of prayer clause (B). No order as to costs.

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