

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.

OA 1187/2019 with MA 1931/2019

Ex RO-II Harish Chandra Tripathi Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : None
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
20.12.2023

Vide our detailed order of even date, we have allowed the OA 1187/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Thus, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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OA 1187/2019 With MA 1931/2019

Ex RO-II Harish Chandra Tripathi

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

OA 1187/2019

The applicant vide the present OA seeks the following prayers:-

“(a) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him gratuity and disability pension with the benefits of broad banding. and/or

(b) Direct respondents to pay the due arrears of disability pension with interest @12% p.a from the date of discharge with all the consequential benefits.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. The applicant Ex RO-II Harish Chandra Tripathi No. 10733-B was enrolled in the Indian Navy on 26.06.1978 and was discharged from Naval Service on 25.01.1990 as “Unsuitable” with service of 11 years

and 07 months while being placed in LMC S2A2(S) (PMT) for Psychiatric illness (neurosis effect). The applicant was discharged as "Unsuitable" under the provision of Regulation 278(1) (c) of the Regs Navy Part III. The disability of the applicant was assessed as being neither attributable to nor aggravated by military service with the percentage of disablement being put forth at 20% for two years. In as much as the applicant had not completed the mandatory length of qualifying service of 15 years, he was not considered by the respondents for the grant of Service Pension under Regulation 78 of Pension Regulation (Navy) 1964. The applicant was also not granted any disability pension in terms of Regulation 101 of the said Regulations.

3. During the course of submissions made on behalf of the applicant on 16.08.2023 learned counsel for the applicant confined the prayer made through the OA to seeking the grant of Invalid Pension alone.

4. Though, the respondents through their counter affidavit dated have sought to assert that the applicant was unsuitable for Naval service, the reasons for the same are depicted through their counter affidavit dated 31.10.2019 which makes it expressly clearly that the reason for the applicant not being suitable for Naval Service was the non-medical category of the applicant of S2A2 (P) with the applicant having been detected to the suffering from "Neurosis (Old) ICD No. 300/V-67".

5. It is essential to advert to Regulation-278 of Pension Regulations for the Navy(Part-III), 1963 which reads as under:-

*"278. Unsuitable. Incompetent or Undesirable Sailors.
- (1) If the Commanding Officer finds that any sailor of the ship's company is unable, either through mental or physical incapacity or through incompetence, to perform the duties of the lowest rate in his branch to which he can be reduce in rank or if the retention of any sailor is considered undesirable on grounds of conduct or character, he shall take the appropriate course among the following:-*

(a) If the sailor volunteers for some other rank, the duties of which he is considered competent to perform, application for transfer is to be made in accordance with Regulation 273. When sailors, who are serving in a different branch from that in which they were entered, are found unsuitable for the duties of the lowest rate to which they can be reverted in their present branch, application may be made for compulsory reversion to their original branch.

(b) full particulars accompanied by the sailor's service documents shall be forwarded to the Captain Naval Barracks through the Administrative Authority, for transmission to the Chief of the Naval Staff, should be think fit, with a recommendation for discharge as "Unsuitable."

(c) Any sailor whose efficiency, physical condition or value to the Service becomes materially impaired may be recommended for discharge under this clause.

(2) In all cases of recommendations for discharge of sailors as 'Unsuitable' on grounds of professional incompetence, Captains shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation.

(3) Discharge 'Unsuitable' shall not be looked upon as a punishment, nor shall it be recommended for men who can properly be dealt with by a medical survey.

(4) Any Boy, Artificer Apprentice or Man, during probationary service, shall be liable to be discharged as 'Unsuitable' under orders of the authorities herein stated, if his progress or conduct is unsatisfactory.

(a) Boys at the Naval Training Establishments.

- by the Captain of the Training Establishment.

In the case of Boys afloat, by the Captain Naval Barracks on the recommendation of the Captain of the ship in which the boy is borne.

(b) Artificer Apprentices. - by the Captain of the Training Establishment concerned, unless he can be absorbed in any other branch.

(c) Direct Entry Sailors. - by the Captain of the Training Establishment concerned. during the period of training and thereafter by the Captain Naval Barracks."

Regulation-278(3) referred to herein above categorically indicates that the discharge 'Unsuitable' shall not be looked upon as a punishment, *nor shall it be recommended for men who can properly be dealt with by a medical survey*. It is apparent that the reasons for ascertaining that the applicant was unsuitable for military service because he was detected to be suffering from Neurosis(Old) ICD No. 300/V-67. Parawise reply to 4.3 to 4.5 categorically reads to the effect:-

"In reply to these Para 4.3-4.5 it is humbly submitted that the applicant was placed in Low Medical Category S2A2(5) (PMT) for psychiatric illness (Neurosis effect) since December 1985. Thereafter, he was discharged as "UNSUITABLE" under the provision of Regulation 278 (1) (C) of Regulations Navy Part III. It is further submitted that the medical board is the competent authority to determine Attributability/ Aggravation of the disability after examining all previous medical records in conjunction with the facts pertaining to the disease and service conditions. It is pertinent to

mention that in the instant case the applicant's disability Neurosis (OLD) ICD No. 300/V-67" has been considered as "Neither Attributable to; Nor Aggravated NANA by the service by the Release Medical Board hereby annexed and marked as Annexure-R2 and the percentage of disability was assessed as 20% for two years. Since, the disability of the applicant was considered as "Neither Attributable to; Nor Aggravated (NANA) by the service", he is not eligible for grant of disability pension. Therefore, Broadbanding of disability element is irrelevant in his case. Hence, the same are denied."

Thus it is apparent that the respondents could not have utilize the clause of unsuitability for discharge of the applicant who was in fact invalidated out from service for his medical condition.

6. The summary and opinion of the classified specialist in psychiatric at INHS Asvini as on 04.12.1989 stated as under:-

"Summary and opinion of LT COL (ANG) Mr Pathe classified specialist in psychiatric at INHS Asvini on 04.12.1989

This 29 yrs old sailor with about 12 yrs of service is an old case of Neurosis and is in low medical category for the same since Dec 82. He was last reviewed in this hospital during 'Jan 88' and was recommended to remain in low medical category S2A2(S) PMT. Being in low medical category his case has come for release from service and he had reported here for final opinion by psychiatrist.

At present except for occasional sweating from palms and soles. He has no constrains. He says that he is able to perform all the duties without any difficulty. His unit report on AFMSF-10 dated 11 Dec 89 is good.

General physical and mental status exam at present reveals as obvious abnormality except minimal residual features of the past illness. He regained the self confidence to some extent. He is able to look after himself.

There is no appreciable change in the patient's condition state last review. Recommended to remain in medical category S2A2(S) PMT. He is considered it for release in same medical category S2A2(S) PMT."

7. The applicant having been invalided from service in terms of Regulation 99 of the Pension Regulations for the Navy 1964 is as under:-

“99. Sailors invalided out of service:- (1) A sailor who is invalided out of the service on account of a disability attributable to service but whose disability is assessed at less than twenty per cent shall be granted gratuity equal to two months’ only if :-

- (i) no pension or gratuity is admissible to him under any other regulation.*
- (ii) the gratuity admissible to him under any other regulation is less than the gratuity admissible under this regulation, in which case the former shall not be drawn.*

2. Pay for assessment of gratuity under this regulation shall be same as for service gratuity under regulation 90.

3. The provisions of regulations 102 and 104, shall apply mutatis mutandis to grant of gratuity under this regulation.”

8. Vide the Government of India, Gazette notification No. 21/01/2016-P&PW(F) dated 04.01.2019 and the Govt. of India, Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioners Welfare vide O.M 21/01/2016-P&PW(F) dated 12.02.2019, it has been provided that the Government servant who retires from service on account of any bodily and mental infirmity which permanently incapacitates him from the service before completing qualifying service of ten years, may also be granted invalid pension subject to certain conditions. Though in the instant case the applicant was invalided out due with the percentage of disability having been assessed by the RMB to be with a percentage of disablement of 20% with two years duration, the applicant was invalided out from service with the applicant having been

discharged in medical category S2A2(P) (PMT). The assessment of the duration of the disability at being 20% for two years cannot be accepted, in terms of verdict of the Hon'ble Supreme Court in ***Cmdr Rakesh Pande vs. Union of India & Ors.*** in Civil Appeal No. 5970/2019 which takes into account the Para 7 of the Govt. of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-c) dated 07.02.2001 which is as under :-

“7. Re-assessment of Disability:- There will be no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a in cases of disabilities which are not of a permanent nature. There will be only one review of the percentage by a Reassessment Medical board to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life unless the individual himself ass for a review. The review will be carried out by Review Medical constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

9. Furthermore, in terms of the verdict of the Hon'ble Supreme Court in ***Ex Rect Mithilesh Kumar vs. UOI & Ors.*** Civil Appeal No. 16438-16440/2017 dated 27.10.2017, the applicant is clearly entitled to the grant of Invalid Pension.

CONCLUSION

10. The OA 1187/2019 is thus allowed to the extent that the applicant is held entitled to the grant of invalid pension which in view of the verdict of the Hon'ble Supreme Court in ***Ex Sep Chain Singh vs. Union of India***

& Ors. (Civil Appeal No. 30073/2017) and in **UOI & Ors. vs Tarsem Singh 2009(1)AISLJ 371**, in relation to the arrears shall be confined to a period of three years from the date prior to institution of the present OA.

11. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 28 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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