

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

TA-07/2013

(Arising out of WP(c)No.566/2013)

P R E S E N T

**HON'BLE MR.JUSTICE N.K.AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD) GAUTAM MOORTHY, MEMBER (A)**

Ex.Nk PS Lovejoy Anal
aged about 60 years
S/O.PS.Angsin Anal,EX NK No.
4344661X, resident of Tampi
Village PO Chakpikarong,
Chandel District- 795201,Manipur.

... **Applicant**

Mr.N.Anix Singh
Mrs.N.Krishna Devi

Legal practitioner for Applicant

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence,101,Douyh Blovk
New Delhi-2.
2. The Senior Records Officer
I/C Records, the Kumaon Regiment-900473.

... **Respondents.**

**Mr.DC Chakraborty, CGSC
Legal practitioner for Respondents**

Date of Hearing :- 18.11.2015

Date of
Judgment & Order : 20.11.2015

JUDGMENT & ORDER

(N.K.Agarwal,J)

Heard Mrs.N.Krishna Devi, learned counsel for the applicant. Also heard Mr.D.C.Chakraborty, learned CGSC assisted by Major Asha Dahia and Major C.S.Dodhi, learned JAG officer appearing for the respondents.

[2] The instant OA has been registered by way of transfer in terms of the order dated 12.08.2013 passed by the Hon'ble Manipur High Court in WP(c) No.566/2013. This appeal has been preferred by the applicant praying for disability pension of who was discharged from service on 27.10.1987.

[3] Facts in brief, as alleged in the application, are that the applicant P.S.Lovejoy Anal ,Ex. Nk.No. 4344661X joined the Indian Army in the 1st Naga Regiment on 21.01.1970. During his service career he was awarded medals, decoration in recognition of his sincere and dedicated services. While in service the applicant was admitted and operated at the Command Hospital, Kolkata and thereafter, his ailment was graded as medical category CEE

(Permanent). Accordingly, he was discharged from service on compassion ground at his own request by an order dated 27.10.1987(FN) (Annexure-A/1) issued by the Commandant, KRC, Ranikhet, after rendering 17 years and 278 days of service. The applicant alleged that though he was discharged from service by allowing a paltry amount of pension, no disability pension has been granted by the respondent's authority w.e.f. 27.10.1987 till now. The applicant further alleged that in a similarly situated case, the concerned respondent authority had allowed disability pension. It is stated that the respondent authority has been given legal notice from time to time for payment of disability pension to the applicant. But instead of granting disability pension, the respondent authority sent an official letter dated 30.05.2005 (Annex-3) issued by the Senior Record Officer of OIC records, the Kumaon Regiment PIN 900473 C/O 56APO stating that the applicant is not eligible for grant of disability pension under the provisions of Para 178 of Pension Regulations, 1961, Part-I, which stipulates that if an individual is discharged from service at his own request he is not eligible for grant of disability pension. Aggrieved, the instant OA has been filed by the applicant.

[4] While admitting that the applicant's disability of 30% which is aggravated by military service, the respondents have contended that the applicant was discharged from service at his own request before completion of his term of engagement and so he is not entitled to grant of disability pension in

terms of Para 178 of the Pension Regulations 1961 (Part-I) and therefore, the applicant has been rightly refused grant of disability pension.

[5] We have heard the learned counsel for both the parties and also perused the materials available on record.

[6] The fact that the applicant was permanently disabled in medical category CCE and his disability was to the extent of 30% is not much in dispute. So far as the other contention raised by the respondents that the applicant was discharged from service at his own request is concerned, it has been considered by the Hon'ble High Court of Delhi in the case *Mahavir Singh Narwal Vs. Union of India and another reported in 2005(1) All India Service Journal 133=111(2004)DLT 550 and affirmed by the Hon'ble Supreme Court in SLP No.24171 of 2004 vide order dated 4.1.2008 as well as the Armed Forces Tribunal, Chandigarh Bench in Rajezsh Chand Vs. Union of Idnia and others passed in OA 1581/2012*, where in it has been held that **'the disability pension cannot be denied to an individual merely on the ground that he has obtained premature discharge on compassionate ground.'** Apart from the above, the integrated Headquarters of MoD (Army) (AG/PS-4) vide their letter No. B/39022/Misc/AG/PS-4(L) BC dated 03 Aug 2010 has clarified that **"as and when a pre-2006 retiree PBOR filed a court case to claim disability pension which was denied to him merely because**

he had proceeded on premature retirement, such cases will be immediately processed for Govt. sanction without awarding court order."

[7] The above order, in our opinion, leaves no doubt that the applicant is entitled to grant of disability pension. It appears that the respondents have not considered the above aspect of the matter while rejecting the claim of the applicant for disability pension.

If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities , particularly in respect of their emoluments ,pension and other benefits. (As observed by the Hon'ble Supreme Court in the case of Nand Lal Vs. state of Uttarkahand and anr reported in (2010) 4 SCC 562).

[8] In view of the above settled position of law, nothing survives for adjudication of the contentions raised in the application. Considering the above settled position of law, in our considered opinion, the application is deserved to be allowed. It is accordingly allowed. The applicant is entitled to disability pension from the date of his discharge form service along with the arrear of disability element which would be restricted to three years prior to the filing of

the application dated 02.09.2013.

[9] The respondents are directed to make necessary calculations and make payment of disability pension to the applicant, as directed above, within a period of three months from the date of receipt of a certified copy of this order by the learned counsel for the respondents. The respondents are further directed to pay the aforesaid amount along with interest @6% per annum till its actual payment.

[10] With the above observations and directions the TA is allowed. However, in the facts and circumstances of case there will be no order as to costs.

MEMBER (A)

MEMBER (J)

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