

IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,

GUWAHATI

OA 02/2016

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL M.P. MURALIDHARAN, MEMBER (A)

No.14906032 L Ex-Naik Amrit Das,
Son of Late Rati Das, a resident of
Village Dhupdhara Juranipara,
Post Office Dhupdhara, District Goalpara,
Assam, Pin-783123

..... Applicant.

By legal practitioners for
Applicant.

Dr Gobind Lal
Mr U Sarma
Ms Rajeda Begum
Mrs Uzma Zeham
Mr ANI Hussain
Ms. T.Borgohain.

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence MoD),
South Block, New Delhi – 110011.
2. Chief of Army Staff, Integrated Headquarters (IHQ) of MoD, (Army)
South Block, New Delhi – 110011.
3. Military Secretary Integrated Head quarters, MoD (Army),
New Delhi South Block, New Delhi – 110011.
4. Officer Commanding, Records
Mechanised Infantry Regiment,
Ahmednagar, Maharastra, PIN 900476, C/o 56 APO.
5. Commanding Officer, No. 13 Mechanised Infantry
Regiment, C/o 56 APO.

..... Respondents..

By Legal Practitioner for the
Respondents

Brig N.Deka (Retd.), CGSC

Date of Hearing : 28.04.2016

Date of Judgment & Order : 19 .05.2016

JUDGMENT & ORDER

(Vice Admiral MP Muralidharan)

1. This Original Application has been filed by Ex Naik Amrit Das, No. 14906032 L, of Mechanised Infantry Regiment, seeking grant of pension with condonation of deficiency in service as well as other service benefits.

2. The essential facts of the case are that the applicant was enrolled in the Army on 13th October, 1982 and discharged from service on 30th April, 1997 under Army Rule 13(3) III (iv), on compassionate grounds at his own request, after serving 14 years 6 months and 20 days. Since he did not have the minimum qualifying service of 15 years, no pension was granted to him. At the time of his discharge the Release Medical Board assessed him to have disability 'G-6 PD DEFICIENCY OLD 269(C)'. The percentage of disability was assessed at 15-19% for a period of two years and he was released in Low Medical Category BEE (Physical Permanent).

3. Learned Counsel for the applicant, Dr. Gobind Lal submitted that the applicant was discharged in low medical category BEE, but the reason for discharge has been recorded in his discharge certificate (Annexure 1) as 'at his own request on compassionate before fulfilling conditions of enrolment'. Learned Counsel further submitted that the applicant was not well versed in languages, neither in English nor in Hindi, and prior to his discharge Subedar Head Clerk of the Unit coerced him to sign on some papers including some applications written in Hindi and the applicant was informed that the papers are required for granting him medical pension since he was in Low Medical Category. Learned Counsel also submitted that the applicant who was discharged on 30 April 1997, without pension or other benefits, was under the impression that he would get his pension after discharge on completion of some formalities and since he went to his remote village he could not pursue his legitimate claims. The learned counsel further submitted that eventually the applicant sought information under the RTI Act (Annexure 2) and was informed that he had been discharged at his own request and was not eligible for pension as he had not completed 15 years of service. He was also informed that he was also not eligible for condonation of service for pension as he left at his own request (Annexure 3).

4. The applicant thereafter made a further request to Respondent No. 4 (Officer Commanding, Records, Mechanised Infantry Regiment) stating that he was under the impression that he was being discharged from service on medical grounds as he had not applied for discharge from service on compassionate grounds is the further submission of the counsel (Annexure 4). Since the applicant had been put in more than 14 years and 06 months of service, he should have been advised by his Commanding Officer to leave service only on completion of pensionable period of service as per the learned counsel. Therefore the learned counsel prayed that the respondents be directed to grant pension to the applicant by condoning the period of shortfall in his service and also grant him other service benefits including disability pension.

5. Brig N.Deka (Retd.), learned Central Govt. Standing Counsel, appearing for the respondents submitted that the contentions raised by the applicant are baseless as he had been discharged on compassionate grounds at his own request, based on an application made to his Commanding Officer on 3rd August, 1996 and after due process he was discharged on 30 April, 1997. The learned counsel also submitted that the applicant had not raised any issues regarding pension or any other benefits at that stage and made an appeal for the same only in November, 2014, after nearly 17 years. Learned Counsel further submitted that the

minimum qualifying service required for earning of pension is 15 years in accordance with the Regulation 132 of the Pension Regulations for the Army, 1961. The counsel also submitted that the applicant is not entitled for condonation of deficiency in service under Regulation 125 since he has been discharged from service at his own request.

6. Learned Counsel further submitted that as regards disability pension, under Regulation 173, an individual becomes eligible for disability pension only if he has been invalidated out on account of disability which is attributable to or aggravated by military service and is assessed at 20% or more. The applicant was discharged at his own request and not on medical grounds and as such his disability was assessed at 15-19% is the further submission of the counsel. It was also submitted by the learned counsel that Hindi is a medium of instruction and communication in the Army and the applicant having served over 14 years and also having passed the requisite Hindi Examination cannot contend that he was unable to comprehend the affidavits and other papers signed by him. The learned counsel further submitted that the applicant at the time of his discharge had given an undertaking (Annexure A1), in which he had clearly indicated that he was aware that he was not entitled to disability pension as he was discharged prior to completion of his term of engagement at his own request. The applicant had also brought

out in his request for discharge that he was having some domestic problems including the fact that there was nobody to look after his landed property and hence cannot claim ignorance at this belated stage was the further submission of the learned counsel.

7. Heard the rival submissions and perused records. Shorn of details, the applicant is seeking service pension and disability pension.

8. While the applicant has claimed that he had not sought discharge on his own, the records placed before us by the respondents clearly indicate that the applicant had sought discharge from service on compassionate grounds (Annexure A1). We also do not find any merit in the contention of the applicant that he was unaware of the consequences and that he blindly obeyed his Unit's Subedar Clerk. These appear to be afterthoughts at this juncture.

9. In accordance with the Regulation 132 of Pension Regulations for the Army, 1961, the minimum qualifying service for earning pension is 15 years. Regulation 125 provides for condonation of deficiency in service upto a period of 06 months, which has since been enhanced to 01 year, based on Ministry of Defence Letter No.4684/DIR/(Pen)/2001 dated 14 August 2001, which has also been incorporated in Regulation 44 of Pension

Regulations for the Army, 2008. Both these provisions, however, exclude granting of condonation to individuals who were discharged at their own request. This clause is no longer relevant, as Regulation 82(a) of Pension Regulations for the Navy, which is *pari materia* to the old Regulation 125(a) and new Regulation 44 of the Pension Regulations for the Army has been declared *ultra vires* by the Hon'ble High Court of Bombay in **Gurmukh Singh Vs. Union of India & Ors., W.P(OS) No. 430/2005.** The Hon'ble High Court of Delhi in **Surender Singh Parmar Vs. Union of India, W.P.(C) No. 12507 of 2004,** took a similar view. In both the judgments, the concerned Regulation was declared as *ultra vires* and violative of Article 14 of the Constitution of India. Further, as observed by the Hon`ble Apex Court, in **Union of India and Anr. Vs. Surender Singh Parmar, (2015) 3 SCC 404,** the said decisions were not challenged before them. Therefore, in our view, the applicant is eligible for condonation of deficiency in service for grant of pension even though he was discharged at his own request. A similar view has been taken by the Kochi Bench of this Tribunal in **TA.No.18/2009, Vinod Roy John vs. Union of India & Ors** and in **OA.No.51/2015, Hav Philip PT vs. Union of India & Ors.** While we have held that the applicant was eligible for condonation of deficiency in service for granting him pension, the arrears of pension, if granted, would be

restricted to a period of three years prior to the date of filing of this OA, in accordance with the principles laid down by the Honorable Apex Court in **Union of India & Ors. Vs. Tarsem Singh, (2008) 8 SCC 648.**

10. As regards the applicant's claim for disability pension, the only medical record placed by him before us is the extract of Certificate of Discharge (Annexure 1), wherein his medical category has been indicated as BEE and disability as 'G6 PD DEFICIENCY OLD 269(C)' at 15-19%. The Release Medical Board papers submitted by the respondents (Annexure A2), indicates that the disability of the applicant was attributable to service and was due to unforeseen effects of medical treatment wherein he was administered anti malarial drugs. However, the disability was assessed at 15-19% and only for a period of 2 years. No records have been placed before us to indicate if the applicant's claim for disability pension was forwarded to PCDA (P) for adjudication or if the applicant had preferred any appeal against the findings of the Release Medical Board or if any subsequent medical review of the applicant was undertaken. In our view, possibly due to the conditions agreed to by the applicant in his request for discharge from service on compassionate grounds (Annexure A1), none of the above would have been undertaken.

11. Regulation 173 of the Pension Regulations for the Army 1961 specifies primary conditions for grant of disability pension and being relevant is re-produced below:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non battle 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."

12. The Regulations specify two conditions for grant of disability viz., disability is to be above 20% and should be attributable to or aggravated by military service. It is further specified that attributability or aggravation is to be decided under rules at Appendix II, ie, Entitlement Rules for Casualty Pensionary Awards, 1982. Rule 4 of the said rules specify that an individual released in a lower medical category than in which he was recruited will be treated as invalidated from service. Even though the applicant was discharged from service at his own request on compassionate grounds, it is not disputed that the Release Medical Board assessed him to have a disability which was held as attributable to service and specifically due to the administration of

anti malarial drugs during the course of medical treatment in service. The disability was assessed at 15-19% for two years.

13. As observed earlier, possibly due to the reason that the applicant was discharged at his own request, his claim for disability was never processed. The Honourable High Court of Delhi in **Mahavir Singh Narwal vs. Union of India & Anr., 111(2004) DLT 550**, held that even personnel discharged on compassionate grounds were entitled to disability pension. Further, Reg 83 of the Pension Regulations for the Army 2008 holds that even personnel who are discharged at their own request on compassionate grounds, shall with effect from 01/01/2006 be eligible for award of disability, provided the individual has foregone lump sum compensation in lieu of disability. The Hon'ble Apex Court in **KJS Buttar vs. Union of India & Ors, (2011) 11 SCC 429**, held that when relaxations are made in an existing scheme restricting such benefits only to those personnel who were invalided out of service on or after a particular date would be violative of Article 14 of the Constitution and hence illegal.

14. In our view, therefore, the applicant cannot be denied disability pension merely on the ground that he had sought discharge on his own, prior to completion of terms of engagement. He would be entitled to disability pension provided the other conditions are met and in the instant case while it is observed that his disability has been held as attributable to service, the degree of disability has been assessed at

less than 20% and only for a period of two years. As brought out earlier, no records have been placed before us to indicate if an appeal was made against the assessment of the Release Medical Board or if the disability still persists. Hence a Re-assessment Medical Board would be necessary to determine if the disability still persists and if so at what percentage.

15. In view of the forgoing, the Original Application is disposed of granting the applicant an opportunity to file a fresh appeal to the respondents seeking condonation of deficiency in qualifying service for pension, within a period of two months from the date of receipt of a copy of this order. The respondents, on receipt of such an appeal, are directed to give due consideration to the request in accordance with law, taking note of the observations made herein above and convey the decision to the applicant within a period of four months from the date of receipt of the appeal. We make it clear that the finding entered that the applicant is eligible for condonation of short fall for grant of pension is binding on all authorities concerned. However arrears of pension, would be restricted to a period of three years prior to the date of filing of this Original Application. As regards the applicant's claim for disability pension, he may prefer a separate appeal to the respondents for re-assessment of his disability within a period of two months from the date of receipt of a copy of this order. If such an appeal is preferred,

the respondents are directed to convene a Reassessment Medical Board treating the appeal of the applicant as a first appeal and on time within three months of receipt of the appeal, keeping in view the observations made herein above. If the Re-assessment Medical Board finds that the disability still persists and is at or more than 20%, the applicant would be eligible for grant of disability pension. He would also be eligible for the benefit of rounding off of the disability pension in accordance with law, in keeping with the directions of the Hon'ble Apex Court in **Union of India & Ors. vs. Ram Avtar, Civil Appeal No.418 of 2012**. It is however made clear that the disability pension, if so granted, would only be from the date of the Re-assessment Medical Board.

16. There will, however, be no order as to costs.

MEMBER (A)

MEMBER (J)

Mc/an