

(2002) 11 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 5218 of 1997

Bapdhan Phukan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2003) 1 GLT 511

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : S.C. Biswas, for the Appellant; D. Baruah, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—Heard Mr. S.C. Biswas, learned Counsel for the Petitioner. Also heard Mr. D. Baruah, learned Addl. C.G.S.C. for the Respondents, Union of India.

2. In this writ petition, the Petitioner, namely, Bapdhan Phukan, sought for a direction to the Respondents to pay the disability pension to him since the day of his discharge and other consequential benefit thus setting aside the impugned discharge order by contending, inter-alia, that in terms of Regulation 173 of the Army Pension Regulation, 1961 the Petitioner is entitled to disability pension. Mr. Biswas, learned Counsel for the Petitioner, supporting the case of the Petitioner, contended that the Petitioner joined the army initially but he was transferred to Pension Establishment from A.M.C. Services w.e.f. 1st August, 1985 and got a pension of Rs. 165/- per month on fulfilling the condition of enrolment with reserve liability for two years and subsequently he was re-enrolled in Defence Security Corporations on 23.5.1988 as he was medically found fit for service in Defence Security Corps. However, the Petitioner suffered from certain ailments for which he was examined by the medical authority and the medical authority opined that the Petitioner was suffering from suboccipital craniectomy and tumoral decompression and the medical authority recorded 60% disability, as seen in the document marked Annexure-I to the writ petition. But the Petitioner

has been discharged from service without benefit of disability pension which, according to Mr. Biswas, learned Counsel, the action of the Respondent is violative of the Regulation 173 of the Army Pension Regulation 1961. It is also contended by Mr. Biswas, learned Counsel that after the re-enrolment in the Army, the Petitioner had rendered about five years of service and during his service the Petitioner got certain ailments. In other words, he became disabled for which the medical authority of the Army, Respondent recommended 60% disability and that being the position, the Respondent authority ought to have afforded disability pension. Supporting his submission, Mr. Biswas has cited certain decisions namely a related decision of Punjab and Haryana High Court, rendered in *Bodan Lal Yadav, Ex- Signalman v. Union of India*, reported in 1992 (3) SLR 758 and also Anr. decision of the same High Court rendered in *Union of India and Ors. v. Bodan Lal Yadav*, reported in 1994 (1) SLR 390, also the decision dated 29.7.97 passed by this Court in C.R. No. 1685 of 1996, in a case between *Shri Ghanashyam Sharma v. Union of India and Ors.*, 1997 (3) GLT 508 and contended that if an army man is discharged from service on medical ground because of personal disorder or medical disability he or she shall be entitled to disability pension but the Respondents authority lost sight of this established principles of laws while passing the impugned order of discharge of the Petitioner from service. It is also argued by the learned Counsel that the Petitioner had discharged his duties and services for the Nation very sincerely, diligently and efficiently and he has been getting only pension of Rs. 167/- per month only, thus putting the Petitioner under hardship and distress and an Ex-army man should not be treated in such a manner by the Respondents authority.

3. At the hearing Mr. D. Baruah, learned Addl. senior Addl. C.G.S.C. for the Union of India and other Respondents, contended that the Petitioner had concealed all the material facts and his service condition at the time of filing of this writ petition, inasmuch as, the Petitioner was discharged from service earlier. But the Respondent authority made sympathetic approach to him and the Petitioner has been allowed to serve again and on the basis of his request and approach to the Respondent authority for his discharge from service on the ground of his personal difficulties and the family affairs, he was discharged from service. Supporting his submission, the learned Addl. C.G.S.C. has drawn my attention to the document, marked Annexure-A to the affidavit-in-opposition, which is the copy of the letter dated 13.7.92 submitted by the Petitioner to the authority concerned for his discharge from service. 1 It is also argued by Mr. Baruah, learned Addl. C.G.S.C. that the Petitioner did not render his service sincerely, diligently and efficiently to the Nation, inasmuch as, he was awarded 14 days imprisonment in Military custody and also 10 days pay of fine by the authority concerned, which cannot be controverted by the Petitioner.

4. Now, this Court is to see and examine as to whether the Petitioner has enforceable legal right in the instant case, or not, and whether the Petitioner could make out a case to justify the interference of the impugned order of discharge of the Petitioner from service or not.

5. On perusal of the available materials on record and after proper application of my mind and also upon hearing the learned Counsel for the parties I am of the view that the Petitioner has no enforceable legal right in the instant case for the following reasons.

6. The representation/letter, in other words the request of the Petitioner for premature-discharge from service, dated 13.7.92, is relevant and important in the instant case for just determination of the real points of controversy between the parties and accordingly, it is quoted below:

To The CRO, DSC, Records, Cannanore (Kerala)

Most respectfully I beg to state the following few lines for your kind consideration please.

I got enrolled in DSC on 23 May 88 and presently serving with 286"B" DSC PI (16 FAD). I married to Smt. Tula Maya Phukan vide Part II Order No. 02E/15/001/89.

My wife deserted me all of sudden on 01 Mar 90 at Tezpur and did not return till date. I have lodged FIR with Police Station Gamaguri Dt-Nowgaon (Assam). Police auth also failed to trace her out till date.

I have two school going children who are studying in class VIII and IV at my native place. I being away on duty my children are not being attended and infact they are neglected since no one is there to look after them.

Under the circumstances I neither able to carry out my assigned duties nor in a position to look after my children who need parents affection at this juncture of time.

In view of the above facts I request your kind honour that my request for discharge from service be favourable and sympathetically considered as a special case under the prevailing circumstances.

Thanking you in anticipation.

Yours faithfully, Sd/- Bapdhan Phukan

Though the Petitioner in his writ petition urged that his application for discharge on compassionate ground was rejected, there is ample materials on record to establish the fact that his representation was duly considered by the Authority, Respondent, sympathetically and accordingly, he was discharged from service under the impugned order of discharge. These facts are available in the counter affidavit, particularly in paragraph 8 of it. There is no reply from the end of the writ-Petitioner in that regard. According to me, he was discharged from the DSC service on his own request on extreme compassionate ground and therefore, the Petitioner is not entitled to get disability pension in terms of the related rules as discussed above and, apart from that, the case laws cited by Mr. Biswas, learned Counsel appearing for the Petitioner, as mentioned above, do not help the case of

the present Petitioner, inasmuch as, in those cases namely (1) Bodon Lal Yadav (supra), (2) Union of India (supra), and (3) Shri Ghanashyam Sharma (supra), those army men were discharged from service on medical ground because of personal dis-order and medical disability and they did not make any request to the authority concerned for their discharge from service on compassionate ground or on the ground of family problems and difficulties. But, in the instant case, there is a specific request from the end of the present writ Petitioner for his premature- discharge from his service, as seen in the document marked as Annexure-A, as highlighted above, wherein the Petitioner did not whisper for disability pension.

7. Whether the consent of the writ Petitioner as discussed above in the present case is barred by acquiescence or estoppel is not always clearly distinguishable from each other and apart from that acquiescence or estoppel is essentially a question of fact and at the same time it is difficult to decide the issue in a writ proceeding. However, the acquiescence of a party is always a fact to be taken into consideration while deciding a petition under the writ jurisdiction. In the instant case the Petitioner himself volunteered and made a personal approach and his request to the Respondent authority for his pre-mature discharge from service and his request was examined and considered by the authority concerned sympathetically and the request for relief sought for was duly granted and after getting such benefits in the year 1992 the Petitioner started approaching the authority by urging and making certain statements and filed the writ petition only in the year 1997. According to me, the present writ petition is hit by principles of law of acquiescence or estoppel and on this ground alone, the present writ petition deserves to be dismissed.

In the result, the writ petition is dismissed. No cost.