

(2001) 01 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

DIRECTOR (THROUGH THE REPRESENTATIVE) ARMY GROUP
INSURANCE SCHEME

APPELLANT

Vs

NAIK HANS RAJ YADAV

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Citation : 2001 2 CPJ 523

Hon'ble Judges : Amarjeet Chaudhary , A.D.Malik J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against order dated 12.6.1998 passed by the learned District Consumer Disputes Redressal Forum, Gurgaon in C.P.A. No. 502, dated 10.4.1998 whereby the claims of the complainant/respondent to the extent of benefit of length of service upto 20 years as against 17 years, granted by the Army Authorities, has been extended and the appellants have been directed to pay the amount of Rs. 41,250/- within a month.

2. THE facts giving rise to the disputes as noticed by the District Forum are that the respondent is an ex-serviceman from Army bearing No. 4172300-L Naik of Kumaon Regiment who was enrolled in the Army on 23.12.1978. He was invalidated from the Army service on medical grounds and was placed in category "EEE" due to Exfoliative-Dermatitis-Indiopathic and the Medical Board has assessed the disability 50% in review after two years the Medical Board assessed the disability at 50% vide letter dated 5.3.1998. All the defence personnel are members of the appellant Society which is like a Life Insurance Company for defence personnel only who pay the premium through their respective pay account officers. On happening of any eventuality like death or disability a certain amount is paid to the disabled or the legal heirs of the deceased. THE complainant on his disability, claimed amount of Rs. 41,250/- by filing C.P.A. No. 502 dated 10.4.1998 before District Forum Gurgaon. The appellant filed reply, inter alia, stating that appellant is a Registered Society and was incorporated in pursuance of a Special Army Order No. 5.5.78 dated May,

1978 for providing speedy financial assistance to the families of those Army Personnel who may die during service, to provide lump sum terminal benefit at the time of retirement and any other benefit/ assistance which the Board of Trustee may decide The Army Group Insurance Scheme is totally Departmental and is run by the Army Group Insurance Directorate at Army Headquarters. No complaint under consumer jurisdiction is maintainable and the respondent does not fall within the definition of consumer. Respondent has already been paid an amount of Rs. 26,931/- as maturity benefit on 12.12.1995. But the amount claimed by way of insurance benefits under Disability Benefit Scheme Rs. 41,250/- is not available to respondent as there was no cut short in the length of his service. As per rules one who retires after the completion of contractual service limit, even though disabled about 40% or above is not entitled to any payment from AGIS on account of that disability.

After hearing the parties, the learned District Forum allowed the complaint filed by the respondent hence the instant appeal.

3. WE have heard the learned Counsel for the parties and perused the material on record. The first contention of the learned Counsel for the appellant is that the issue involved in the present case does not fall within the ambit of Consumer Protection Act as the respondent is not a consumer and even if it is so, no case has been made out by the respondent claiming the benefit of 20 years of service instead of 17 years as already granted. After considering the Army Order No. 5.5.78 dated May, 1978 we find force in the contention of the appellant that it is a service dispute as it has direct nexus with the service rendered in the Indian Army. There is no element of any profit and loss to the appellant society which is functioning under the over all control of the Ministry of Defence only for the welfare of the ex-serviceman, and such a service cannot be said to be covered under Section 2(1)(o) of the Consumer Protection Act, 1986. The expression "service" does not include service rendered free of charge or under a contract of personal service. So the type of service provided by the appellant cannot be said to be service in terms of Section 2(1)(o) of the Act. WE are saying so for the simple reason that the appellant Society has to calculate the benefits to the ex-service man only in accordance with the discharge certificates issued by the Army Authorities and they can neither add nor subtract the length of service, medical category etc. So, the respondent could agitate the issue for taking the benefit of 20 years instead of 17 years, under the service dispute. Resultantly, the present case falls outside the purview of Section 2(1)(o), so the learned District Forum had no jurisdiction to entertain and adjudicate the case on merits. Though we have held that the District Forum had no jurisdiction to entertain the dispute under the Consumer Protection Act, yet, even on merits it is patent on the record that the claim of the respondent was not justified. Though the respondent claims to be Lance Naik, however, he was a L/Naik only by virtue of Time Scale Promotion which is a Regimental policy and has been placed on record at page 50 of the paper book. The conditions of time scale promotion are very specific that a Sepoy even if he is promoted as Lance Naik under time scale

would be governed by the terms of engagement as applicable to Sepoys and retire on completion of the terms of engagement and they will not be counted against the vacancies of Non- commissioned Officers as authorised in the establishment of Units and formations. The terms and condition Nos. 58 and 59 are as under : "Time Scale Promotion 58.To give financial and pensionary benefits to all the Sepoys who could not be promoted to the rank of Naik due to any reason. Government has sanctioned time scale promotions upto the rank of Naik over and above the authorisation of Lance Naik/ Naiks. The promotions will be affected as under : (a) Sepoys not appointed Lance Naik due to any reason, will be granted time scale appointment of Lance Naik three years before completion of terms of engagement. (b) Similarly Sepoys/Lance Naiks not promoted to the rank of Naik, will be granted time scale promotion to the rank of Naik will be granted time scale promotion to the rank of Naik one year before completion of terms of engagement. Terms and conditions for time scale promotion 59.Time scale promotes will be governed by the terms of engagement applicable to Sepoys and they will retire accordingly. Further, they will not be counted against the vacancies of NOS. Not only this, even in the Certificate of Discharge produced by the appellant on record, it is clear that the respondent has been shown as a Sepoy and not a Lance Naik. This discharge certificate is placed at page 54 of the paper book. This also shows that Time Scale Promotion was only to grant some benefit so long as respondent was in service but recurring pensionary liability was to be calculated on the substantive posts. In this view of the matter, the appellant had rightly calculated the benefits admissible to the respondent in his capacity as a Sepoy without taking into consideration the time scale promotion as a Lance Naik. The respondent tried to get undue benefit of various correspondence entered into by the Authorities addressing him as a Lance Naik. As we have discussed earlier during the service the respondent was to be addressed as Lance Naik as he was given only Time Scale Promotion but after discharge, his dues were to be settled in terms of the same policy which gave him time scale promotion and as per that policy he has to be treated as Sepoy in terms of para 59 of the scheme. Moreover, discharge certificate of the respondent is conclusive evidence of rank of the respondent, which shows him to be a Sepoy. This aspect has not been challenged by the respondent. In this view of the matter, we do not find any merit in the claim of the respondent even on merits. For the foregoing reasons, the order of the learned District Forum dated 12.6.1998 is set aside and the complaint preferred by the respondent is dismissed being not maintainable. However, the respondent will be at liberty to pursue his remedy before any other Forum and expression of our opinion on merits of the case will not prejudice the claims of the respondent. No costs. Appeal allowed.