
(2007) 01 RAJ CK 0050
In the Rajasthan High Court

Ex. Havaladar Birda Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2007) 3 RLW 2681

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Ex. Havaladar Birda Ram, with the prayer that the order dated 21st September, 1995 be quashed and the respondents be directed to grant him the disability benefits at the half of the life insurance cover to the tune of Rs. 37,500/- with interest @ 24% P.A. and Clause (1)(i) of Annexure 11 and Para 1(a) of communication-cum-order dated 19.II.1985.be declared illegal and quashed.

2. According to the petitioner, he was enrolled in the Indian Army on 30th September, 1963 and was allotted to the Intelligence Corps. Every member of the armed forces is covered by the risk under the Army Group Insurance Scheme (for short "the A.G.I.S."). In the event of any untoward incident or happenings in that if an army personnel is met with any accident resulting into either death or disability, he is entitled to receive the benefit of insurance claim provided under the said scheme. He being a member of A.G.I.S., monthly premium was deducted from his salary as contribution towards the said policy. Although the A.G.I.S. is a society registered under the Societies Registration Act but it is fully controlled by the regular officers of the Indian Army.

3. While serving the respondents, the petitioner was reported sick. When he was subjected to examination by medical officer at the Base Hospital, Delhi, he was found to be suffering from Ankylosing, Ankylosing-Spondylitis and was eventually

placed in medical category CEE (P). He was then transferred to pension establishment on completion of 24 years service in September, 1987 with his disability assessed at 50% and accordingly discharged from service with medical pension @ Rs. 225/- per month. At the time of discharge, he was granted honorary rank of Naik Subedar in the month of September, 1987 itself. It is submitted that petitioner was entitled to disability benefits under the A.G.I.S. to the tune of 50% of the insured amount. The insurance coverage being of Rs. 75,000/-, he was therefore, entitled to receive Rs. 37,500/-.

4. The petitioner made a representation to the respondents for grant of insurance benefits in the rank of Junior Commissioned Officer (Naib Subedar). The respondents by their communication dated 13.5.1995 informed him that the petitioner cannot be granted additional element of pension since he retired before 1.10.1991. Although the respondents by their letter dated 11.2.1995 had earlier granted him the benefit of additional element of pension @ Rs. 100/- per month, but this was cancelled in their subsequent communication dated 13.5.1995. The petitioner submitted another representation on 5.6.1995 claiming the aforesaid benefits, but this was denied to him by the respondents vide their communication dated 22.6.1995. Eventually, however, the respondents vide letter dated 26.6.1995 intimated to the petitioner that instead of 100 per month, the petitioner was entitled to receive only Rs. 45/- per month as additional element. The petitioner then submitted representation on 20.7.1995 and 21.8.1995, but they were also rejected. Hence the writ petition.

5. Although the respondent Nos. 1, 2 & 4, who are the official respondents, have also contested the writ petition and filed their separate reply, but the A.G.I.S. has filed its own reply, in which it has contested the petition. It has contended that the other respondents have wrongly been impleaded as party to the writ petition. The Union of India has got nothing to do with the funds created and maintained by A.G.I.S. It's affairs are managed by the Board of Governors. A.G.I.S. is not financially controlled by the Government nor does it receive any financial help from them. It is only a society registered under the Societies Registration Act and therefore, not a State in the meaning of Article 12 of the Constitution of India.

6. The respondents have also raised the objection with regard to delay in filing of the present petition. It has been stated that the petitioner was discharged on 30th September, 1987, whereas the writ petition has been filed as last as on 17th November, 2000, after more than 13 years of the accrual of cause of action. The petition is, therefore, liable to be dismissed on the ground of delay and laches.

7. On merits it has been submitted that as per eligibility rules, disability benefits under the scheme are not admissible to members in low medical category who proceeds on release/discharge from service on fulfilling/completion of terms of engagement. Reliance has been placed on Army Order 27/81 and the letter of Army Hqrs. No. A/32395/ORG2 (MP)(c) dated 19.11.85. Since the petitioner

proceeded on discharge after fulfilling and completing term of engagement of his rank which is 24 years of service, he was not entitled to the relief prayed for. Maturity benefits admissible under the Army Group Insurance Scheme, amounting to Rs. 7109/- have already been paid to the petitioner and no other amount is due. It has been submitted that the disability benefit covered under the A.G.I.S. is granted to those members of the scheme, who are invalided out or released before completion of contractual period of service which result into curtailing the term of his service due to disability. The amount of disability is calculated @ 50%. The amount of insurance is liable to be proportionately reduced to the extent of percentage of disability. Since the petitioner proceeded on discharge on completion of his terms of engagement as applicable to his rank at the time of discharge and there is no cut short in his service career, as such he is not eligible for disability benefits under the scheme. The honorary rank of Naib Subedar was conferred upon the petitioner by his Excellency the President of India. Conferment of this rank cannot be therefore, considered as grant of regular promotion. The individual does not get any benefit of extended service, but this only enhances his image and status after retirement. For grant of honorary rank of Naib Subedar to Havildar, the most important pre-requisite is that the Non Commissioned Officer (NCO) should have attained the age of superannuation and hence question of increase in term of service does not arise. Criteria to get honorary rank is given in Intelligence Corps Record Office Instructions. A havildar, who is honorary Naib Subedar gets monthly monetary benefits of Rs. 45/- vide Government of India, Ministry of Defence letter dated 6.11.1991 and those personnel, who retired subsequent to 1.10.1991 are entitled to such benefit @ 100/- per month. In the case of the petitioner, he having retired prior to 1.10.1991 would be entitled to additional monthly monetary benefit of Rs. 45/- only which has been granted.

8. I have heard Shri G.R. Punia, the learned Counsel for the petitioner and Shri Vineet Mathur, learned Asstt. Solicitor General for the Union of India and Shri B.K. Mehar for A.G.I.S.

9. Shri G.R. Punia apart-from making the arguments as enumerated above, has cited the judgment of this Court in the case of Dana Ram Jat v. Union of India and Ors. S.B. Civil Writ Petition No. 553/1996; decided on 4.5.1998. According to him, the controversy raised in this matter is squarely covered by the decision of Coordinate Bench of this Court in the case of Dana Ram Jat (supra).

10. On perusal of the judgment of Dana Ram, however I find that was a case, in which the individual was subjected to invaliding medical board and was found to be suffering from "Pulmonary Tuberculosis" and was certified to be having 100% disability, but instead of being medically boarded out he was discharged from service on completion of 15 years of tenure on 31.3.1993, which according to the respondents in that case, was a normal discharge after fulfilling the conditions of enrollment based on recommendations of Release Medical Board conducted at the time of discharge. This Court concluded that the documents placed on record

prove that it was not a case of normal discharge, but in fact the individual was released on the recommendations of the invalidation medical board, which was held on 31.3.1993 and was later-on approved on 26.4.1993. Contention raised on behalf of the respondents in that case was, therefore, found not substantiated. On that basis the discharge of the individual on completion of 15 years which is the minimum qualifying service entitling for grant of pension, was not accepted as on completion of the term of engagement. In the present case, however, the petitioner had completed 24 years of service and had retired in the capacity of Havildar. The petitioner has not been able to dispute or prove to the contrary that the normal term of engagement and the period of discharge on fulfillment conditions of service in the case of Havildar is not 24 years or is more.

11. Instructions dated 19.11.1985 referred to above are clear on the subject, especially clause 1 of which provides that the personnel, who were discharged with any percentage of disability, who proceed on pension or discharge or release at their own request or the personnel whose disability element is detected at the time of proceeding on normal pension or discharge or release, are not eligible for grant of disability pension. The criteria laid down for eligibility of disability benefits clearly provides in para 2 of the said instructions that the disability benefits shall be granted only when the career of an individual is covered on account of disability. In other words, an individual should be discharged to retire from service earlier than the completion of the normal age of retirement on account of disability.

12. Conferment of honorary rank of Naik Subedar by the President of India merely has the effect of enhancing the status and reputation of the individual at the time of his retirement". Conferment of such honorary rank does not have the trappings of a regular and substantive promotion. Moreover grant of honorary rank from Naik Subedar to Havildar, always coincides with the date of retirement of the Non Commissioned Officer, which being it's pre-requisite condition, therefore, there cannot be no question of extension in the term of the service and grant of additional benefit on the post of Naik Subedar on that basis. Even otherwise, the official respondents in their reply have categorically clarified that the petitioner having crossed the upper age limit for substantive promotion to the rank of Naik Subedar and not fulfilling the required medical criteria, was not eligible for regular promotion. According to the official respondents, those serving as Havildars are required to be discharged on completion of 24 years in terms of as provided for by item III (i) of the Table annexed to Army Rule 13(3) and that fact has not been denied by the petitioner. When the petitioner retired w.e.f. 30.9.1987 having completed 24 years of service, no fault can be found in the action of the respondents in denying the disability benefits to the petitioner.

13. For what has been discussed above, I do not find any merit in the writ petition. The same is, therefore, dismissed with no order as to costs.