

(2013) 04 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) 432 of 2013

Ex. Sub. Rajender Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : (2013) 5 AD 67

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : D.V.S. Yadav, for the Appellant; Saqib, Advocate for Resp. Nos. 1 and 2 and Ms. Anjali Vohra, Advocate for Resp. No. 3, for the Respondent

Judgement

S. Ravindra Bhat, J.—The controversy in the present writ petition is the entitlement of the petitioner to benefits of the Army Group Insurance Fund. The respondents deny it to him on the ground that he proceeded on discharge from service after completion of term of engagement. The brief facts relevant for the purpose of this judgment are that the petitioner was enrolled in the Army on 17.03.1982. It is not in dispute that he served, during his military career, in several areas. He was in the field area in Kargil during 2003-2005. Whilst in exercise in Lathi (field area) and during the exercise, he developed primary hypertension. He was medically examined and was placed in low medical category P2 (T-24) w.e.f. 04.01.2008 due to Primary Hypertension. He was medically examined and placed in medical category SHAPE-1 H1, A1, P2 E1 according to assessment of the Medical Board held on 12.12.2008. The petitioner was to complete the normal tenure of his service of 28 years, in March 2010. He was granted two years" extension of service for the period 17.03.2010 to 16.03.2012, by order dated 13.12.2008. However, before his extended tenure could commence, the previous order (of 13.12.2008) granting it, was cancelled, by order dated 12.01.2010. The cancellation of this order resulted in the denial of extension, and the petitioner was consequently discharged from service on 31.03.2010. The petitioner moved the Armed Forces Tribunal (AFT) by filing OA

323/2011 for disability pension and grant of Army Group Insurance (AGI) benefit.

2. On 12.03.2012, the petitioner was medically re-examined in the Army Base hospital; the report stated, inter alia, that "Primary hypertension is an idiopathic disorder with known familial clustering and no known service related causative factors hence not conceded as not attributable to service." and further that "In view of the association of the ID with service in field CI/OPs area, ID is conceded as aggravated by military service." On 19.03.2012, the petitioner was granted disability pension @ 30%, despite his claim for rounding off @ 50%. In this background, the petitioner sought Army Group Insurance benefits, by representation to the Insurance scheme, which turned down the request on 21.05.2012. On 01.10.2012, he filed a writ petition before this court, for the 50% pension benefit and grant of AGI scheme benefit. This petition was withdrawn on 23.11.2012 with liberty to seek same relief. He has, therefore, approached this Court.

3. At the outset, it was argued that the petitioner is not challenging his discharge on the ground of low permanent medical categorization, but is interested in securing the AGI benefits available in the case of someone entitled to 50% disability pension.

4. The mainstay of the petitioner's case is a Division Bench judgment of this Court [Sagrika Singh vs. Union of India & Ors. CWP 3850/2010 (decided on 29 August, 2011)] where during a short-service officer's extended (second five year tenure) an option was exercised for further four-year tenure. Before commencement of the term, she was diagnosed with kidney failure, and the resultant 100% permanent low categorization disqualified her from claiming the said four year tenure. The respondents therein had urged, like it is done in the present case, that in terms of Para 59 of the Army Group Insurance Scheme, the discharge was at the end of her tenure, and not during service, and consequently she was ineligible. However, the Court had turned down that argument. It was further argued that the reference to service being cut short due to medical conditions intervening, or terms of engagement being cut short due to such exigency (medical condition intervening) had been analyzed and given contextual interpretation to mean that they referred to different situations, which included an extended tenure, after completion of regular service. In the present case too, the extended tenure had been sanctioned, but could not be fully enjoyed due to the low medical categorization of the petitioner, on account of conditions aggravated during the petitioner's tenure.

5. The respondents rely on the text of Para 59 of the Scheme and submit that the interpretation placed in Sagrika's case has to be limited to the peculiar facts of the case. It is urged that if given the meaning that the Division Bench attributed to, the provision would result in a virtual bonanza of benefits which the Army and the Group Insurance Scheme never visualized. Having regard to the limited mandate given to the Scheme, which formulates and designs its policies to cater to unforeseen situations that result in abrupt curtailment of

military careers, due to death, disability or invalidity during the tenure or term of a military personnel, either as a result of war, or any other service attributable condition, the grant of benefit to one who cannot secure the extension precisely because he or she does not fulfil one essential condition, of medical fitness, after completion of regular tenure or term of service, would not amount to the condition of "cutting short" of such term or service.

6. Para 59 of the Army Group Insurance Scheme reads as follows:

59. The objective of AGIF Disability Scheme is to provide financial benefits to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement or service applicable to that rank....

Regulation 163 of the Army Regulations, which deal with retirement age of JCOs, reads as follows:

163. Retirement of JCOs

(a) Retirement of JCOs of all Arms of the Services, who opted for revised terms operative from 01 Dec 76, is compulsory on completion of the following service, tenure or age limits:-

(i) Nb Ris/Nb Sub... 26 years pensionable service or 50 years of age, whichever is earlier.

(ii) Ris/Sub. 28 years pensionable service or 50 years of age, whichever is earlier.

7. In Sagrika case, the Court noticed the facts as follows:

8. Being initially appointed for 5 years, petitioner was granted extension by another 5 years. She became eligible to be considered for further extension in service by another 4 years, but prior to expiry of said period of 5 years, it was detected that one kidney of the petitioner was malfunctioning. In the year 2009 upon examination by a Medical Board it was opined that the petitioner had a malfunctioning kidney and thus the petitioner was placed in permanent low medical category with disability assessed at 100%. Since one condition of grant of extension in service was that the person ought not to be in low medical category; petitioner was denied further extension in service by another 4 years, and was consequently released from service.

9. Accepting her fate, the petitioner made a representation to the AGIF praying that disability benefit stipulated under the Army Group Insurance Scheme be released to her. Vide communication dated 30.07.2009 issued by the Adjutant General's Branch AGIF, the petitioner was informed that she is not entitled to any disability benefit upon the reason that the disability benefit is available to an officer whose service is cut short due to invalidment or release on medical grounds. It was informed to the petitioner that she had completed the extended tenure of service and denial of extension by another 4 years did not amount to curtailment of tenure of service.

21. On the merit of the defence taken with respect to the claim by the petitioner, the factual backdrop is not in dispute. Enrolled in the Indian Army as a Short Service Commissioned Officer the initial term of engagement was of 5 years and the petitioner had a right to be considered for extension in service, firstly for a term of 5 years and thereafter for another term of 4 years. Petitioner's right was to be considered for extension in service. The Army Authorities were thus under an obligation to consider said right of the petitioner. However, to earn an extension in service i.e. for the right to fructify and yield fruit, the petitioner had not to be in permanent low medical category.

22. It is true that law treats a denial of extension in service upon the occurrence of a contingency or non-fulfillment of a term as not a curtailment of a tenure of service for the reason in such a situation the only right of the person concerned is to serve till the assured term of service with a right to be considered for extension in service, which right would be contingent upon the suitability of the person being determined. But in the instant case we are not concerned with service Jurisprudence on the subject, but with the term of an insurance fund and needless to state the term incorporated in the Rules of the Fund would be a term of insurance.

8. The Court then noticed Para 59 of the Army Group Insurance Scheme and said that it contained three elements - the object to provide financial benefits to individuals (a), whose service is cut short due to invalidment or release on medical grounds (b), before completion of the terms of engagement or service applicable to that rank. The Court then further analyzed as follows:

25. In other words the benefit is either upon service being cut short before completion of terms of engagement or upon service being cut short with reference to the service applicable to that rank.

26. The expression "terms of engagement" and the expression "service applicable to that rank" are disjunctive and for which we would only highlight that the two expressions have been interspaced by the word "or" in between. The expression "service applicable to that rank" would obviously be required to be given a meaning other than the meaning which would be given to the expression "terms of engagement" for the reason Rule against redundancy requires an interpretation where neither expression is rendered otiose.

27. The expression "terms of engagement" has not been defined under the Army Group Insurance Scheme. It is pertinent to note that paragraph 59 of the Scheme enables an individual to claim financial benefits under the Scheme if the individual's service is cut short due to invalidment or release on medical grounds before the completion of the terms of engagement or service applicable to the Rule. The 2 expressions "the terms of engagement" and "service applicable to that rank" have to be read along with the expression "service is cut short". Thus, the Rule can be reconstructed to read: The objective of AGIF Disability Scheme is

to provide financial benefits to individuals whose service is cut short due to invalidment or release on medical grounds before (i) completion of the terms of the engagement (ii) service applicable to that rank.

28. It would immediately be noticed that the word "service" used in the first part of the paragraph which prefaces "cutting short of tenure" on the ground of invalidment or as a result of release on medical grounds is common to the two disparate and distinct expressions used in the last part of the said paragraph i.e. before (i) completion of terms of engagement, and (ii) service applicable to that rank.

29. The first issue which arises is whether the word "service" is applicable to the two broad category of officers i.e. Short Service Commissioned Officers and Permanent Commissioned Officers or not. There is no scope to argue that the word "service" applies to both categories of officers.

32. There is no dispute that the terms of engagement of the petitioner allowed an extension on fulfillment of certain eligibility conditions as stipulated in the Army Order dated 14.2.2005. Amongst the conditions incorporated in the said order, one condition was (and this is the condition with which we are concerned) that the officer should be Shape-I Medical category. The petitioner not being in Shape-I Medical category and thus her engagement which would have otherwise got extended was not extended or in other words the service got curtailed. In any case, the extension by a further period of 4 years was undoubtedly a part of the petitioner's terms of engagement and thus the inevitable conclusion has to be that the terms of engagement were cut short due to her invalidment on account of petitioner being in low medical category.

33. The reasoning of the respondents that the petitioner has been invalidated on the eve of the commencement of the 2nd extension would involve reading into the provision words and expressions which do not find mention therein. The absurdity of the interpretation becomes stark if for instance, the medical infirmity was discovered just at the commencement of the 1st extension. Could it then have been argued that the petitioner was not entitled to the benefit of the scheme.

34. The terms of engagement of the petitioner required the petitioner to serve for 14 years subject to fulfillment of the prescribed eligibility conditions. The only reason which resulted in the tenure of engagement being cut short was petitioner's failure to achieve Shape-I Medical category.

9. With respect, this Court has difficulty accepting the logic and assumption premised in *Sagrika Singh* (supra). The normal tenure or term of service of any public servant, including an armed force or military personnel is a matter of status, and defined under rules or regulations. In petitioner's case, the term of office, by virtue of Regulation 163, is 28 years of service, or attainment of a

certain age, whichever is earlier. There is no difficulty in applying the ratio in *Sagrika*, if, during the subsistence of such tenure (or term) the personnel suffers from a medical condition resulting in invalidity. In such eventuality, his eligibility to the insurance benefit under AIG cannot be in doubt. Equally, during subsistence of the extended tenure (be it within a month, the remainder being 1 year 11 months) if the person incurs a medically debilitating condition resulting in downgrading of medical category to unacceptable limits, he or she would undoubtedly be entitled to the AIG benefit. However, during subsistence of the regular or assured tenure (in the present case 28 years) and before the commencement of the extended tenure (for which he is yet to be considered and sanction yet to be granted), if the individual suffers such medical condition, which results in his disqualification for the tenure itself, there can, in our opinion, be no cutting short of such tenure.

10. This Court is mindful that a public servant's rights to continue in the post is the subject matter of applicable rules or regulations, which define the tenure or term, in terms of age, and in some cases, age as well as length of service. The entitlement to a further or extended tenure is not a matter of course, but upon fulfilment of the applicable and attendant criteria. In that sense, there is no entitlement, but an expectation to be given the extended or further tenure. This has been so held in *All India Judges Association and Others Vs. Union of India and Others*,) and *Ramesh Chandra Acharya Vs. Registrar, High Court of Orissa and Another*, . In the latter decision, the Orissa Service Code governing the age of retirement of the petitioner was not amended. The petitioner retired at the age of 58 years and filed a petition under Article 32 contending that the age of superannuation had stood extended to 60 years by 1993 case. A Division Bench of the Supreme Court held:-

1...there can be no right of an employee to continue in service de-hors statutory or administrative rule prescribing superannuation age and continuation in service could be only subject to the conditions provided....

*** 12... in the absence of a specific rule made by the State no judicial officer has a right as such to continue beyond the age of 58. It is only when the High Court, after reviewing all aspects of service including the past record of the officer concerned, specifically orders that in the interest of the judicial service of the State it is necessary to retain the particular officer beyond that age-limit and allow him to superannuate at the age of 60. In other words, continuation beyond 58 years is permissible only when the High Court makes a positive recommendation in favour of that officer for such continuation. Otherwise the judicial officer has to retire at the age of 58. This can be departed from only when the State makes a specific rule otherwise.

11. Again, in *Shanker Raju Vs. Union of India (UOI)*, the Supreme Court, while explaining the difference between a term of office and a tenure, stated, in the context of a challenge to the ending of term of office of a member of the Central Administrative Tribunal, after the completion of one extension, as follows:

25. Prior to and after its amendment, Section 8 speaks of "Term of Office". In our view the Legislature has used this expression consciously. The expression "Term" signifies a fixed period or a determined or prescribed duration. The word "term" when used in reference to the tenure of office, means ordinarily a fixed and definite time. There is a distinction between the words "term" and "tenure" as applied to a public officer or employee. The "term", as applied to an office, refers to a fixed and definite period of time. The word "tenure" has more extended meaning than the word "term" and "tenure" of an office means the manner in which the office is held especially with regard to time.

26. The learned Counsel Shri Narasimha submits that the Legislature, while amending Section 8 of the Act, has not placed any bar or embargo or any outer limit of number of years that can be served by a Member of the Tribunal. Therefore, a Member of the Tribunal who has served for ten years as a Member is still eligible to apply and participate in the selection process for being appointed as a Member. Though the argument advanced looks attractive, but on a deeper consideration, we find no merit in the contention canvassed by the learned Counsel. In our view, the language employed in the Section does not admit any ambiguity. The language of the Statute is clear and unambiguous. Section 8(1) of the Act provides the term of office of Chairman of the Tribunal, which shall be five years from the date he assumes his office. The proviso qualifies and carves out an exception to the main enactment. The exception is, though a Chairman can hold office as such for a term of five years, he cannot hold such office after he attains the age of sixty-eight years. Sub-section (2) of Section 8 of the Act provides the "Term of Office" of a Member of the Tribunal. First part of the Section envisages that a member of the Tribunal shall hold the office for a "term of five years". The term as applied to an office, refers to a fixed and definite period of time that an appointee is authorised to serve in office. Alternatively, it can be said that the term of office that is used by the Legislature could only mean the period or limit of time during which the incumbent is permitted to hold the office. The second part of the Section gives discretion to the appointing authority to extend the term of office of a member of the Tribunal to one more term of five years. The expression "extendable", that finds a place in the Sub-section, could only mean that the term of office of an incumbent as a member of the Tribunal can be extended if the parties agree. The proviso appended to the Sub-section again carves out an exception to the main provision and restricts a member for holding office after he has attained the age of sixty five years. The proviso takes care of a situation where a member whose term of office is extended for a further period of five years cannot hold such office if he has attained the age of 65 years during the extended period of five years. A combined reading of both parts of Section 8(2) of the Act clearly demonstrates that a member of a Tribunal can hold such office for a fixed and definite period of time, i.e. for a period of five years from the date on which he enters upon his office and that period may be extended for one more term of five years. What is contended before us by the learned Counsel for the Petitioner is that there is

neither prohibition nor any embargo for a member who has completed 10 years as Member to participate in the selection process for being appointed as a Member of the Tribunal for another term of five years. This, in our opinion, is impermissible since the total term that a person can hold the office of the Member of the Tribunal is only for a period of 10 years. In our view, if the office is created by the Legislature under due authority, it may fix the term and alter it....

12. In view of the above discussion, this court is of the opinion that the reasoning and conclusions in *Sagrika Singh* are not sound. Besides, the Court, in that case, did not consider Regulation 163, and the law declared by the Supreme Court in the cases cited above that the right to continue in the post, for the entire term, prescribed under the rules, is of a different character from the right to be considered for extension, which is an entitlement of a weaker kind, dependent on eligibility conditions, including fulfilment of medical and physical standards. At the same time, this Bench is a co-ordinate one, and propriety dictates that a reference is made to a Full Bench for consideration of the following questions of law:

1) Can the right to extended service, of an Army personnel, on completion of the term of office, and attainment of the prescribed age of superannuation be equated with the right to continue in service during the term of office prescribed under the relevant rules, in the context of Para 59 of the Army Group Insurance Scheme?

2) Can it be said that the denial of extended service or extended tenure of service, upon attainment of the prescribed superannuation age, - without the concerned individual having served in such extended tenure at all-amounts to cutting short of such service, or terms of engagement, under Para 59 of the Scheme, in the given facts of the present case?

The Registry is directed to place the present orders and the file for appropriate orders of the learned Chief Justice, to enable the constitution of a Full Bench, to consider and answer the questions formulated above.