

(2008) 12 MAD CK 0246

In the Madras High Court

Case No : Writ Petition No. 15669 of 1999

R. Sundar Raj

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2008) 12 MAD CK 0246

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Md. Ibrahim Ali, for the Appellant; B. Mani, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner seeks a Writ of Mandamus directing the respondents to pay the petitioner Military Pension.

2. The writ petition was admitted on 22.9.1999. Subsequently, the respondents have filed a counter affidavit dated 20.7.2000 justifying the denial of pension to the petitioner. Even though the original case of the petitioner was grant of Military pension and he also relied upon the various recommendations sent by Army to Central Government, at the time of filing writ petition, the Central Government has passed an order dated 15.4.1998 negating the case of the petitioner. This letter is also enclosed as Annexure to the counter affidavit. The reasons given by the Central Government are found in the order dated 15.4.1998, which reads as follows:

...

2. You were released from service on account of Invaliding disease (ID)-Schizophrenia.

3. The disability on account of which you were released from service is a

constitutional disorder. On perusal of your service/medical documents, the Appellate Medical Authority has found that the onset of ID was in Dec., 90 in peace. There was no unusual prolonged field service. There was no head injury or debilitating illness prior to onset of ID. There was no delay in diagnosis and treatment. There was no service aggravating factors. In view of the fact that your disability has been regarded by the Medical Authorities as neither attributable to nor aggravated by duties of Military service, you are not entitled to disability pension under the Rules.

4. It is, therefore, regretted that your request cannot be acceded to.

3. The petitioner was served with the copy of the counter affidavit and he has not chosen to challenge the order of the Central Government. However, thereafter, the petitioner has filed an amendment application in WPMP No. 1147 of 2007 seeking to amend the prayer. The said petition was ordered by this Court on 29.8.2007. Under the amended prayer, the petitioner now seeks for a re-induction of the petitioner into Army services as Sepoy with all monetary benefits.

4. In support of the said prayer, the petitioner relies upon the provisions of Disabilities (equal opportunities, protection of rights and full participation) Act 1995 and more particularly Section 47 of the Act.

5. After the amendment was ordered, the learned Counsel for the respondent has now produced a Notification issued by the Ministry of Social Justice and Empowerment, which reads as follows:

S.O.1179 In Exercise of the powers conferred by proviso to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) the Central Government having regard to the type of work carried on hereby exempt all categories of posts of combatant personnel Armed Forces from the provisions of the said section.

6. However, the learned Counsel for the petitioner contends that the Notification can only have prospective effect and therefore, at the time of his discharge, he should have the protection of Section 47 of the Act. Such a conclusion cannot be drawn from the Notification issued under the Act. As to whether the provisions of the Act will apply to the armed forces, it is a doubtful question. In any event, in the present case, the petitioner was discharged from service and the medical opinion of the Medical Board reads as follows:

OPINION: This 27 years old serving soldier is a case of Schizophrenia ICD-295, V-67 in psychiatric surveillance being released from service vide Madras Regimental Centre letter No. 01490/225/Adm.2 dated 17 June 94. The individual had a psychotic breakdown in Dec 90 which was insidious in nature. He is presently asymptomatic. Psychiatrically residual features of schizophrenia are still apparent which are in the form of apathy and mild volitional disturbance. He is likely to remain asymptomatic when not under stress. Relapses are likely in his case. Hence recommended to be released in low medical category DEE

(Psychological) permanent".

7. In the present case the discharge order is fully supported by medical opinion. Therefore, the learned Counsel for the petitioner now attacks the medical opinion by stating that the medical board had not found the petitioner unfit on the contrary it recommended the petitioner to be kept in low medical category.

8. Such a conclusion cannot be drawn from the report of the medical Board. The Medical Board cannot recommend either discharge or retention and it can only give medical opinion regarding the medical condition of a particular individual sent for review. In the present case, the review shows that the petitioner is suffering from Schizophrenia.

9. The discharge order was made when once report is in the hands of the respondent. The only requirement is for a show cause notice. In the present case, the show cause notice is issued to the petitioner and thereafter, the order of discharge came to be made. The petitioner in the original writ petition never attacked either report of the medical board or discharge order. On the contrary, the letters sent by the respondents from March 1996 to November 1997 to the Central Government recommending his case for pension was the basis for filing this writ petition. When it is rejected by the Central Government by a speaking order, the petitioner made an attempt to amend the prayer attacking his original termination. However, considering the fact that the respondents are governed by Army Act, this Court cannot grant any direction contrary to the decision taken by the respondents unless it is shown that such an order is invalid under the provisions of the Army Act.

10. In view of the above, the writ petition is misconceived and the same is dismissed. No costs.