

(2011) 08 DEL CK 0416

In the Delhi High Court

Case No : Writ Petition (C) . 3850 of 2010

Sagrika Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 32
Income Tax Act, 1961 — Section 10(23AA), 10(23C), 80G
Law Commission Act, 1965 — Section 3(1)
Supreme Court Act, 1981 — Section 31

Citation : (2011) 08 DEL CK 0416

Hon'ble Judges : Rajiv Shakdher, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.S. Pandey and Santosh Kumar, for the Appellant; Neeraj Chaudhari, Akshay Chandra, Mohit Auluck, Khalid Arshad, Major Rahul Soni for R 1 to R 3 (UOI) Jayant Nath and Anjali Vohra, for R 4, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 01.01.1976 the Armed Forces constituted a society known as Army Group Insurance Fund (hereinafter referred to as the "AGIF") and registered the same under the Societies Registration Act 1908. The principal object of the fund was to cater to the socio-economic needs of the Army Personnel and their families by providing an insurance cover.

2. In the year 1982, Army Group Insurance Fund Rules (hereinafter referred to as the "AGIF Rules") were notified. The Preamble whereof reads as under:

1. The Army Group Insurance Scheme has been approved by the Government of India for the welfare of all Army Personnel. The Army Group Insurance Fund which was constituted in consequence with effect from 1 Jan 76, was sanctioned vide Government of India, Ministry of Defence letter No. A/37586/AG/PC&JEC/9302/D/(Pay/Services) dated 15 Dec 1975, to be treated as an approved Fund for the purposes of deductions under Army Rule 205 (b) from the pay and

allowances of the Army personnel, to meet compulsory contributions to the Fund.

2. The Government of India have also -

(a) Exempted the income of the Army Group Insurance Fund from payment of Income tax u/s 10 (23C) of the Income Tax Act vide Department of Revenue and Banking Notification No. 1721 (F. No. 197/22/76-II(A1) dated 14 Apr 1977.

(b) Extended the provision of Section 80G of the Income Tax Act to the donations given to the Army Group Insurance Fund vide Income Tax Commissioner letter No. CIT-6/TE/172/76/140 of 20.10.81.

3. The fund is established by the Armed Forces (Army) of union for welfare of their past and present members in terms of Section 10 (23 AA) of the Income Tax Act, 1961.

(Emphasis Supplied)

3. In the year 1984 the Army Group Insurance Fund Bye-Laws were notified. Chapter-II of the Bye-Laws are relevant for the present decision and hence we note the same, as under:

CHAPTER II

SUBSCRIPTION

(Refers to Rule 6)

2.1 The rates of subscription to the Fund are laid down in Rule 6 of the AGI Fund Rules.

2.2 JC Os/OR belonging to the Defence Security Corps and all personnel on deputation to Army Postal Service will pay such an additional subscription, over and above the normal subscription, payable under the Rule quoted above, as may be laid down from time to time.

2.3 The Board of Governors being the competent authority to approve the revision of the rates of subscription, the following procedure will be followed in the event of a proposal to vary the rates of subscription:

(a) The changes proposed to be introduced by the Board of Management regarding the rates of subscription will be intimated by the Army Headquarters (AGI Dte) to Headquarters Commands to enable the latter to ascertain the view of the members.

(b) The views of the members and recommendations of the GOSC-in-C would be conveyed to Army Headquarters (AGI Dte) where these will be collated and the proposal submitted to the Board of Governor for approval through the Board of Management.

(c) Thereafter the proposal will be forwarded to the Ministry of Defence for the issue of Government orders authorizing the CDA (O)/PAO (s) to make deduction

of subscription at the revised rates.

(d) On issue of Government orders, an amendment to the relevant AGI Fund (Rules) will also be forwarded to the Registrar of Societies, Delhi.

(Emphasis Supplied)

4. In July 2002 the Board of Governors, AGIF issued an Army Order laying down the modalities of the Army Group Insurance Scheme, relevant portion whereof reads as under:

Introduction

1. Army Group Insurance Scheme for Army personnel was introduced with effect from 01 Jan 1976 under the authority of Government of India, Ministry of Defence letter No. PC No. A/37586/AG/PC & JEC/9302/D (Pay/Services) dated 15 Dec 1975 to cater for the socio economic needs of the Army Personnel and their families further improvements have been made by enhancing insurance cover and benefits while in service and in retirement. It is a compulsory, contributory, self sustaining Group Scheme which is totally departmental and is run at Army Headquarters by the Army Group Insurance Fund (AGIF), which is a Society registered under the Societies Registration Act XXI of 1860. The scope of the main objects of the Scheme have been enlarged and are:

...

(c) Provide disability cover to entitled serving Army personnel depending on their percentage of disability, if their contractual period of service is cut short.

....

PART IV - DISABILITY BENEFITS

58. AGIF Disability Scheme was introduced on 01 Jan 80 to compensate those personnel whose service was cut short and were invalidated out of service in Medical category EEE with 40 per cent and above disability....

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. The disability benefit is paid as lumpsum benefit based on initial assessment by Invalidating Medical Board or Release Medical Board before completing the contractual period of service for the rank and meeting the eligibility conditions. The disability benefit for 100 per cent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20 per cent or as specified...

(Emphasis Supplied)

5. On 19.02.1999 the Petitioner was appointed as a Short Service Commissioned Officer in the Indian Army and was attached with Army Medical Corps.

6. As per the Army Orders applicable, for the period between the years 1999-2009, a Short Service Commissioned Officer attached with the Army Medical Corps was appointed initially for a period of 5 years and was entitled to grant of extension of service by a period of 5 years, with further right for service to be extended by another 4 years upon fulfilling the eligibility conditions prescribed for grant of extension of service.

7. Vide Army Order dated 14.02.2005 the eligibility conditions prescribed for grant of extension of service of a Short Service Commissioned Officer attached with the Army Medical Corps were notified as under:

(i) the minimum average of grading in all the Annual Confidential Reports of the Officer should be 6;

(ii) there should not be an adverse remark in any of the Annual Confidential Reports of the officer;

(iii) there should not be a drop in the performance in the latest Annual Confidential Report of the officer and

(iv) the officer should be in medical category SHAPE-I.

It was further prescribed that the officers in permanent low medical category will not be granted extension of service.

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.

10. Thinking that a service benefit was denied to her, the Petitioner approached the Armed Forces Tribunal praying that AGIF be directed to release the sum assured to her, which petition was dismissed by the Tribunal holding that the

insurance fund was a private body and not amenable to its jurisdiction. The Petitioner has thereafter approached this Court with the same prayer as was made before the Tribunal. The Petitioner urges that as per the terms of the fund, her service being cut short as a consequence of she being denied extension by 4 years upon the reason of her being in permanent low medical category, she would be entitled to the sum assured, which we note is Rs. 10 lakhs.

11. The petition is opposed upon the preliminary objection that AGIF being a society registered under the Societies Registration Act 1908, it was not amenable to the writ jurisdiction of the High Court. On merits, the stand taken is that the terms of insurance requires that the tenure of service of an individual is cut short due to medical invalidation and this not being the case, Petitioner would not be eligible to receive the sum assured on said account. It was highlighted that the amount otherwise payable, minus the sum assured on account of tenure in service being curtailed due to medical invalidation has been released.

12. The expression "State", is defined in Article 12 of the Constitution of India, to include inter-alia the Government of India, the Government of each of the capital states and all local or other authorities within the territory of India or under the control of the Government of India. Obviously AGIF is not the Government of India nor is it the Government of any State nor is it a local authority. Would it be "other authority"?

13. That immediately leads us to a consideration of the question as to who would be "other authority" contemplated in the definition of "State" in Article 12 of the Constitution of India.

14. Decisions on the issue are legion and since we do not intend to make a catalogue, we highlight the fundamental decision of the Supreme Court reported as *Ajay Hasia v. Khalid Mujib Sehravardi* (1989) 1 SCC 722. Considering whether a society registered under the J&K Societies Act 1898, which was running a college, was "an authority" as contemplated by Article 12 of the Constitution of India, reviewing past precedents, the anvil on which the test had to be predicated, was stated in the following words:

7. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government", the court, must not allow the enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental rights as the Government.

8. We may point out that this very question as to when a corporation can be regarded as an "authority" within the meaning of Article 12 arose for consideration before this Court in *R.D. Shetty v. International Airport Authority of*

India.....

The court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed:

A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of Directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of Directors appointed by Government though this consideration also may not be determinative, because even where the Directors are appointed by Government, they may be completely free from Governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

The court then proceeded to indicate the different tests, apart from ownership of the entire share capital: (SCC pp. 508 & 509, paras 15 & 16)

... There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where

public functions are being performed. Vide Arthur S. Miller: The Constitutional Law of the "Security State" It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in *Sukhdev v. Bhagatram* where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed Government agencies. Activities which are too fundamental to the society are by definition too important not to be considered Government functions.

....

These observations of the court in the International Airport Authority case have our full approval.

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case..... We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the

International Airport Authority case, be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

....

11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12. ...

(Emphasis Supplied)

15. Examining the memorandum of association and rules of the society and highlighting the deep pervasive control of the Government over the society as also its funds and highlighting the public importance of the affairs of the society i.e. education, it was held that the society would be "an authority" contemplated by Article 12 of the Constitution of India. Para 9 of the decision highlights the 6 parameters on which the issue has to be tested.

16. As noted by us hereinabove, AGIF was established with the approval of the Ministry of Defence, Government of India. The main object of AGIF is to cater to the socio-economic needs of the Army Personnel and their families by providing insurance cover. Every Army Personnel has to compulsorily become a member of the AGIF and subscription to the Fund is deducted from the pay and allowances of the Army Personnel. There is no discretion or a choice with the Army Personnel. AGIF is subject to governmental control in the matter of revision of rates of subscription to the Fund inasmuch as rates of subscription to the Fund cannot be revised without prior approval from the Government. (See: Chapter II of the Bye-Laws of AGIF).

17. It may be true that the share capital of the fund is not provided by the Government but it needs to be highlighted that the State controls the fund through the Army Officers and prescribes through Army Orders the terms of the fund and the deduction is compulsory under Army Rule 205 (b). The fund is established by the Government pursuant to an executive policy decision of the

Government. The Government has complete control to regulate and manage the fund. It is a compulsory fund to which every member of the Armed Force has to subscribe to. There is no doubt of the fund being "an authority" within the meaning of the said expression under Article 12 of the Constitution of India and thus the fund would be a "State" and hence amenable to the writ jurisdiction of a High Court.

18. The matter can also be looked at from another angle. In the decision reported as *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Supreme Court stated the law relating to maintainability of an action under Article 226 of the Constitution of India against a private Respondent:

16. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure

The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review:

At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are - and who are not - public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute - and whose powers and duties are defined by statute. So government departments, local authorities, police

authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose."

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

....

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the Appellants on the maintainability of the writ petition.

(Emphasis Supplied)

19. As already stated hereinabove, AGIF performs a public duty by providing insurance cover to the Army Personnel and their families by way of premium being compulsorily deducted from the salary of Army Personnel and thus a writ of mandamus can certainly be issued to AGIF to compel it to perform its duty.

20. Thus, looked at from any angle, the present writ petition is maintainable against AGIF.

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.

23. Para 59 of the Army Group Insurance Scheme is the source upon which Petitioner has predicated her case and needless to state is the para upon which the defence is predicated. It is thus an interpretation of the relevant paragraph of the Scheme which would determine the fate of the instant lis. It reads as follows:

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

24. The aforesaid single sentence may, for purposes of convenience be divided into 3 parts; namely, (i) The object of AGIF Disability Scheme is to provide financial benefits to individual, whose service is cut short due to invalidment or release on medical grounds (a) before completion of the terms of engagement (b) or service applicable to that rank.

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

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 "terms of engagement" for the reason Rule against redundancy requires an interpretation where neither expression is rendered otiose. 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.

30. Now, the expression "service applicable to that rank" would ordinarily apply to officers who are permanently commissioned in the service and thus the expression "before completion of terms of engagement" would apply to other than Permanently Commissioner Officers. The reason being that the expression "terms of engagement" exemplifies a circumstance which even though is a service has attributes, which makes it somewhat different from service applicable to the rank. In other words, the tenure of service of say, 2 officers in the same rank would vary depending on whether the officer is a Short Service Commissioned Officer or a Permanently Commissioned Officer.

31. Having reached the conclusion that the expression "terms of engagement" relates to Short Service Commissioned Officers, the next logical inquiry has to be: "What are the terms of engagement".

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.

35. The scheme being for the benefit of Army Personnel, a beneficial interpretation ought to be placed and since the scheme is an insurance scheme, the "Contra Proferentem Rule" derived from the latin maxim *United India Insurance Co. Ltd. Vs. Pushpalaya Printers, United India Insurance Co. Ltd. v. Pushplaya Ltd.*), requires the policy to be construed liberally in favour of the assured. The law declared by the Supreme Court in the decision reported as *Bombay Anand Bhavan Restaurant Vs. The Deputy Director, ESI Corporation and Another, Bombay Anand Bhawan Restaurant v. Deputy Director ESIC and Anr.* requires this Court, to employ, while dealing with measures crafted to provide social security to intended beneficiaries, liberal constructive interpretation tools which promote the object of the welfare measure and not negate the same.

36. We would highlight that a beneficial interpretation requires to be placed upon the rules, office orders and the various paragraphs of the Army Group Insurance Scheme since the object of the fund is the welfare of Army Personnel and amongst others, one object is to provide financial benefits to individuals whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement.

37. Accordingly, Rule is made absolute. Mandamus is issued to Respondent No. 4 to pay the sum assured to the Petitioner as per interpretation placed by us upon para 59 of the Army Group Insurance Scheme and needless to state the Petitioner would be entitled to simple interest on the said sum at the rate of 8% per annum reckoned from a date three months after the Petitioner raised a demand upon Respondent No. 4 till the date the payment is released.

38. No costs.