(2012) 07 CAL CK 0032

In the Calcutta High Court

Case No : F.M.A. No. 1735 of 2003

Union of India and Others — APPELLANT

Vs

Rajat Kumar Ghosh — RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:
CCS (Pension) Rules, 1972 — Rule 38, 9(2)

Citation : (2012) 4 CALLT 146 : (2013) 2 CHN 581 : (2013) 1 WBLR 807

Hon'ble Judges : Pratap Kumar Ray, J;Dipankar Datta, J

Bench : Division Bench

Advocate : Tarakeswar Paul and Smt. Sushma Dutta, for the Appellant; Asim Banerjee and Mr. Nandadulal Banerjee, for the Respondent

Judgement

Pratap Kumar Ray, J.—Assailing the judgement and order dated 15th May, 2002 passed by the learned Trial Judge in W. P. No. 1064 (w) of 1999, this appeal has been preferred by the Union of India and officers of Central Reserve Police Force. The judgement under appeal read such:-

The writ petitioner was declared medically unfit by the Medical Board. The respondent authority relying on the report of the Medical Board removed the writ petitioner from service. The order or removal was impugned by the writ petitioner before this Court in C.O. 4056 (W)/1996 wherein this Court by an order dated April 26, 1996 upheld the order of removal and directed the respondent authority to consider the case of the writ petitioner for extending retiral benefits. In terms of the said order dated April, 26, 1996 the respondent authority considered the matter and passed the following order;

In this connection it is unformed that a central Govt. Employee is covered under CCS (Pension) Rules 1972. You were invalided from service after serving less than 10 years in CRPF. A Central Govt. Employee who served for less than 10 years is not eligible for Invalid Pension as per Rule 38 of CCS (Pension) Rules, 1972. Hence you are not entitled for Invalid Pension.

2. As regards disability pension, it is informed you that you were a patient of "Schiz-phrenia" for which you were invalided from service after declaring completely and permanently incapaciated for further active service of any kind in the CRPF by a board of Medical Officers at GC, CRPF. Durgapur. The disease for which you were invalided, do not find place under the Head "Diseases affected by stress and strain" of schedule I-A of CCS (EOP) Rules incorporated as Appendix-3 of Swamy''s pension compilation incorporation CCS (Pension) Rules corrected upto 1/3/01. Hence, you are not eligible for disability pension.

3. However, as per entitlement, the following payments have been made to you:-

(i) CGEGIS

Rs. 2,324/-

(ii) Terminal Gratuity

Rs. 3,430/-

(iii) RF final payment

Rs. 15,000/-

4. It appears from the order impugned dated April, 26, 1996 quoted (Supra) the writ petitioner was denied pension on the ground that he had served less than 10 years and as such,/ he was not entitled to pension as per Rule 38 of the CCS (Pension) Rules, 1972.

I have perused Rule 38, I do not find any period mentioned in the said rule which could disqualify the writ petitioner from availing pensionary benefits having served the force for less than 10 years.

Mr. P.K. Sen, learned Counsel, appearing for the respondent authority, could not impress upon me as to why the writ petitioner could be denied retiral benefits for having served less than 10 years. Mr. Sen, learned Counsel, has relied on an Apex Court judgment Union of India & Others Vs. Rakesh Kumar reported in 2001 3 Sup 48 wherein the Apex Court denied the pensionary benefit to the members of the force for having served less than 20 years. In those cases the writ petitioners resigned from service after having served less than 20 years. The Apex Court considered the Rule 48A of the CCS (Pension) Rule which provides for minimum 20 years qualifying service for a government servant to avail the pensionary benefit. Under Rule 49 of the Pension Rule if the qualifying service was less than 20 years the government servant was not entitled to get pensionary benefit. Considering such provision the Apex Court held that a member of the force should resigned after serving less than 10 years could not be entitled to get pension.

In my view, such provision has no application in the instant case and as such, the Apex Court decision has no application herein. Resignation is a voluntary act on the part of the employee whereas invalidated retirement on invalidation at the

direction of the respondent authority is not a voluntary act on the part of the employee concerned.

In the instant case the respondent authority considering the report of the Medical Board could have offered him lighter work, they have not done so. Instead they thought it fit to remove the petitioner from service on being declared unfit. This Court upheld the order of removal and directed the retiral benefits to be extended to the writ petitioner. Since Rule 38 being the appropriate rule applicable herein, does not specify any qualifying period the order impugned is liable to be quashed and set aside.

In the result, the writ petition succeeds. The order dated 4th February, 1998 appearing at page 26 of the writ petition is quashed and set aside. The writ petitioner be granted retiral benefits in accordance with the provision of the CCS (Pension) Rule 1972 after having due regard to the observation made by me herein.

The writ petition is disposed of accordingly without any order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

5. This appeal has a checkered history. The aforesaid writ petitioner moved a writ application earlier registered as C.O. No. 4056 (W) of 1995 assailing the invalidation notice dated 31st March, 1993 issued by the Additional DIG, Group CLILPL, CRPF, Durgapur-14 by which the writ petitioner/respondent of this appeal was given one month''s notice for invalidation in terms of Rule 2 of the Central Civil Services(Medical Examination) Rules, 1957 relying upon the medical opinion dated 27th March, 1993 whereby writ petitioner/respondent was declared unfit for service in CRPF as a Combatant on the reasoning that the psychiatric illness as developed while in service despite treatment in different base hospital could not be cured and the disease became a chronic disease being diagnosed as a case of Schizophrenia. In the said writ application the order of invalidation from service issued on 7th May, 1993 issued by the same authority was also under challenge including the letter dated 9th January, 1995 refusing to re-employ the petitioner on the basis of his representation dated 31st December, 1994 wherein it was urged by the writ petitioner/respondent that after proper treatment in a Polyclinic of Government of West Bengal situated at 5, Subarban Hospital Road, Kolkata-700 020 under Professor A. N. Chowdhury, he recovered from the disease which was identified as a chronic case of Schizophrenia and he became fit for re-appointment. The medical opinion declaring the writ petitioner/ respondent unfit for service in CRPF as a combatant read such:-

Proceedings of a Assembled at

: Board of Officers

: GS HOSPITAL, CRPF DURGAPUR 14

On

: 27.3.93

For the purpose of

: Invalidation of No. 850773298 CT R.K. Ghosh of GC CRPF Durgapur as per Medical Supdt. Directorate General, CRPF, New Delhi lettat to MIJIT-INST- 88 dated 25.4.88

By order of

: Addl. DICP Group Central CRPF Durgapur-14, letter No. M. iii-8/93-Estt-8 dated 19.3.93.

Composition of the Board

:

Presiding Officer

: Dr. B.C. Sahu DPH GRC Grade-I; MO I/C GC CRPF Hospital, Durgapur-14;

Member-I

: Dr. B.N. Pattanaik M O GDO Grade-I, GC, CRPF Hospital, Durgapur-14;

Member-II

: Dr. A.K. Sinha M O DLO Grade-II, GC, CRPF Hospital, Durgapur-14

6. The board having assembled in pursuant to the Addl. DIGP GC CRPF Durgapur letter No. M. III-8/93-Estt.-8 dated 19.3.93 and Medical Superintendant Dte. Genl CRPF letter No. M III-INST-88 dated 25.4.88 to examine the case of No. 850773278 CT R.K. Ghosh of GC CRPF Durgapur, for invalidation.

7. The medical opinion and recommendation of the board are as under :-

MEDICAL OPINION

No. 850773278 CT. R. K. Ghosh of GC CRPF Durgapur (is a case of Schizophrenia) 30 years unmarried male from West Bengal working in CRPF since last 7 years. Developed psychiatric illness 4 years back and treated in Base Hospital one CRPF New Delhi. Since then he was developed 3-4 relapses of psychiatric illness and treated in all the three Base Hospitals of CRPF. He has been finally diagnosed as a case of Schizo-phrenia. Now his illness has become chronic, even if has shown some improvement residual symptoms like social withdrawal, impulsivity and lack of initiative persisting. He has not achieved full recovery even after a course of 7 ECTS and adequate treatment with antipsychitric medication. In view of the chronicity of his illness in opinion he is ''Unfit'' for service in CRPF as a combatant.

1. Sd/- (Dr. B.C. Sabu) M O I/C GC DPR

2. Sd/- (Dr. S.N. Pattanaik) M O GDO Gr. I

3. Sd/- (Dr. L.K. Sinha) M O GDO Gr. II

8. The invalidation notice dated 31st March, 1993 read such:-

OFFICE OF THE ADDL. DIG, GROUP CLITPL, CRPF, DURGAPUR-14 (W.B)

No. M. III-8/93-Estt-8

Dated, the 31st March, 93

To

No. 850773278 CT R. Ghosh (Throughy AC (HQ), GC, CRPF, Durgapur) GC, CRPF, Durgapur-174

Subject: INVALIDATION (NOTICE)

You have been examined by a Medical Board of this GC on 27.3.93 and a copy of the opinion of the Board is enclosed.

2. Under the provision of para 5 of Govt. of India decision No. 1 below rule 2 of the Central Civil Services (Medical Examination) rules 1957, you are hereby given one months notice for invalidation which will be effective w.e.f the date on which the notice is served on you. You are also informed that :-

A) Subject to the provision of supplementary rule 233 (1) l9''b0 and 2 of the note below articles 827-A CRS, as the case may be, and any orders regarding grant of leave, your invalidation will be effected expiry of a period on one month from the date of serving of this notice unless you desire to retire from an earlier date.

B) You may submit, if you so desire, within a period of one month a request to be examined by Medical Review Board supported by prima facie evidence that good grounds exist for your doing so and

C) If you prefer a request for examination by Medical Review Board, you shall be liable to pay the fees prescribed under the rules.

3. Your application/written request, if any, should reach the undersigned before expiry of the above notice period, failing which you will be sent on invalidation on due date.

4. Please acknowledge receipt.

Encl: 2

SD/- (Mahendra Prasad) Addl. DIG. Dated the 31st March, 93.

No. M. III-8/93-Estt-8

Copy forwarded to :-

1. The AC (HQ), CC, CRPF, Durgapur for information. Two copies of the notice are

enclosed. One copy be handed over to No. 850773278 CT R.K. Ghosh and the other copy duly signed and attested by you as taken of having received the same may be sent to this office for record. His application, request if any may also be sent to this office.

SD/- (Mahendra Prasad) Addl. DIG.

9. The order invalidating out from service and striking off the name of the writ petitioner/respondent from the strength of the Group centre dated 7th May, 1993 read such

OFFICE OF THE ADDL. DIG, GROUP CENTRE, C.R.P.F., DURGAPUR-14 (W.B.)

No. M. III-8/93-ESTT-8

Dated 7 May, 1993

INVALIDATION FROM SERVICE (OFFICE OFFER)

No. 850773278 CT R.K. Ghosh of this Group Centre is a case of Schizophrenia. He developed psychiatric illness 4 years back and was treated in Base Hospital-One, CRPF, New Delhi. Since then he has developed 3-4 relapses of psychiatric CRPF. He has been finally diagnosed as a case of Schizo-phrenia. In addition he is a chronic case and even then he has shown improvements, residual symptoms like socall with drawal, impulsivity and lack of initiative persist. He has not fully recovered even after a course of 7 ECTS and adequate treatment with antipsychatric medication. As per the opinion of the Medical Board, Group Centre, CRPF, Durgapur-14, the above named individual has been declared completely and permanently incapacited for further active service of any kind in the CRPF. The above named individual was issued with notice No. M. III- 8/93-Estt-8 dated 31.3.93 as per rule which was served on 1.4.93. The individual has not dis-agreed with the opinion of the Medical Board as he has not submitted any application against invalidation.

2. No. 850773278 Ct R.K. Ghosh of this GC is hereby invalided out from service w.e.f. 7.5.93 (AN). He is struck off strength of this Group Centre from the same date. Ex-postfacto approved is a hereby also accorded for retention/notice period in service w.e.f. 27.3.93 to 7.5.93 for bonafied Govt. Service.

(Mahendra Prasad) Addl. DIG Dated the, 7 May, 1993

No. M. III-8/93-ESTT-8

No. 850773278 Ct R.K. Ghosh, GC, CRPF, Durgapur through AC (Hor), GC.

(Mahendra Prasad) Addl. DIG

Internal

PRI, Risk Fund/M.O.-I/C/AC (Hqr)/AC (Adm)/HC (SR)/HC (Cash)/HC (Pay)/I/C-Pension, FOC-GC for information and necessary action.

10. Prayer for rehabilitation/re-appointment by the writ petitioner/respondent by his representation dated 31st December, 1994 annexing the certificate of the Doctor reads such:-

REGISTERED WITH A/D

R.K. Ghosh C/o. Mr. Gopal Modak; M.C. Fatakgora; P.O. Chandannagar Distt. Hooghly; West Bengal PIN CODE NO: 712136

1. The Inspector General of Police Eastern Sector; C.R.P.F. HC.-Block; S/III; P.O. Soch Bhavan Salt Lake City; Calcutta-91

2. The Addl. Dy. Inspector General of Police Group Centre; C.R.P.F. Durgapur-14 Distt. Burdwan; West Bengal.

Respected Sir,

SUB: "PRAYER FOR REHABILITATION"

With due respect, I desire to draw your attention on the following aspects for your kind perusal :-

1. I, Sri R.K. Ghosh, F/N. 850773278 appointed as a Constable at Group Centre, C.R.P.F., Durgapur-14, (W.B.) on 17.6.85 and I was declared invalid vide O.O. No. M. III/8/93- ESTT-8 dtd. 07.5.93 from the office of A.D.I.G., G.C., C.R.P.F., Durgapur-14, Distt. Burdwan, (W.B.) on medical ground on and from 07.5.93 (AN)

2. Sri, I was served with a month''s notice dated 31.3.93 to get myself examined by "Medical Review Board" but owing to my indisposition during the period in question I was not in a position to appear before the Medical Board.

3. Since last one and a half year I have undergone a regular treatment in a "Poly Clinic" of Government of West Bengal, 5, Subarban Hospital Road, Calcutta 700 020 under Prof. A.N. Chowdhury. Dr. Chowdhury''s noteable performance has enabled me to come round and to attend a sound physique with no other allied discomfort in this regard and advised me accordingly to resume my duties if kindly permitted by your goodself. A Xerox copy Doctor''s Certificate is enclosed in support of my prayer.

11. You are surely to appreciate the financial problem that I have been facing as a jobless one in my family in these hard days.

12. I would, therefore, request you to kindly offer me a re-appointment under your kind control and supervision so that my family can have a glimpse to survive.

Thanking you in anticipation,

Dated, Chandannagar The 31st Dec'' 1994 Enclo: One Xerox copy of Dcotor''s Fit Certificate.

Yours Faithfully, (R.K. Ghosh)

13. Refusal to re-employ by the decision dated 9th January, 1995 in response to application dated 31st December, 1994 as referred to above, reads such:-

OFFICE OF THE INSPECTOR GENERAL OF POLICE, E/S/, CRPF, CALCUTTA-91

No. R.II-1/95-ES-ADM.I

Dated, the 9 Jan'' 95.

To

Shri R.K. Ghosh, C/O Mr. Gopal Modak, M.C. Lane, Fatakgora, P.O. Chandannagar, Dist. Hooghly, (West Bengal), Pin-712136.

Subject:- RE-EMPLOYMENT

Reference your application dated 31.12.94.

2. It is to inform you that there is no provision for re-employment of retired/ invalidated out personnel in CRPF.

(C.P. SINGH) VSM ADDITIONAL DIGP, (ADM) For IGP-E/S, CRPF, CALCUTTA

14. The said writ application C.O. No.4056 (w) of 1995 was disposed of by the order dated 26th April, 1996. Order reads such:-

Mr. Ashim Banerjee

Mr. Nandadulal Banerjee... For the Petitioner

Mr. Mihir Chakraborty

Mr. Bidyut Roy... For the Respondents.

15. Providence has put the Petitioner in a situation indeed most unfortunate. Employed with the Central Reserve police Force (CRPF) since 1985, suddenly fell ill in 1988 while posted in Imphal, on duty. The Respondent authorities treated him in its various medical centres including in New Delhi and was found to be suffering from Sehisophremia (Schizophrenia). Eventually, the Petitioner was admitted in the Group Centre Hospital of the Respondents and a Medical Board was constituted for such purpose. After due consideration declared him as "unfit" for service with the Respondents. In accordance with the findings of the Medical Board by an order dated 7th May, 1993 the Respondents terminated the service of the petitioner. According to its Rules the petitioner was made aware that within a month thereof that the petitioner was entitled to seek review of the findings of the Medical Board upon payment of necessary charges.

16. I find the Respondent authorities have acceded to the request made by the mother of the Petitioner as far as the law permitted. They have taken every care to ensure treatment as far as possible in accordance with their Rules and Regulations and thereafter they have issued the termination of service order. I do

not find any force in the allegations made in the writ petition against Respondents. The predicament of the Petitioner and his family members, indeed, invokes sympathy but the law must take its own course.

17. The disease complained of would probably not strictly render the petitioner "unfit".

18. If found "unfit" for work, the petitioner would reasonably be considered to be given voluntary retirement as that he could get retirement benefits. This is in view of the fact that the petitioner fell ill in course of his service.

19. In view of the finding as above, the Respondents are directed to consider if any benefit including the retirement benefits can be afforded to the petitioner in accordance with law, if found favourably, then such benefits may be paid to the petitioner.

20. The writ application, is thus, disposed of without any order as to costs.

(Ronojit Kumar Mitra, J.)

21. Learned Trial Judge in the first writ application order of which is quoted above was of the view that the disease complained of would probably not strictly render the writ petitioner unfit and thereby opined that had there been any situation that he was unfit for work, he ought to have been given a chance of voluntary retirement for grant of retirement benefit as petitioner fell ill in course of his service. With that finding and observation learned Trial Judge in the said writ application directed the respondent to consider whether any benefit including any retirement benefit could be granted in accordance with law.

22. On a bare reading of the said order of the Learned Judge passed in the first writ application, it appears that the learned Trial Judge was not satisfied with invalidation order on the ground that the writ petitioner became unfit for service in CRPF as combatant due to chronicity of his illness as diagnosied as a case of schizophrenia and kept open that issue for decision in accordance with law which means that the representation of the writ petitioner dated 31st December, 1994 as filed on the strength and basis of the medical officer''s opinion who was a Professor attached with the Polyclinic of the Government of West Bengal was required to be considered. The rejection of representation was by a single line order without assigning any reason.

23. The appellant of the present appeal thereafter passed a decision on 14th February, 1998 in compliance with the order dated 26th April, 1996 passed in the first writ application by rejecting the prayer for retirement benefits as well as disability pension on the grounds stated thereto. The said decision dated 14th February, 1998 became the subject matter of challenge in the present connected writ application of this appeal which hereinafter referred to as second writ application registered as W. P. No. 1064 (w) of 1999. The decision dated 14th February, 1999 impugned in the second writ application reads such:-

OFFICE OF THE ADDL DIGP GROUP CENTRE C.R.P.F. DURGAPUR-14 (WB)

No. J. II-6/96-GCD-EC-II

Dated, the Feb '' 98.

To

Shri Rajat Kumar Ghosh (Ex-Ct, CRPF) C/O Mr. Gopal Modak, M.C. Lane, Fatak Gore, P.O. : Chandan Nagar, Distt : Hooghly (WB)

Subject : CO No. 4056 (W)/96 FILED BY EX-CT RAJT KUMAR GHOSH V/S UNION OF INDIA AND OTHERS

Please refer to judgment dated 26.4.96 pronounced by the Hon''ble High Court of Calcutta on your petition vide CO No. 4056(W)/96.

2. In this connection it is informed that a central Govt. Employee is covered under CCS (pension) Rules 1972. You were invalided from service after serving less than 10 years in CRPF. A Central Govt. invalid Pension as per Rule 58 of CCS (Pension) Rules 1978. Hence you are not entitled for invalid pension.

3. As regards disability pension, it is informed you that you were a patient of "Schie-phrenia" for which you were invalided from service after declaring completely and permanently incapaciated for further active service of any kind in the CRPF by a board of Medical Officers at GC, CRPF, Durgapur. The disease for which you were in valided, do not find place under the head "Diseases affected by stress and strain" of Schedule IA of CCS (EDP) Rules in-coporated as Appendix-3 of Swamy''s pension compilation incorporating CCS (Pension) Rules corrected upto 1.3.91. Hence you are not eligible for disability pension.

However, as per entitlement, the following payments have been made to you :-

i)

CGEGIS

Rs. 2,324/-

ii)

Terminal Gratuity

Rs. 3,430/-

iii)

RF final payment

Rs. 15,000/-

(Rajit Rai) Dy. Comdt. Addl DIGP (CCD), GC (DPR) Dated, the Feb. ''98.

No. J. II6/96-GCD-EC-II

Copy forwarded to :-

1. Shri Nand Dulal Babdhopadhyay, Advocate, w.f.t his letter dated 14.8.97, addressed to the IGP, ES, CRPF, Calcutta and the DIGP, CRPF, Calcutta.

2. The IGP, ES, CRPF, Calcutta

3. The DIGP, Calcutta

w.f.t this office end of even number dated 3.12.97 and IGP, ES, CRPF, letter No. J. II-3/96-WB-ES (Legal) dated 11.2.98

(Rajit Rai) Dy. Comdt, Addl DIGP(CCD), GC (DPR)

24. On bare reading of the impugned decision it appears that the finding of the learned Trial Judge in the first writ application which was not appealed against, holding inter alia, that the disease complained of would probably not strictly render the writ petitioner unfit was not at all dealt with and considered dealing with the representation for re-employment dated 31st December, 1994 wherein the writ petitioner categorically contended in paragraph 3 quoting opinion of Professor A. N. Chowdhury that his disease as was diagnosed as a case of Schizophrenia was cured and he was fit to resume duty.

25. In the second writ application the writ petitioner/respondent prayed for following relief:-

(a) ... Rule nisi on the respondents to show cause why a Writ in the nature of Mandamus shall not be issued by directing the respondents to re-instate the petitioner in service by cancelling the impugned invalidation notice No. M. III-8/93-BSTT-8 dated 7th May, 1993 as set out in Annexure ''C'' issued by the Additional Deputy Inspector General of Police, Group Centre, CRPF, Durgapur-14, the Dy. Comdt. Additional Deputy Inspector General of Police (CCD), Group Center, Durgapur, the respondent No. 4 as set out in Annexure ''G'' if the petitioner found fit to perform light job and in alternative petitioner found ''Unfit'' direct the respondents to give the petitioner disability pension as per order of the Hon''ble Court set out in Annexure ''F''.

(b) ... Rule nisi on the respondents to show cause why a Writ in the nature of Certiorari shall not be issued by commanding the respondents to produce all the records, relevant papers and documents relating to this case so that perusing the same conscionable justice may be rendered.

(c) ... Upon hearing the parties and showing cause if any make the rule absolute.

(d) ... Issue of such order or orders and/or direction or directions if the respondents make no answer and/or make false or insufficient answer.

(e) ... Any other appropriate order or orders as to your Lordships may seem fit and proper.

26. Learned Trial Judge allowed the second writ application partly by quashing

the impugned decision refusing to grant disability pension and invalid pension, but did not pass any order of reinstatement in service or re-employment in service. The judgement of the second writ application has not been attacked by preferring any appeal by the writ petitioner, as such at the present moment in this appeal preferred by the Union of India and other officers of CRPF, there is no scope to consider the prayer for re-employment on the basis of representation of the writ petitioner with supporting opinion of medical officer who attended him in a Government Hospital. Hence, this appeal is limited with reference to the direction of the Learned Trial Judge directing to release retiral benefits in accordance with provision of the CCS (Pension Rules) 1972. This appeal has been opposed by the writ petitioner/respondent by contending that impugned judgement under appeal was justified and writ petitioner became entitled for retirement benefits in terms of said rule. It is the case of the appellant as made out before the learned Trial Judge as well as before this Court that writ petitioner since became unfit for service in CRPF as combatant by rendering service less than 10 years, as such he was not entitled to get any retirement benefits having regard to the provision of law as laid down in Rule 48A, Rule 49 read with Rule 38 of CCS (Pension) Rule, 1972. The judgement of the Apex Court cited before the learned Trial Judge reported in (2001) 3 SCC 48 in support of the contention of the appellant that the writ petitioner is not entitled to get any retirement benefits due to the fact of rendering service less than 10 years also has been referred to. Learned Trial Judge allowed the writ application directing payments of retirement benefits relying upon Rule 38 of the said Rule on the reasoning that there was no minimum period of service prescribed as qualifying period, to enjoy invalid pension.

27. To address the issue as raised in this appeal assailing the judgement under appeal we have to consider the relevant rules applicable in this field and factual matrix of this case where the service of writ petitioner/respondent came to an end by an order of invalidation by declaring him unfit for service on medical ground due to his suffering from Schizophrenia. By the impugned decision passed by the appellant, prayers for invalid pension and disability pension were rejected. Appellants did not consider the issue of re-employment. The learned Trial Judge upheld the invalidation order and directed grant of retiral benefits in accordance with CCS(Pension) Rules, 1972, hereinafter referred to as ''said Rule''. Rule 38 of the said rule is the relevant provision which is attracted herein to grant invalid pension, reads such:-

38. Invalid Pension-

(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-

(a) a Medical Board, in the case of a Gazetted Government servant and of a non-gazetted Government servant whose pay, as defined in rule 9 (21) of the Fundamental Rules, exceeds seven hundred and fifty rupees per mensem;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

NOTE 1- No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his Office or Department is aware of the intention of the applicant to appear before the medical authority. The medical authority shall also be supplied by the Head of the Office or Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant. If a service book is being maintained for the applicant, the age recorded therein should be reported.

NOTE - 2.- A lady doctor shall be included as a member of the Medical Board, when a woman candidates is to be examined.

(3) The form of the Medical Certificate to be granted by the medical authority specified in sub-rule (2) shall be as in Form 23.

(4) Where the medical authority referred to in sub-rule (2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(5) Omitted

28. Under Chapter V of the said Rule with the head "Classes of pension and condition governing their grant", there are different provisions for grant of different type of pension namely superannuation pension, retiring pension, pension due to absorption in or under a Corporation, Company or body, invalid pension, compensation pension, compulsory retirement pension etc. Superannuation pension has been defined under Rule 35 which is available on attaining age of compulsory retirement. Retiring pension is controlled by Rule 36. Rules 39 and 40 deal with compensation pension and compulsory retirement pension respectively. Rules 35, 36, 39 and 40 read such:-

35. Superannuation pension -

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

36. Retiring pension-

A retiring pension shall be granted-

(a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of 1[ ] rule 48 2 [or rule 48-A] of these rules, or rule 56 of the Fundamental Rules or Article 459 of the

Civil Service Regulations; and

(b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of rule 29 of these rules.

39. Compensation pension-

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option-

(a) of taking compensation pension to which he may be entitled for the service he had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2)

(a) Notice of at least three months shall be given to a Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(c) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(d) No compensation pension shall be payable for the period in respect of which he receives pay and allowances in lieu of notice.

(3) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is reemployed before the expiry of the period for which he has received pay and allowances he shall refund then pay and allowances so received for the period following his re-employment.

(4) If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment.

40. Compulsory retirement pension-

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than 1[full compensation pension] or gratuity or both admission to him on the date 3 of his compulsory

retirement.

2 (***)

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the 1[full compensation pension] admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation:- In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or as the case may be, under sub-rule (2), shall not be less than 3 [the amount of rupees sixty per mensem].

29. Having regard to the aforesaid different type/category of pension as categorised under Chapter V, it is abundantly clear that invalid pension is a separate and different category, which is not related with other category of pensionary benefits detailed above. Rule 49 under Chapter VII of the said Rule deals with quantification of amount of Pension. There is no specific minimum service period that could be considered as qualifying service for pension, but under Rule 49 sub rule (2) clause (b) those with qualifying service of less than 10 years would be granted gratuity only and pension is available to them who will render service for more than 10 years on the basis of provision laid down in the said Rule 49. Sub Rule 2 Clause (c) starts with the word "Notwithstanding," nonobstante clause, regarding non-applicability of clause (a) & (b) of sub Rule (2) of Rule 49 in respect of a case of invalid pension. Rule 49(2) reads such:-

49. Amount of Pension-

(1) ...

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty three years the amount of pension shall be determined as follows, namely :-

Average emoluments

Amount of monthly pension

(i) Upto first Rs. 1,000

50% of average emoluments

(ii) Next Rs. 500

45% of average emoluments

(iii) Balance

40% of average emoluments subjkect to a

maximum of Rs. 1,500 per mensem

including relief on pension payable upto

index level 328;

(b) in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a0 and in no case the amount of pension shall be less than rupees sixty per mensem;

(c) notwithstanding anything contained in clause (a) and clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of rule 54.

30. The qualifying service has been defined under Rule 3 (1), clause (q) which means the period of service as rendered on duty. Rule 3(1) (q) reads such:

3. Definitions-

In these rules, unless the context otherwise requires:-

(1) (a) ...

(aa) ...

...

... ... (q) ''qualifying service'' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

31. On the basis of the aforesaid statutory provision, it appears that invalid pension is a separate category of pension which has no connection with reference with other category of pension as mentioned in the statute and thus the grant of invalid pension is not dependent upon or its quantification is not conditioned with minimum 10 years qualifying service. The reason is obvious that invalid pension is granted to a person who becomes invalid due to any accident or suffering from any disease, during service period and having regard to the constitutional mandate of social justice when a person in service suffers invalidity, there is no scope for limiting minimum tenure of service to attract the benefit for pension under category of invalid pension. Hence, the decision of appellant rejecting grant of invalid pension on the reasoning advanced is not legally sustainable.

32. Regarding refusal to grant disability pension, the issue is now being dealt with. The relevant rule is Central Civil Service (Extraordinary Pension) Rules. Under Rule 3(4), disease has been defined as disease mentioned in Schedule 1A of said rule. Schedule 1A contains the list and classification of diseases which can be contracted by the service holder wherein under clause ''B'' different diseases affected by stress and strain, are mentioned. Schedule 1-A Clause A and B,

which are relevant for this case, read such:

SCHEDULE 1-A [See Rule 3(4)]

1. LIST AND CLALSSIFICATION OF DISEASES WHICH CAN BE CONTRACTED BY SERVICE

A. Diseases affected by climatic conditions

(i) Pulmonary Tuberculosis.

(ii) Pulmonary Oedema

(iii) Pulmonary Tuberculosis with pleural effusion.

(iv) Tuberculosis-Non-pulmonary.

(v) Bronchitis.

(vi) Pleurisy, empyema, lung abscess and bronchiectasis

(vii) Lobar pneumonia.

(viii) Nephritis (acute and chronic).

(ix) Otitis Media.

(x)Rheumatism-acute.

(xi) Rheumatism-chronic.

(xii) Arthritis.

(xiii) Myalgia.

(xiv) Lumbago.

(xv) Fost-bite leading to amputation of limb/limbs.

(xvi) Heat Stroke.

B. Diseases affected by stress and strain

(i) Psychosis and Psychoneurosis.

(ii) Hyperpiesia.

(iii) Hypertension(B.P.)''

(iv) Pulmonary Tuberculosis.

(v) Pulmonary Tuberculosis with pleural effusion.

(vi) Tuberculosis-Non-pulmonary.

(vii) Mitral Stenosis.

(viii) Pericarditis and adherent pericardium.

(ix) Endo-carditis.

(x) Sub-acute bacterialendo-carditis, including ineffective endocarditis.

(xi) Nyocarditis-acute or chronic.

(xii) Valvular disease.

33. Rule 3 sub Rule 4 of the said Extraordinary Pension Rule is applicable to award disability pension under Rule 9(2). Rule 3 Sub rule 4 and Rule 9(2) read such:

1. Rule 3

(1) ...

(2) ...

(3) ...

Rule 4 "disease" means-

A disease as is mentioned in Schedule I-A hereto annexed.

Rule 9 (1) ...

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent per cent disability shall be as specified in Schedule II hereto annexed. The quantum of disability pension for lower percentage of disability shall be, "proportionately lower". (The minima and the maxima given in Schedule II are applicable only for arriving at the monthly disability pension for cent per cent disability and are not applicable in respect of percentage of disability lower than cent per cent).

34. The quantification of disability pension identified in Schedule II of the said Rule reads such:-

SCHEDULE II (See Rule 9(2) DISABILITY PENSION

1. The revised rates of disability pension introduced with effect from 1.1.1986 are as follows:

2. Disability Pension for 100% disability shall be allowed at the following rates:-

Basic pay per month Rate of disability pension per month for 100% disability

1

2

(i) Not exceeding Rs. 1,500

30% of basic pay subject to a minimum of

Rs. 375.

(ii) Exceeding Rs. 1,500 but not exceeding Rs. 3,000

20% of basic pay subject to minimum of Rs. 450

(iii) Exceeding Rs. 3,000

15% of basic pay subject to minimum of Rs. 600 and maximum of Rs. 1,250.

3. For lower percentage of disability the monthly disability pension shall be proportionately lower as at present provided that where permanent disability is not less than 60 % the total pension (i.e., pension or service gratuity admissible under the Ordinary Pension Rules plus disability pension under EOP Rules) shall not be less than 60% of basic pay subject to a minimum of Rs. 750.

35. This disability pension is available irrespective of the fact of getting pension or gratuity under any other rules for the time being in force in terms of Rule 5 vide Government order dated 26th February, 1966 which reads such:-

Rule 5.

G.O.I.M. F of O.M. No. 19 (18)EV (A) /66 dated 26.2.66

5. Except as otherwise provided in these rules, an award made under these rules shall not affect any other pension or gratuity for which the Government servant concerned or his family may be eligible under any other rules for the time being in force; and the pension granted under the provisions of these rules shall not be taken into account in fixing the pay of pensioner in his continued employment or re-employment in Government service.

36. The appellant rejected grant of disability pension on the ground that the disease Schizophrenia is not covered under Schedule 1-A. It appears from the Schedule 1-A clause (B) sub clause (I) that "psychosis and psychoneurosis" are covered as schedule diseases affected by stress and strain in service. It appears from the medical report which is the basis of invalidation order striking out the name of writ petitioner/respondent from service that initially writ petitioner/ respondent suffered psychiatric illness and was treated in medical centre of CRPF by anti-psychiatric medication but there was no recovery and ultimately he was diagnosed as a patient of schizophrenia.

37. Hence from the medical report itself it appears that Schizophrenia disease is nothing but a disease under category of psychiatric illness. The meaning of the word Schizophrenia is profitable to quote from the dictionary of Stedman''s Medical Dictionary, Third Unabridged Lawyers'' edition, edited by Jacob A. Stein, published by the W.H. Anderson Company, Cincinnati and Jefferson Law Book Company, Washington, D.C. The words "Schizo "Phrenea" and Schizophrenia defined in this dictionary read such:-

Schizo-Phrenea.

schizophrenia (skiz-o-frene-ah) [schizo +G phren. Mind] A term, coined by Bleuler, synonymous with and replacing, dementia precox: the most common

type of psychosis, characterized by extensive withdrawal of the individual''s interest from other people and the outside world and the investment of it in his own self.

(Underline is of mine)

38. From the said dictionary meaning it appears that schizophrenia is combination of the two words one schizo which means to split or quality or division and phrenea means mind. It is mentioned in said dictionary that it is most common type of cases characterised by extensive withdrawal of individual''s interest from other people and the outside world. This word schizo has been coined by the scientist Bleuler.

39. The definition of Schizophrenia, its treatment, medication etc. in the medical dictionary as obtained by searching "Google website" read such:

Schizophrenia

Definition

Schizophrenia is a psychotic disorder (or a group of disorders) marked by severely impaired thinking, emotions, and behaviors. Schizophrenic patients are typically unable to filter sensory stimuli and may have enhanced perceptions of sounds, colors, and other features of their environment. Most schizophrenics, if untreated, gradually withdraw from interactions with other people, and lose their ability to take care of personal needs and grooming.

Treatment

The treatment of schizophrenia depends in part on the patient''s stage or phase. Psychotic symptoms and behaviors are considered psychiatric emergencies, and persons showing signs of psychosis are frequently taken by family, friends, or the police to a hospital emergency room. A person diagnosed as psychotic can be legally hospitalized against his or her will, particularly if he or she is violent, threatening to commit suicide, or threatening to harm another person. A psychotic person may also be hospitalized if he or she has become malnourished or ill as a result of failure to feed, dress appropriately for the climate, or otherwise take care of him- or herself.

A patient having a first psychotic episode should be given a CT or MRI (magnetic resonance imaging) scan to rule out structural brain disease.

Antipsychotic medications

The primary form of treatment of schizophrenia is antipsychotic medication. Antipsychotic drugs help to control almost all the positive symptoms of the disorder. They have minimal effects on disorganized behavior and negative symptoms. Between 60-70% of schizophrenics will respond to antipsychotics. In the acute phase of the illness, patients are usually given medications by mouth or by intramuscular injection. After the patient has been stabilized, the

antipsychotic drug may be given in a long-acting form called a depot dose. Depot medications last for two to four weeks; they have the advantage of protecting the patient against the consequences of forgetting or skipping daily doses. In addition, some patients who do not respond to oral neuroleptics have better results with depot form. Patients whose long-term treatment includes depot medications are introduced to the depot form gradually during their stabilization period. Most people with schizophrenia are kept indefinitely on antipsychotic medications during the maintenance phase of their disorder to minimize the possibility of relapse.

As of the early 2000s, the most frequently used antipsychotics fall into two classes: the older dopamine receptor antagonists, or DAs, and the newer serotonin dopamine antagonists, or SDAs. (Antagonists block the action of some other substance; for example, dopamine antagonists counteract the action of dopamine.) The exact mechanisms of action of these medications are not known, but it is thought that they lower the patient''s sensitivity to sensory stimuli and so indirectly improve the patient''s ability to interact with others.

DOPAMINE RECEPTOR ANTAGONIST. The dopamine antagonists include the older antipsychotic (also called neuroleptic) drugs, such as haloperidol (Haldol), chlorpromazine (Thorazine), and fluphenazine (Prolixin). These drugs have two major drawbacks: it is often difficult to find the best dosage level for the individual patient, and a dosage level high enough to control psychotic symptoms frequently produces extrapyramidal side effects, or EPS. EPSs include parkinsonism, in which the patient cannot walk normally and usually develops a tremor; dystonia, or painful muscle spasms of the head, tongue, or neck; and akathisia, or restlessness. A type of long-term EPS is called tardive dyskinesia, which features slow, rhythmic, automatic movements. Schizophrenics with AIDS are especially vulnerable to developing EPS.

SEROTONIN DOPANINE ANTAGONISTS. The serotonin dopamine antagonists, also called atypical antipsychotics, are newer medications that include clozapine (Clozaril), risperidone (Risperdal), and olanzapine (Zyprexa). The SDAs have a better effect on the negative symptoms of schizophrenia than do the older drugs and are less likely to produce EPS than the older compounds. The newer drugs are significantly more expensive in the short term, although the SDAs may reduce long-term costs by reducing the need for hospitalization. They are also presently unavailable in injectable forms. The SDAs are commonly used to treat patients who respond poorly to the DAs. However, many psychotherapists now regard the use of these atypical antipsychotics as the treatment of first choice; in particular, clozapine appears to be more effective than other antipsychotics in controlling persistent aggression in some patients.

NEWER DRUGS. Some newer antipsychotic drugs have been approved by the Food and Drug administration (FDA) in the early 2000s. These drugs are sometimes called second-generation antipsychotics or SGAs. Aripiprazole (Abilify), which is classified as a partial dopaminergic agonist, received FDA

approval in August 2003. Two drugs that are still under investigation, a neurokinin antagonist and a serotonin 2A/2C antagonist respectively, show promise in the treatment of schizophrenia and schizoaffective disorder.

Psychotherapy

Most schizophrenics can benefit from psychotherapy once their acute symptoms have been brought under control by antipsychotic medication. Psychoanalytic approaches are not recommended. Behavior therapy, however, is often helpful in assisting patients to acquire skills for daily living and social interaction. It can be combined with occupational therapy to prepare the patient for eventual employment"

Resources

Books

American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders. 4th ed., revised. Washington, D.C.: American Psychiatric Association, 2000.

Beers, Mark H., MD, and Robert Berkow, MD., editors. "Psychiatric Emergencies." Section 15, Chapter 194 In The Merck Manual of Diagnosis and Therapy. Whitehouse Station, NJ: Merck Research Laboratories, 2004.

Beers, Mark H., MD, and Robert Berkow, MD., editors. "Schizophrenia and Related Disorders." Section 15, Chapter 193 In The Merck Manual of Diagnosis and Therapy. Whitehouse Station, NJ: Merck Research Laboratories, 2004.

Wilson, Billie Ann, Margaret T. Shannon, and Carolyn L. Stang. Nurse''s Drug Guide 2003. Upper Saddle River, NJ: Prentice Hall, 2003.

Periodicals

DeLeon, A., N. C. Patel, and M. L. Crismon. "Aripiprazole: A Comprehensive Review of Its Pharmacology, Clinical Efficacy, and Tolerability." Clinical Therapeutics 26 (May 2004): 649-666.

Frankenburg, Frances R., MD. "Schizophrenia." eMedicine June 17, 2004. http://www.emedicine.com/med/topic2072.htm.

Hutchinson, G., and C. Haasen. "Migration and Schizophrenia: The Challenges for European Psychiatry and Implications for the Future." Social Psychiatry and Psychiatric Epidemiology 39 (May 2004): 350-357. Meltzer, H. Y., L. Arvanitis, D. Bauer, et al. "Placebo-Controlled Evaluation of Four Novel Compounds for the Treatment of Schizophrenia and Schizoaffective Disorder." American Journal of Psychiatry 161 (June 2004): 975-984.

Mueser, K. T., and S. R. McGurk. "Schizophrenia." Lancet 363 (June 19, 2004): 2063-2072.

Volavka, J., P. Czobor, K. Nolan, et al. "Overt Aggression and Psychotic Symptoms in Patients with Schizophrenia Treated with Clozapine, Olanzapine, Risperidone, or Haloperidol." Journal of Clinical Psychopharmacology 24 (April 2004): 225-228.

Yolken, R. "Viruses and Schizophrenia: A Focus on Herpes Simplex Virus." Herpes 11, Supplement 2 (June 2004): 83A-88A.

Underline is of mine.

40. The definition of the word ''psychosis'' from Free Online Dictionary as searched out from Google internet read such:-

schiz?o?phre?ni?a (skts-frn-, -frn-e)

n.

1. Any of a group of psychotic disorders usually characterized by withdrawal from reality, illogical patterns of thinking, delusions, and hallucinations, and accompanied in varying degrees by other emotional, behavioral, or intellectual disturbances. Schizophrenia is associated with dopamine imbalances in the brain and may have an underlying genetic cause.

2. A situation or condition that results from the coexistence of disparate or antagonistic qualities, identities, or activities: the national schizophrenia that results from carrying out an unpopular war.

The American Heritage(r) Dictionary of the English Language, Fourth Edition copyright (c)2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company. All rights reserved.

Schizophrenia

n

1. (Psychiatry) any of a group of psychotic disorders characterized by progressive deterioration of the personality, withdrawal from reality, hallucinations, delusions, social apathy, emotional instability, etc. See catatonia, hebephrenia, paranoia

2. Informal behaviour that appears to be motivated by contradictory or conflicting principles

[from schizo- + Greek phren mind + -ia]

Collins English Dictionary - Complete and Unabridged (c) HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

Schizophrenia (skts-frn-, skts-)

Any of a group of psychiatric disorders characterized by withdrawal from reality, illogical patterns of thinking, delusions, hallucinations, and psychotic behavior. Schizophrenia is associated with an imbalance of the neurotransmitter dopamine

in the brain and may have an underlying genetic cause.

Schizophrenia

a psychotic condition marked by erratic behavior, withdrawal from reality, and intellectual and emotional deterioration. Also called dementia praecox. - schizophrenic, n., adj.

See also: Insanity

Thesaurus Legend: Synonyms Related Words Antonyms

Noun 1. schizophrenia - any of several psychotic disorders characterized by distortions of reality and disturbances of thought and language and withdrawal from social contact

dementia praecox, schizophrenic disorder, schizophrenic psychosis psychosis - any severe mental disorder in which contact with reality is lost or highly distorted

Meaning of the word ''psychosis'' from Wikipedia, the free encyclopedia

Psychosis (from the Ancient Greek "psyche", for mind/soul, and -"-osis", for abnormal condition or derangement) means abnormal condition of the mind, and is a generic psychiatric term for a mental state often described as involving a "loss of contact with reality". People suffering from psychosis are described as psychotic. Psychosis is given to the more severe forms of psychiatric disorder, during which hallucinations and delusions and impaired insight may occur.[2] Some professionals say that the term psychosis is not sufficient as some illnesses grouped under the term "psychosis" have nothing in common (Gelder, Mayou & Geddes 2005). Indeed, a complex constellation of neurological and psychological factors can result in the altered signalling observed in psychosis. In otherwise normal individuals, exogenous ligands can produce psychotic symptoms. NMDA receptor antagonists, such as ethanol and ketamine, can replicate a similar psychosis to that experienced in schizophrenia.[3]

The terms psychosis and psychotic are very broad and can mean anything from relatively normal aberrant experiences through to the florid and catatonic expressions of schizophrenia and bipolar type 1 disorder [6] Despite this, psychosis is a term generally given to noticeable deficits in normal behavior (known as deficit or negative signs) or more commonly to the florid experiences of hallucinations or delusional beliefs. People experiencing psychosis may exhibit personality changes and thought disorder. Depending on its severity, this may be accompanied by unusual or bizarre behavior, as well as difficulty with social

interaction and impairment in carrying out daily life activities. It is also important to note that psychosis usually refers to negative expressions, that is paranoia, stereotypy etc. rather than ecstatic experience such as religious ecstasy, though with such a broad term, there are no hard and fast rules.

(Underline is of mine)

Psychiatric disorders

Primary psychiatric causes of psychosis include the following:[10] [11] [12]

? schizophrenia and schizophreniform disorder

? affective (mood) disorders, including severe depression, and severe depression or mania in bipolar disorder (manic depression). People experiencing a psychotic episode in the context of depression may experience persecutory or self-blaming delusions or hallucinations, while people experiencing a psychotic episode in the context of mania may form grandiose delusions.

? schizoaffective disorder, involving symptoms of both schizophrenia and mood disorders

? brief psychotic disorder, or acute/transient psychotic disorder

? delusional disorder (persistent delusional disorder)

? chronic hallucinatory psychosis.

(Underline is of mine)

History

The word psychosis was introduced to the psychiatric literature in 1841 by Karl Friedrich Canstatt in his work Handbuch der Medizinischen Klinik. He used it as a short-hand for ''psychic neurosis''. At that time neurosis meant any disease of the nervous system, and Canstatt was thus referring to what was thought to be a psychological manifestation of brain disease.[80] Ernst von Feuchtersleben is also widely credited as introducing the term in 1845,[81] as an alternative to insanity and mania.

The division of the major psychoses into manic depressive illness (now called bipolar disorder) and dementia praecox (now called schizophrenia) was made by Emil Kraepelin, who attempted to create a synthesis of the various mental disorders identified by 19th century psychiatrists, by grouping diseases together based on classification of common symptoms.

psychosis

Pronunciation:

noun (plural psychoses)

a severe mental disorder in which thought and emotions are so impaired that

contact is lost with external reality:

they were suffering from a psychosis

[mass noun]:

the symptoms of psychosis

41. Learned Advocate for the appellant Mr. Pal very frankly has submitted that disease Schizophrenea is a psychotic disorder and it is coming within Schedule 1A disease under heading ''psychosis''. He has referred a book "Current Psychiatry" whose Editor-in-Chief is Henry A. Nasrallah, M.D, Vol. 6, No. 12. The relevant portion read such:-

Research and clinical observation tell us that psychosis is a secondary feature of schizophrenia. This brain disease''s enduring and most disabling components are cognitive deficits and negative symptoms, both of which have been shown to precede the onset of psychotic symptoms. Because the core deficit is cognition-especially short-term memory and executive functions-individuals with schizophrenia are unable to return to the class room or hold a job even when medications have suppressed their psychotic symptoms.

From that book he has further referred page chapter 3.1 which read such:

Schizophrenia is a psychiatric disorder that can be severely disabling; poor social and occupational functioning is characteristic of the disorder. Schizophrenia can exert a distressing effect both on the person experiencing this disorder.

42. Having regard to the aforesaid dictionary meaning, we are of the view that Schizophrenia is also coming within the category of disease "psychosis" which is schedule disease under Schedule I-A entitling the patient concerned for an award of disability pension under Rule 9(2) of the said Extraordinary Pension Rules.

43. The appellant accordingly went wrong to reject disability pension by holding that disease was not schedule disease under the said Extraordinary Pension rule without even taking note of dictionary meaning of medical term.

44. Hence, having regard to the aforesaid findings, we are of the view that the writ petitioner/respondent is entitled for invalid pension under Rule 38 of the CCS (Pension) Rule, 1972, amount of which is to be quantified under sub Rule 2(C) of Rule 49 and disability pension under CCS(Extraordinary Pension) Rule on quantifying the same at the ratio of 100% disability as writ petitioner''s service has been rendered invalid declaring him unfit due to suffering from the said disease in terms of quantification formula set out in Schedule-II of the said Extraordinary Pension Rule.

45. The order of learned Trial Judge therefore is modified on the aforesaid terms as learned Trial Judge passed an order of retiral benefits which is not applicable here, but it is a case of grant of invalid pension and disability pension on the basis of rule and factual matrix as discussed.

46. The Apex Court judgement as relied upon by the appellants, namely the case Union of India and Others Vs. Rakesh Kumar etc., has no applicability in the instant case, to oppose the prayer of the writ petitioner/respondent. The said case of Rakesh Kumar (supra) was on different factual premises where a person after resignation from the post claimed pensionary benefits, before completion of qualifying service for pensionary benefit available under said rule. The said case was not relating to grant of invalid pension. In the said judgement the Apex Court has discussed about different category of pension in terms of Chapter 5 in paragraph 13 of the said report by identifying invalid pension as separate category. The relevant portion of paragraph 13 read such:-

13. The next step is-once it is accepted that members of BSF are governed by the CCS(Pension) Rules, then the question is -whether a member is entitled to get pension on his resignation before the compulsory age of retirement or 20 years of service or if he retires or is retired at the age of 30/33 years of qualifying service. The scheme of the said Rules provides that normally a government servant is entitled to get pensionary benefits after he retires at the age of superannuation. There are exceptions for grant of pensionary benefits in cases where a government servant voluntarily retires after completing 20 years of qualifying service and also retires after completing 30/33 years of qualifying service, invalid pension or compensation pension or on compassionate grounds etc. Chapter V deals with grant of pensions and the conditions for such grants. As per Rule 35 superannuation pension is to be granted to a government servant who retires on his attaining the age of compulsory retirement. Retiring pension is further given to a government servant who retires or is retired in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 after completing 30 years of qualifying service or Rule 48-A of the CCS (Pension) Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Services Regulations. Rule 48-A provides for voluntary retirement after completion of 20 years of qualifying service after giving three months'' notice in writing to the appointing authority and if such notice is accepted he would get retiring pension. Thereafter, Rule 49 provides for method of calculation of amount of pension to such government servant. Relevant parts of the CCS (Pension) Rules for grant of pension are as under:

47. Having regard to the aforesaid discussions made relating to conceptual field of Rule 38 of CCS (Pension) Rule 1974 and entitlement of disability pension under relevant provision of CCS (Extraordinary Pension) Rules, it is expressly clear that the appellant''s officer Rajit Rai, Dy. Comdt., Addl. DIGP (CCD), GC (DPR) did not adjudicate the issue by looking through relevant provisions of the statute and thereby rejected the grant of invalid pension and disability pension arbitrarily. From medical opinion declaring writ petitioner unfit for service which was the basis of invalidation order identifying the disease Schizophrenia is squarely covered by disease affected by "stress and strain" under Schedule IA of the said Rule and Rule 38 is very much explicit on grant of invalid pension. The petitioner/respondent''s right to claim the invalid and disability pension

accordingly was not addressed fairly, reasonably and justly when ex-facie from the materials on record he was legally entitled for such grant. Hence, the action of the officer concerned is attracted by malice in law. Principle of malice in law is applicable when action of any officer is deliberate act without due regard to rights of other whose matter is decided. Malice in law is an act done unlawfully and wilfully without reasonable and probable cause and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others. Reliance is placed on the judgement passed in the case of State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, to address the ingrediential difference of malice in fact and malice in law. Paragraphs 12 and 13 of said report is quoted below.

12. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)

13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State., if at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.

48. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, also speaks same view.

49. Due to such deliberate act disregarding the rights of the writ petitioner/ respondent, who became invalid due to stress and strain in service period, writ petitioner/respondent suffered to maintain his livelihood after service came to an end and it caused suffering to his rights covered under Article 21 of the Constitution of India. When during the service tenure and due to stress and strain in service period the writ petitioner/respondent became invalid due to suffering from disease Schizophrenia and when he became entitled for invalid pension and disability pension, the authority namely the appellant ought to have been more careful and sensitive to grant the same when there was no ambiguity in the language used in the statute to grant such benefits. The action of appellant is also in breach of human rights concept when an employee suffers stress and strain in service career due to nature of work and place of posting having adverse environmental effect and resultant effect order of invalidation of service is passed. Human rights concept mandates protection of his maintenance

of livelihood and release of benefits under statutory provision forthwith and promptly without keeping the issue pending and not to compel him to take shelter of Court of law for redressal of his grievance. In the first writ application the Hon''ble Court observed that disease was not grave to the extent as would inflict invalidation order and directed to decide the issue afresh by considering application for re-employment as filed after recovery from said illness. As the writ petitioner/respondent has not preferred any appeal against the judgement passed in the trial Court in the second writ application, where re-employment issue was rejected, we are handicapped to grant any relief of re-employment applying conceptual mandate of social justice and economic justice and international charter of human rights.

50. The appellant despite direction of Court in the first writ application did not consider his representation of re-employment and rejected his legal right to claim invalid pension and disability pension and thereby grounded him in a situation for the last so many years in a pitiable condition with his family members/dependents, which is squarely attracted by arbitrary action of Article 14 and breach of the Article 21 in the angle of deprivation from livelihood by its extended meaning of the word "life".

51. Having regard to the aforesaid findings and observation as made the appellants are further directed to release invalid pension under Pension Rule, 1972 aforesaid and Disability Pension under Extraordinary Pension Rule aforesaid by calculating amount in accordance with law with effect from next date of invalidation of service i.e. 8th May, 1993, within three months from the date.

52. Now the question of grant of interest on the amount of invalid pension and disability pension as has been directed to be released is considered. As already discussed, the writ petitioner/respondent was entitled for invalid pension and disability pension in terms of statutory provision which is explicit in nature without any ambiguity and the payment of which has been denied for so many years causing suffering of the family members/dependents of the writ petitioner/ respondent and also of the writ petitioner himself and as the amount which was due to the writ petitioner/respondent was not released, following the settled legal proposition as discussed below direction to pay interest on arrear amounts of invalid pension and disability pension would be justified.

53. In the case S. K. Dua vs. State of Harayana reported in (2008) 3 SCC 4, the Apex Court held that in absence of any statutory rule of payment of interest for delayed payment of retirement benefit, interest is payable on application of Article 14, 16 and 21 of the Constitution of India as it is not bounty by the State. A celebrated judgement by the Constitution Bench on that issue is relied upon which was passed in the case Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa Vs. N. C. Budharaj reported in (2001) 2 SCC 721, wherein the majority speaking through Durai Swamy Raju, J opined " it is basic proposition of law that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be

called viz. interest, compensation or damages and this proposition is unmistakable and valid the efficacy and binding nature of such law cannot be either diminished or whittled down".

54. Considering the aforesaid principle of law writ Court being a Court of equity should pass appropriate order for payment of interest.

55. The concept of award of interest is not imposition of penal measure but infact it is a normal accretion on capital. Reliance is placed to the judgement passed in the case Alok Shanker Pandey Vs. Union of India (UOI) and Others,

56. Considering the aforesaid principle we direct that interest @10% per annum on the arrears amount of invalid pension and disability pension with effect from 8th May, 1993 to be paid to the writ petitioner within three months from this date. The appeal assailing the judgement of the learned Trial Judge stand disposed of accordingly by modifying the order to the extent as discussed and granting appropriate relief to the writ petitioner/respondent exercising power of appellate jurisdiction inspired by the principle flowing from Order XLI Rule 33, Civil Procedure Code.

(Pratap Kumar Ray, J.)

I agree

