

(2015) 04 MEG CK 0016

In the Meghalaya High Court

Case No : W.A. No. 57 of 2014 in WP(C) No. 214 of 2013

Union of India and Others

APPELLANT

Vs

Satya Narayan

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 147 FLR 685

Hon'ble Judges : U.N. Singh, C.J;S.R. Sen, J

Bench : Division Bench

Advocate : R. Deb Nath, CGC, for the Appellant

Final Decision : Dismissed

Judgement

1. Mr. R. Deb Nath, learned CGC, appears for the appellant.

No one appears for the respondent.

We have heard learned counsel for appellants and perused the pleadings of writ appeal.

2. This writ appeal has been filed against judgment and order dated 22.4.2014, passed by learned single Judge in WP(C) No. 214 of 2013, whereby, the writ petition was allowed while holding that since injury suffered by respondent (writ petitioner) was attributable to service he is entitled to get disability pension under the Central Civil Services (Extraordinary Pension) Rules. It was also directed to pay the disability pension to the respondent (writ petitioner) within a period of four months from the date of receipt of a certified copy of the order.

3. The fact of the case is that the respondent (herein), TC No. 68775 (G/5000649) Ex. Rct/GD Satyanarayan was enrolled in Assam Rifles on 12th March 2004. He was informed at the time of his enrolment into Assam Rifles, by the Presiding Officer of the Recruitment team that in case he is found unfit to become an efficient soldier during course of training, he will be liable to be discharged from service. An undertaking signed by the respondent (herein) to

that effect at the time of his enrolment states that "certified that I am aware about the fact that in case of my being found unfit to become an efficient soldier during the course of my training, I am liable to be discharged from service. I do not enjoy any privilege of Government servant till attested as Rifleman. The above fact has been briefed by the Presiding Officer at the time of my enrolment."

4. In terms of Rule 4 of Assam Rifles Rules, 1985 (para 4) the Director General Assam Rifles is empowered to issue order and instructions to regulate the working of the Force. In view of the powers derived from the above Rules, Policy Instructions No. I [36011/40/92-TRG/1821] dated 14th November 1992 and as amended from time to time has been formulated to regulate the training, relegation and discharge of recruits who are unable to continue/complete their training, due to being placed in Low Medical Category (EEE) by Medical Boards convened on recommendation of Specialist Doctors of Service Hospitals and other competent Medical Authorities.

5. Upon enrolment in Assam Rifles, the respondent (herein) was put under training at No. 1 Training Battalion, Assam Rifles Training Centre and School, Dimapur for basic Training. While he was undergoing the basic Military training, he had sustained injury "FRACTURE NECK OF FEMUR LT (OPTD)" and was referred to 151 Base Hospital Guwahati (Assam) for further treatment. He was operated at 151 Base Hospital. The Medical Specialist placed the respondent (herein) in Low Medical Category A-5 which refers to severe derangement of functional capacity and renders a person permanently unfit for duties. Accordingly, he was discharged from service on Medical Grounds w.e.f. 30th April 2005 (AN). As per Medical Board proceedings, the disability of the petitioner was assessed to be 20% attributable to service.

6. The respondent (herein) was cleared all his dues by the appellants on 12.05.2005 and 04.06.2005. He sent a legal notice dated 07.08.2008 for release of the disability pension but the same was not acted upon. However, vide letter dated 10.10.2008, the representation was rejected and a reply was sent as the respondent (herein) was staying in Delhi, approached the Delhi High Court but the same was rejected on the ground that the respondent (herein) should have approached the Army Tribunal. However, as he was a member of Para Military Force his claim could not have been maintained before the Army Tribunal. Thus, the respondent (herein) once again approached the High Court of Delhi by filing WP(C) No. 4589/2010, but the same was rejected on the ground of lack of territorial jurisdiction to entertain the matter vide order dated 09.02.2011 while granting him liberty to approach the Court of competent jurisdiction. The point raised by the respondent (herein) in writ petition appears to be that he suffered the disability only during the course of service training on account of hard and tough physical training conducted by the appellants.

7. Learned single Judge while referring to Rule 3-A(1)(a) of the Central Civil Services (Extraordinary Pension) Rules has held that under the Rules, injury should be suffered by the claimant in the service and thus, it should be

attributable to the service and only then the claimant would be entitled to get the disability pension. Learned single Judge has also referred to decision taken by the Government of India regarding the disability pension vide the revised provisions in respect thereof, which became effective from 01.01.1986. The revised provisions would regulate the Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary Pension) Rules. Below the provisions, a note has been appended [to Rule 3(2)] providing that for lower percentage of disability, the monthly pension shall be "proportionately lower". Learned single Judge has also observed that Rule 49 of the CCS (Pension) Rules, 1972 only provides for an amount of pension and it is not related to entitlement for the disability pension which is to be dealt with separately under the CCS (Extraordinary Pension) Rules. Thus, the requirement of qualifying service of 10 years as mentioned in Rule 49(1) of the CCS (Pension) Rules, 1972, would not be a condition precedent for granting the disability pension under the CCS (Extraordinary Pension) Rules. On this premise, learned Single Judge has held that the respondent (herein) is entitled to get the disability pension under the aforesaid extraordinary pension rules.

8. Being aggrieved from the judgment, the respondents in Writ Petition (the Appellants herein) namely, Union of India and Ors. have preferred the instant Writ Appeal. It is submitted that, though the respondent (herein), during the course of training, sustained injuries and thus the disablement is attributable to service, yet he is not entitled to claim the disability pension for the reason that the percentage of disability has been assessed to be 20% being much below the minimum requirement of 60% as per Rule 9(3) of CCS (Extraordinary Pension) Rules. He is also not eligible for grant of invalid pension under Rule 49(2)(b) of CCS (Pension) Rules because he had not completed mandatory 10 years of qualifying service.

9. On the other hand, learned counsel for the respondent (herein), while justifying the reasons given and discussions made for passing the impugned judgment has reiterated the arguments raised in the writ petition.

10. On due consideration of rival submissions, we do not find any infirmity in the impugned judgment.

11. In Central Civil Services (Extraordinary Pension) Rules, Rule 3-A provides for disability. It says that if the disablement is attributable to Government service, then the claimant claiming the benefits of disability pension can acquire eligibility. In the instant case, there is no dispute that the respondent suffered 20% disability during the course of training. Therefore, he can be said to be entitled to claim the benefits of disability pension. Though, a ground has been taken that the injury was suffered during the course of training when the claimant was acquiring the competence to perform duty, therefore, it cannot be said to be connected with performance of duty. The argument cannot be acceptable for the simple reason that the respondent was found medically fit at the time of recruitment and that is why, he was admitted to training. Besides,

having knowledge of the requirement of medical fitness for continuance in job, generally no one would perform a feat of the training in a negligent manner to suffer serious injury with debacle of being declared a Low Medical Category. The injury suffered in this case could only be an accidental injury unforeseen by the trainee/recruit. At the time of acceptance of respondent for service as Rifleman, there was also no note of any kind of disease or deficiency which could have stopped him from completing his training.

12. Another ground that is urged in the grounds of appeal is the undertaking given by the respondents, in terms of instruction issued by the Director General of Assam Rifles under a policy decision. Rule 3-A of CCS (Extraordinary Pension) Rules provides for eligibility for pension in the case of claiming a disability. Rule 3-A is in the nature of a statutory force and if the same provides for eligibility for pension in the case of disability of lower percentage than 60% as generally acceptable for grant of disability pension under the Extraordinary Pension Rules, then, the executive instruction issued by the Directorate General of Assam Rifles would subserve object of that Rule. All the amendments under the Rules being in the nature of statutory provisions and even also the executive instructions issued by the Ministry of Personnel, Public Grievances and Pensions can have over riding effect on the instructions issued by the Assam Rifles, an organization which is functioning under the administrative control of the Ministry of Home Affairs.

13. Generally, the disability pension consists of two elements namely, (i) service element and (ii) disability element. Service element is equal to the retiring pension based on qualifying service whereas the disability element is basically attributable to the service. In the instant case, the service element relating to qualifying service would not be relevant but the disability element which is attributable to the service would determine the entitlement and the amount of pension. The appellant-organization has admitted the 20% disability as attributable to service. Besides, the Government of India has also clarified the position regarding the entitlement to claim disability pension and has provided certain guidelines for lowering the percentage of pension in accordance with the percentage of disability. The same as reproduced in the impugned judgment passed by learned Single Judge is reiterated as under:

"The Govt. of India had taken the decision regarding the Disability Pension and rates as follows:

(1) Revised provisions effective from 1st January, 1986, regulating Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules:- In pursuance of Government decisions on the recommendations of the Fourth Central Pay Commission announced in the Department of Pension and Pensioners' Welfare, Resolution No. 2/13/87-PIC, dated the 18th March, 1987, it has been decided to introduce the following modifications in the rules regulating Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules (hereinafter referred to as EOP Rules).

2. Definition of pay:

1. The term "Pay" in these orders means the basic pay in the revised scales promulgated under the CCS (Revised Pay) Rules, 1986.

2. In the case of Government servants who opt to continue to draw pay in pre-revised scales beyond 31.12.1985, the term "Pay" will include basic pay in the pre-revised scales of pay plus dearness allowance, additional dearness allowance, ad hoc dearness allowance up to average CPI 608 and the two installments of Interim Relief appropriate to the basic pay.

3. Disability Pension:

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

2. For lower percentage of disability the monthly disability pension shall be proportionately lower as at present (see Note below this decision) 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 and maximum of Rs. 2500.

NOTE - For lower percentages of disability, the monthly pension shall be "proportionately lower". (The minima and maxima given above are applicable only for arriving at the monthly disability pension for cent per cent disability and are not applicable in respect of percentages of disability lower than 100%). For example if the disability is only 80%, the disability pension shall be 80/100 of the pension in Column 2 above."

14. Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners Welfare) vide Office Memorandum No. F. No. 45/86/97-P & PW(A)-Part-II dated 27.10.1997, vide paragraph 5.2 has also provided as under:

"5.2. Where the disability pension under the CCS (EOP) Rules, is drawn in addition to invalid pension under the CCS (Pension) Rules, 1972, the minimum limit of Rs. 1275/- will apply to total of two pensions as indicated in paragraph 5.1. Where the disability pension is drawn in isolation, the minimum limit of Rs. 1275/- will apply for 100% disability. For lesser degree of disability the minimum limit will be proportionately less."

The above extract is relevant for the purpose that the Ministry has provided that for a lesser degree of disability, the minimum pension limit will be proportionately less. Hence, the stand of Assam Rifles that since the disability has been assessed to be less than 60% the respondent should not be granted pensionary benefits, cannot be acceptable. Besides, there is a distinction between invalid pension and disability pension. Again, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners Welfare) vide Office Memorandum dated 7.8.2001 has clarified the position:

"The invalid pension may continue to be regulated as per the CCS (Pension)

Rules subject to certain minimum amount and the extraordinary disability pension may continue to be treated as a separate element and this should be fixed as per the degree of disability. This will be subject to the further condition that the amount of disability pension and invalid pension in no case exceed the last pay drawn."

The CCS (Pension) Rules, 1972 deals with invalid pension whereas Rule 3-A of the Extraordinary Pension Rules provides for disability pension provided that the eligibility to claim pension would depend upon attributability of disability to the service.

15. Thus, we hold that the respondent would be entitled to get the disability pension under the Central Civil Services (Extraordinary Pension) Rules. Accordingly, the impugned judgment is hereby affirmed and the writ appeal is dismissed.