(2019) 03 CAL CK 0113

In the Calcutta High Court

Case No : CAN 6600 Of 2017 In Tender Of Md Appl (MAT) No. 1027 Of 2017

Union Of India & Others — APPELLANT

Vs

Bankim Chandra Debnath — RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A
Code Of Civil Procedure, 1908 — Order 7 Rule 7
Central Civil Services (Pension) Rules, 1972 — Rule 29, 35, 36, 38, 39, 40, 48, 48A, 49
Central Civil Services (Extraordinary Pension) Rules, 1978 — Rule 3A(1)(a)(i)
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 CAL CK 0113

Hon'ble Judges : Dipankar Datta, J;Bibek Chaudhuri, J

Bench : Division Bench

Advocate : Dibyendra Narayan Ray, Arpa Chakraborty, Anant Kumar Shaw

Final Decision : Disposed Off

Judgement

Bibek Chaudhuri, J

1. The Union of India and officers of the Central Reserve Police Force (hereafter the CRPF) have filed the instant writ appeal challenging the judgment and order dated 30th January, 2017 passed by the learned Judge in WP No.17873(W) of 2011.

2. The above mentioned writ petition was filed by one Bankim Chandra Debnath, the respondent herein, alleging, inter alia, that he was appointed in the CRPF in 2001. During the period between 2nd March, 2007 and 9th September, 2008, the petitioner was referred to composite Hospital, CRPF, Guwahati on several occasions on the alleged ground of his abnormal behaviour. Subsequently on 22nd and 23rd June, 2009, a proceeding of departmental Rehabilitation Board was held at Eastern Sector Headquarters, Calcutta under the Chairmanship of Inspector General of Police, Bihar Sector, CRPF, Patna to assess medical fitness of the respondent. The Medical Board found the petitioner unfit for service in the

CRPF and recommended for his invalidation from service. The Commandant, IInd Battalion, CRPF, appellant No.6 sent a letter to the respondent on 20th July, 2009 communicating the observation of the Medical Board and further informing him that he would be invalidated out from service after 30 days from the date of issuance, and to submit his willingness/unwillingness regarding the proposed action within 30 days from the date of receipt thereof. The respondent initially expressed his unwillingness by a letter dated 2nd August, 2009. Again on 16th September, 2009, appellant No.6 informed the respondent in writing that his disability was assessed to the extent of 100% and he was unfit for further service in the CRPF and as per provisions contained in Rule 38 of the CCS (Pension) Rules, 1972, he would be invalidated out from service after 30 days from the date of such letter. The aforesaid letter was followed by another letter dated 22nd September, 2009 issued by appellant No.6 requesting the respondent to submit necessary documents for the grant of invalid pension. At this stage, the respondent expressed his willingness subject to the condition that he be favoured with invalid pension. He was, accordingly, invalidated out from service with effect from 15th October, 2009. On 23rd February, 2010, the appellant No.2 issued a letter to the respondent informing, inter alia, that he was only entitled to death/retirement gratuity and medical allowance at the rate of Rs.100 per month and he would not be favoured with invalid pension as he did not render qualifying period of service of 10 years. The respondent submitted a representation on 30th March 2010 requesting the appellant No.6 to grant invalid pension in his favour which, however, yielded no result. Subsequently, the wife of the respondent submitted an application for compassionate appointment in the CRPF in place of the respondent which was also turned down. Further representations of the respondent did not also find favour of the relevant authority. As a last resort, the respondent invoked the jurisdiction under Article 226 of the Constitution of India for appropriate relief in the form of granting invalid pension.

3. The learned Single Judge allowed the writ petition by directing the appellants to grant full pension to the petitioner before his Lordship's, as available on invalidation from service with effect from 15th October, 2009 with all arrears within three months from communication of the order.

4. The aforesaid order is assailed in the instant appeal.

5. Mr. D.N. Roy, learned Advocate for the appellants at the outset draws our attention to the relevant portion of the impugned judgment which runs thus:-

"Pension on retirement after rendering qualifying service but before the regular retirement age is provided in Rule 48 the CCS (Pension) Rules, 1972. Here the employee applies for retirement and pension after putting in the minimum period of service, required. It appears from their stand that to avail of it, in CRPF, an employee must have rendered at least ten years of qualifying service. When the petitioner superannuated, then the applicable Rule was 38. Rule 38 is applicable in extraordinary cases where an employee while in service becomes totally

incapacitated. He is allowed or often forced to superannuate with pension. Mr. Shaw, for the petitioner contends that when the circumstances of superannuation are extraordinary as above, then the employee is not required to render the minimum period of qualifying service. In my opinion, the contention of the petitioner is absolutely correct. It would be plainly illogical if on an interpretation of the rules, an employee becoming 100% incapacitated within 10 years of service would not get any pension but if such incapacity arose after completion of 10 years of service pension would be granted. The purpose of rule 38 is beneficent-to grant pension to an employee on the happening of a serious disability, rendering him totally unfit for service. Therefore, the emphasis is on disability and not on the length of the service. In my opinion, the use of the phrases therein "he may be granted invalid pension" or "service gratuity in accordance with Rule 49, depending upon the length of his qualifying service on the date of retirement" are disjunctive. The reference to Rule 49 or qualifying services provided therein is only in relation to gratuity. On the contrary Rule 48 applies in case of pension on voluntary retirement after rendering qualifying service in, normal circumstances, where the length of service is material in granting pension to a person on superannuation. Therefore, the condition of qualifying service does not apply in case of a pension on the ground of invalidation of service."

6. It is urged by Mr. Roy that the learned Single Judge failed to consider that a member of the CRPF is not entitled to any pension unless he completes qualifying service of 10 years. In order to substantiate his contention, learned counsel for the appellants refers to Rules 35, 36, 39 and 40 of the Central Civil Services (Pension) Rules, 1972 (hereafter as the 'said Rules').

7. Rule 35 speaks about superannuation pension which shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

8. Rule 36 says about the retiring pension which 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 Rule 48 or Rule 48A 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.

c) To a Government servant who, on being declared surplus of voluntary retirement in accordance with the provision of Rule 29 of this Rules.

9. Rule 39 deals with the compensation pension which is payable to a Government servant on abolition of his permanent post subject to certain circumstances which are not relevant for the purpose of this case.

10. Rule 40 speaks about compulsory retirement pension of a Central

Government Employee.

11. It is submitted by the learned Advocate for the appellants that Rule 38 of the said Rules cannot be construed as in the nature of beneficial legislation and thereby giving effect to invalid pension to an employee who has been invalidated out from his service due to his illness before completing service of ten years. In other words, an employee must have completed ten years qualifying service in order to be eligible for invalid pension. In support of his contention, learned counsel for the appellants relies upon a judgment of the Hon'ble Supreme Court in Union of India and Another vs. Bashirbhai R. Khiliji, reported in (2007) 6 SCC 16.

12. Paragraph 10 of Bashirbhai (Supra) is relevant for our purpose:-

"Therefore, the minimum qualifying service which is required for the pension as mentioned in Rule 49, is ten years. The qualifying service has been explained in various memos issued by the Government of India from time to time. But Rule 49 read with Rule 38 makes it clear that qualifying service of pension ten years and therefore, gratuity is determined after completion of qualifying service of ten years. Therefore, for grant of any kind of pension one has to put in the minimum of ten years of qualifying service. The respondent in the present case, does not have the minimum qualifying service. Therefore, the authorities declined to grant him the invalid pension.***"

13. Based on the aforesaid contentions, appellate intervention for rectification of the impugned order is prayed for by Mr. Roy.

14. Mr. Anant Kumar Shaw, learned Advocate for the respondent submits that invalid pension under Rule 38 of the said rules may be granted if a government servant retires from service on account of any bodily, mental infirmity which permanently incapacitates him for service. Invalid pension is a separate category of pension having no connection with other category of pension mentioned in CCS (Pension Rules) 1982. According to Mr. Shaw, the grant of invalid pension is not dependant upon rendering of minimum ten years qualifying service by an incumbent.

15. Mr. Shaw next draws out attention to a letter (Annexure P-6 of the writ petition) dated 22nd September, 2009 addressed to the respondent by the Commandant, IInd Battalion, CRPF informing him the decision of the relevant authority to provide him with invalid pension. The respondent was also directed to submit necessary documents for issuance of such invalid pension in his favour. Relying on such assurance, the respondent offered his willingness to be invalidated out from service. Subsequently, the relevant authority cannot change its stand holding that the respondent was not entitled to invalid pension on the ground that he did not render ten years qualifying service.

16. Mr. Shaw has, accordingly, prayed for dismissal of the appeal.

17. Factual aspects are not in dispute in the instant case.

1. Undisputedly, the petitioner was appointed in the CRPF in 2001 in the post of Constable (GD).

2. It is also not disputed that after his selection and before his appointment, he went through medical examination conducted by the relevant authority engaged by the appellants.

3. The respondent did not dispute the finding of the departmental Rehabilitation Board held on 22nd and 23rd June, 2009 at Eastern Sector Headquarter, Calcutta under the Chairmanship of IGP, Bihar Sector, CRPF, Patna (Bihar). Brief note of incident/case summaries runs thus:-

"He is suffering from 'Bipolar Disorder' since 1994. While posted in 11 Bn he was referred to CH Guwahaty on 10.3.07 for his abnormal behavior since 2/3/07 with symptoms of Manda. One the way to hospital, he absconded from the Barpeta Road Rly. Station and reached his native place in W.B. He was taken to Psychiatry OPD of North Bengal Medical College, Siliguri on 6.3.07 and treated with parenteral, oral antipsychotics and lithium. He was further brought back to CH Guwahaty by his elder brother and admitted there from 10.3.07 to 28.3.07. He was sent on 60 days medical test. Wef. 29.5.07. On reporting back in the hospital, he was treated with oral mood stabilizers and Benzodiazepines. He was discharged on 1.6.07 with category S-3(T-12) without firearms. He was again referred to CH Guwahaty on 6.2.08 with the history of frequent panicky and refused to obey the orders/instruction. He was discharged on 13.2.08 and categorized as S2(T-24) without firearms. He was further referred to CH Guwathaty on 12.7.08 with the history of excessive talk, restlessness and sleeplessness and aggressive. After treatment he was sent on 10 days leave on medical grounds on 29.7.08. He was again referred to CH Guwahaty on 9.9.08 with the history of abnormal behavior.

The referral letter of Medical Officer and behavior report of Coy Commander revealed that he had suspicious activities. He tends to quarrel unnecessary with coy. Personnel and civilians outside the camp and also threatens coy. personnel. He was recommended unfit for field duties in CRPF as it is very difficult to keep him in the field unit. He is suffering from 'Bipolar disorder' which is characterized by episodic spells of MANIA and DIPRESSION with (or) without PSYCHOTIC FEATURES and remission and relapses even with medication. He is unfit for service in CRPF and categorized as S-5. He is recommended for invalidation from the service and the percentage of disability is 100%."

18. The Supreme Court in Bashirbhai R. Khiliji (supra) did not have the occasion to consider the question as to whether an employee governed under the CCS (Pension) Rules is entitled to extraordinary pension or not in case of disablement which is attributable to government service in terms of Rule 3A(1)(a)(i) of the Central Civil Services (Extraordinary Pension) Rules, 1978. Schedule 1A details out list and classification of disease which can be contracted during service. Schedule 1A reads thus:-

I. LIST AND CLASSIFICATION OF DISEASES WHICH CAN BE CONTRACTED BY SERVICE

A. Diseases affected by climate conditions

.....

B. Diseases affected by stress and strain

i) Psychosis and Psychoneurosis.

ii) Hyperpiesia.

iii) Hypertension (BP).

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.

PSYCHOSIS

Psychosis is a common and functionally disruptive symptom of many psychiatric, neurodevelopmental, neurologic, and medical conditions and an important target of evaluation and treatment in neuropsychiatric practice. Psychosis is the defining feature of schizophrenia spectrum disorders, a common but variable feature of mood and substance use disorders, and a relatively common feature of many developmental, acquired, and degenerative neurologic and medical conditions. Across these conditions, psychosis is both a contributor to disability and a barrier to productivity and participation.

In their current conceptualization of psychosis, both the APA and the World Health Organization define psychosis narrowly by requiring the presence of hallucinations (without insight into their pathologic nature), delusions, or both hallucinations without insight and delusions. In both of these current diagnostic classification systems, impaired reality testing remains central conceptually to psychosis.

Delusions (i.e. fixed false beliefs), by definition, are evidence of impaired reality testing: delusional beliefs are ones maintained steadfastly even in the face of evidence contradicting them incontrovertibly.

Similarly, hallucinations (i.e. perceptions occurring in the absence of corresponding external or somatic stimuli) are evidence of impaired reality when the individual experiencing them is unable to recognize the hallucinatory nature of such experiences.

Both the current APA and the World Health Organization classification systems acknowledge that "formal thought disorder" (i.e. disorganized thinking, including illogicality, tangentiality, perseveration, neologism, thought blocking, derailment, or some combination of these disturbances of thought) is one of several commonly co-occurring features of psychotic disorders. The DSM-5 allows formal thought disorder to supplant hallucinations and delusions in the diagnosis of a psychotic disorder when it is accompanied by grossly disorganized behaviour, catatonia (for schizophrenia, schizophreniform, brief psychotic, and schizoaffective disorders) and/or negative symptoms (for schizophrenia, schizophreniform, and schizoaffective disorders but not brief psychotic disorder), alone or in combination. Since mildly disorganized speech is common and diagnostically nonspecific, the degree of thought disorder required to fulfil this DSM-5 criterion must be of severity sufficient to substantially impair effective communication.

A subset of the population with genetic, epigenetic, and developmental risk factors may, with sufficient exposure to risk-modifying social and environmental factors, be prone to developing persistent psychotic symptoms. This psychosis proneness-persistence model may explain, at least in part, the development of hallucinations and delusions across the broad range of psychiatric disorders with which they are associated. It also may yield insights into the risk factors for and mechanisms of psychosis associated with neurologic conditions. Thus psychosis is listed as a feature of multiple psychiatric disorders presented in the DSM-5. Although psychosis is the defining feature of the schizophrenia spectrum disorders (ie, schizophrenia, schizoaffective disorder, delusional disorder, schizophreniform disorder, and brief psychotic disorder), it also occurs in some people with bipolar disorder during either a manic or depressive episode as well as in some individuals during a major depressive episode associated with major depressive disorder. In those conditions, the psychotic symptoms (usually delusions) may be thematically either congruent or incongruent with the prevailing mood. Psychotic symptoms (ie, hallucinations without insight, delusions) may develop during either intoxication or withdrawal from substances and, in some cases, may become chronic sequelae of prior substance use (substance-induced psychotic disorder). When individuals with obsessive-compulsive disorder lack insight into the pathologic nature of their obsessions, their obsessions are described as delusions. The psychosis proneness-persistence model and RDoC approach suggests that the presence of hallucinations or delusions reflects disturbances in the neural systems underlying these symptoms regardless of the categorical psychiatric or neurologic disorder with which they are associated. {Arciniegas DB. Psychosis. Continuum (MinneapMinn). 2015;21(3 Behavioral Neurology and Neuropsychiatry):715-36.}

NEUROSIS

Neurosis is a class of functional mental disorders involving chronic distress but neither delusions nor hallucinations. The term is no longer used by the professional psychiatric community in the United States, having been eliminated from the Diagnostic and Statistical Manual of Mental Disorders in 1980 with the publication of DSM III. It is still used in the ICD-10 Chapter V F40-48.

MOOD DISORDERS

Mood can be defined as a pervasive and sustained emotion or feeling tone that influences a person's behavior and colors his or her perception of being in the world. Disorders of moodsometimes called affective disorders-make up an important category of psychiatric illness consisting of depressive disorder, bipolar disorder, and other disorders...

It is tempting to consider disorders of mood on a continuum with normal variations in mood. Patients with mood disorders, however, often report an ineffable, but distinct, quality to their pathological state. The concept of a continuum, therefore, may represent the clinician's overidentification with the pathology, thus possibly distorting his or her approach to patients with mood disorder. Patients with only major depressive episodes are said to have major depressive disorder or unipolar depression. Patients with both manic and depressive episodes or patients with manic episodes alone are said to have bipolar disorder. The terms "unipolar mania" and "pure mania" are sometimes used for patients who are bipolar but who do not have depressive episodes. Three additional categories of mood disorders are hypomania, cyclothymia, and dysthymia. Hypomania is an episode of manic symptoms that does not meet the criteria for manic episode. Cyclothymia and dysthymia are disorders that represent less severe forms of bipolar disorder and major depression, respectively {Kaplan and Sadock - Synopsis of Psychiatry}

Depression

A major depressive disorder occurs without a history of a manic, mixed, or hypomanic episode. A major depressive episode must last at least 2 weeks, and typically a person with a diagnosis of a major depressive episode also experiences at least four symptoms from a list that includes changes in appetite and weight, changes in sleep and activity, lack of energy, feelings of guilt, problems thinking and making decisions, and recurring thoughts of death or suicide.

Mania

A manic episode is a distinct period of an abnormally and persistently elevated, expansive, or irritable mood lasting for at least 1 week or less if a patient must be hospitalized. A hypomanic episode lasts at least 4 days and is similar to a manic episode except that it is not sufficiently severe to cause impairment in social or occupational functioning, and no psychotic features are present. Both

mania and hypomania are associated with inflated self-esteem, a decreased need for sleep, distractibility, great physical and mental activity, and overinvolvement in pleasurable behavior. Bipolar I disorder is defined as having a clinical course of one or more manic episodes and, sometimes, major depressive episodes. A mixed episode is a period of at least 1 week in which both a manic episode and a major depressive episode occur almost daily. A variant of bipolar disorder characterized by episodes of major depression and hypomania rather than mania is known as bipolar II disorder.

Mood disorders are characterized by a disturbance in the regulation of mood, behavior, and affect. Mood disorders are subdivided into

(1) depressive disorders

(2) bipolar disorders - Major depressive disorder (MDD) is differentiated from bipolar disorder by the absence of a manic or hypomanic episode.

(3) depression in association with medical illness or alcohol and substance abuse. {Harrison's Principles of Internal Medicine , 19thed}

19. From the extract of board proceeding which has been reproduced hereinabove, it is ascertained that the medical board found that the respondent is suffering from Bipolar Disorder which is characterized by episodic spells of Mania and Depression with or without Psychotic Features and relapses even with medication.

20. It is found that the medical board did not arrive at a conclusive opinion as to whether the respondent was suffering from Bipolar Disorder without Psychotic Features. If a patient suffers from Bipolar disorder without Psychotic Features, the cause of the disease lies in his genetic disorder.

21. In the instant case, it is found from the board report that the respondent's Bipolar Disorder is associated with Psychotic Features. The respondent was a Constable of the CRPF. Psychotic Bipolar Disorder, which respondent was stated to be suffering, could not be detected on medical examination prior to his entry in service. Had he been suffering from Bipolar Disorder even before his joining service, it ought to have been obligatorily recorded by the Medical Board, failing whereof, the respondent would be entitled to benefit of statutory inference that the said disease had been contracted during the course of his service. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities, eventually stated to be constitutional or genetic in nature, had escaped the notice of the authorities concerned at the time of his induction as a constable of the CRPF. In support of our observation, we may profitably rely upon the decision of the Supreme Court in Union of India & others vs. Manjeet Singh reported in AIR 2015 SC 2114.

22. Rule 3-A(1)(a)(i) of the Central Civil Services (Extraordinary Pension) Rules provides that disablement shall be accepted as due to government service, provided that it is certified that it is due to wound, injury or disease which is

attributable to government service. We have already found, adopting the benefit of statutory inference, that the respondent had contracted Bipolar Disorder during his service. It is not disputed that before being diagnosed with Bipolar Disorder, the respondent was posted as a constable in the Indo-Bangladesh Border. Working in a border area as a constable is undoubtedly a job having tremendous stress and strain. It can reasmably be inferred that the respondent was affected with Bipolar Disorder which is characterized as a species of Psychosis and Psychoneurosis as a result of stress and strain attributable to government service.

23. Under the facts and circumstances of the present case, we are of the considered view that though the respondent is not entitled to invalid pension in view of the decision of the Supreme Court in Bashirbhai's case (supra), he is entitled to disability pension because he was affected with Bipolar Disorder which is a species of Psychosis and Psychoneurosis in course of his service which rendered him disabled from continuing with his employment.

24. A question may naturally arise at this juncture as to whether this court while deciding a mandamus appeal can grant some relief to the writ petitioner/ respondent which was not even sought for by him in his original application under Article 226 of the Constitution. In UP State Brassware Corporation Ltd vs. Uday Narain Pandey reported in J.T 2005 (10) SC 344, it was observed by the Supreme Court:-

"Order VII, Rule 7 of the Code of Civil Procedure confers power upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act. Section 11-A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen."

25. Similarly, in a writ proceeding, a relief which was not even prayed for by the writ petitioner can be granted, according to the demand of the situation. Borrowing the principle of Order VII, Rule 7 of the Code of Civil Procedure, court can mould relief for doing substantial justice.

26. The Supreme Court in Manjeet Singh (supra) observed:-

"The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No.2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure."

27. The respondent joined the CRPF in 2001. He served the force till 15th

October, 2009. Before the respondent was invalidated out, he was directed by the appellant No.6 to submit papers for grant of invalid pension. Subsequently on 23rd February, 2010, the appellant No.2 informed him in writing that he was not entitled to invalid pension as he did not render qualifying period of service of ten years. The appellants vehemently urged that the respondent is not entitled to invalid pension as he was invalidated out before completion of ten years of qualifying service of ten years. The appellants relied on Bashirbhai's case (supra) in support of their contention.

28. While this court is of the view that the respondent indeed is not entitled to invalid pension, it has arrived at the conclusion that the writ petitioner is entitled to disability pension.

29. In view of such finding made by this court, the appellants are directed to take immediate step for assessment and grant of disability pension to the petitioner.

30. The appellants are also directed to complete the exercise of assessment of disability pension in favour of the writ petitioner within two months from the date of this order and communicate the same to the writ petitioner for initiation of payment of such disability pension.

31. The instant appeal and the connected application are thus disposed of on contest, however, without costs in the light of the observations made herein above.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

