

CASE NO.:
Appeal (civil) 686 of 2005

PETITIONER:
Union of India & Anr

RESPONDENT:
Bashirbhai R.Khiliji

DATE OF JUDGMENT: 16/05/2007

BENCH:
A.K.MATHUR & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

A.K. MATHUR,

1. This appeal is directed against the order passed by the Division Bench of the High Court of Gujarat at Ahmedabad whereby the Division Bench of the High Court has set aside the order passed by the Additional Deputy Inspector General of Police, Central Reserve Police Force, (for short, CRPF), Group Centre, Gujarat, Gandhi Nagar dated 26.4.1996 and held that the respondent is entitled to invalid pension which may be calculated in accordance with rules and paid to him within three months along with interest at the rate of 9 per cent from 1.9.1991.

2. Brief facts which are necessary for disposal of this appeal are that the respondent herein was selected and appointed as Armed Constable in the Central Reserve Police Force. He was posted at Amritsar (Punjab) in the Anti-terrorist squad. Thereafter, he was posted at Srinagar (Jammu & Kashmir) for the protection of citizens against terrorists. While on duty due to heavy snowfall in Srinagar he suffered from Pyrogenic meningitis and neurosensory deafness (bilateral). Consequently, he was referred to S.M.N.S.Hospital and was admitted there from 19.1.1990 to 14.2.1990 and thereafter at the Base Hospital -1, New Delhi and All India Institute of Medical Sciences, New Delhi from 17.3.1990 to 16.4.1990 for investigation and treatment. He was diagnosed as a patient of ' Pyrogenic Meningitis with B.I. Sensory Deafness'. Despite medical treatment at various hospital, the respondent could not be cured and he was declared unfit for active duty. His case was referred for consideration whether he could do alternative job. But there also he could not secure one as he was found invalid. Finally he was invalidated from service on 1.7.1991 (F.N.) vide office order dated 27.6.1991 passed by the Group Commander, CRPF, Gandhinagar. The respondent requested for invalid pension but that was rejected on the ground that he had not completed the qualifying service of ten years. But he has been given service gratuity of Rs.4,140/- apart from a recurring payment of Rs.1000/- per month from Risk Fund for life vide order dated 12.12.1991. The respondent filed S.C.A.No. 12432 of 1994 before the High Court of Gujarat praying for invalid pension. But by order dated 28.2.1996 the High Court directed that the representation of the respondent for separate pension be considered in accordance with rules. It was also observed that the respondent's case for separate entitlement to invalid pension was distinct from the entitlement from the risk fund and if the entitlement from the risk fund was the same as invalid pension, reasoned order be passed in that respect. Pursuant to that direction, respondent's representation was considered and was rejected by order dated 26.4.1996. The respondent also made a representation with regard to recovery of Rs.22231/- . This was rejected on the ground that the respondent

had been overpaid with respect to the period he remained under treatment and medical examination. The respondent thus approached the High Court again by filing the present writ petition and claimed for invalid pension. This was opposed by the appellants that the respondent is not entitled to invalid pension as per Central Civil Services (Pension) Rules, 1972, since he had not completed ten years of service. The Division Bench after considering Rule 38 which deals with the invalid pension took the view that since the respondent's invalidity was 100 per cent, therefore he was entitled to invalid pension and the condition of ten years of qualifying service could not be invoked so as to deny the respondent the invalid pension. The Division Bench further held that since the respondent while on duty has suffered the permanent disability, therefore, whatever excess payment made to him should not be recovered. Aggrieved against this impugned order the present appeal was filed by the appellants.

3. We have heard learned counsel for the parties and perused the records. There is no two opinion in the matter the respondent while serving at height has suffered 100 per cent invalidity. He has already been granted Rs.1000/- per month out of the risk fund which is specially reserved for such disability. But so far as the question of granting invalid pension is concerned, that cannot be considered though it may be harsh, as per the scheme of the Pension Rules. The respondent being a constable in the Central Reserve Police Force is governed by the Central Reserve Police Force Act, 1949 and Central Reserve Police Force Rules, 1955 (hereinafter to be referred to as 'the Rules of 1955'). According to Rule 42 of the Rules of 1955, the respondent is governed by the Central Civil Services (Pension) Rules, 1972. The Pension Rules of 1972 contemplates various types of pensions in Chapter V. Rule 35 deals with superannuation pension. Rule 36 deals with retiring pension. Rule 37 deals with pension on absorption in or under a Corporation, Company or Body. Rule 38 which deals with invalid pension reads as under :

" 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 Two thousand and two hundred 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 candidate 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 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."

Rule 39 deals with compensation pension. Rule 40 deals with compulsory retirement pension. Rule 41 deals with compassionate allowance. These are various kinds of pensions admissible to Government servants. Chapter VII deals with regulation of amounts of pensions. This chapter deals with how the amount to be determined after putting in qualifying service. Rule 48 deals with retirement on completion of 30 years' qualifying service. Rule 48A deals with retirement on completion of 20 years' qualifying service. Rule 49 which is relevant for our purpose, reads as under :

" 49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(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 calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(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 (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensem.

) 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.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half- year

and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause () or Clause (b) of sub-rule, shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

(5) & (6) Deleted."

We are presently concerned with two provisions of the Rules i.e. Rule 38 and Rule 49. Rule 38, as reproduced above, contemplates the invalid pension. The procedure has been mentioned therein i.e. in case an incumbent retires from service on account of bodily or mental infirmity which permanently incapacitated him for the service, then a medical certificate of incapacity shall be given by the concerned authorities and in particular form No.23 the same may be applied before the competent authority. It is true that the qualifying service is not mentioned in Rule 38 but Rule 49 which deals with the amount of pension stipulates that a Government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. Therefore, the minimum qualifying service of ten years is mentioned in Rule 49. The word 'qualifying service' has been defined in Rule 2(q) of the Rules which reads as under :

" (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;"

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 is 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. But the amount of gratuity has been determined and the same was paid to him.

4. We feel that this is little harsh that an incumbent while discharging his onerous duties became completely deaf. Therefore, the respondent should have been adequately compensated for that. A sum of Rs.1000/- per month has already been granted to him from the Risk Fund which is specially reserved for such contingency. So far as the pension is concerned, as he has not put in ten years of minimum qualifying service, it would not be admissible to him. However, a sum of Rs.22,231/- which has been paid to him during the medical treatment, shall not be recovered from him. Hence, in view of our above discussion, we allow this appeal and set aside the order of the Division Bench of the Gujarat High Court. There would be no order as to costs.

5. However, before parting with this case we feel that since the respondent while discharging his duties has become invalid to serve anywhere on account of impairment of both of his ears, therefore, in fitness of things, at least something should be given to him for survival and we direct that a sum of Rupees one lakh be given to him ex gratia. This amount in question be released by the appellants to the respondent within a period of two months from the

date of receipt of a copy of this judgment.

JUDIS