

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
JALAHABAD BENCH**

THIS THE 14th DAY OF FEBRUARY, 2008

Original Application No. 319 of 2004

CORAM:

HON.MR.JUSTICE KHEM KARAN,V.C.

Abdul Anis, S/o Nizamuddin Khan,
aged about 37 years, R/o House No.63-B/663
New Janta Colony, Mustafa Quarter
Agra Cantt. Presently working on the post of
Tailor Group R.S.S.D, Central Ordnance Depot, Agra.

.. Applicant

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India through Secretary
Ministry of Defence, South Block
Army Headquarter New Delhi-110011.
2. Director General Ordnance Services,
South Block Army Headquarter
New Delhi- 110011.
3. Commandant Central Ordnance Depot,
Agra Cantt., Agra.

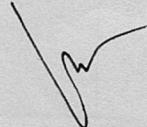
..Respondents

(By Adv: Shri Ashok Mohiley)

ORDER

BY JUSTICE KHEM KARAN,V.C.

Applicant Abdul Anis, aged about 37 years has filed this OA for quashing order dated 20.1.04 and 25. 2.2004 (A-1 & A-2) respectively and for commanding the respondents to grant invalid pension to him, pursuant to order dated 13.1.2003 (A-14) and his application dated 31.1.2003 (A-15).



2. His case in brief is that he was appointed as Tailor in Class IV in Central Ordinance Depot, Agra in the year 1988 and worked as such to the satisfaction of his superiors. It was in May 2002 that he developed trouble in his right eye and consequently was unable to perform his duties as a Tailor. On 14.5.2002 he submitted a medical certificate issued by the department of Ophthalmology of Apollo Hospital. The Commandant, Central Ordinance Depot, Agra issued a letter dated 10.6.2002 (A-4) asking the applicant to appear before Chief Medical Officer, district hospital Agra. He alleges that the authority concerned issued another letter dated 3.9.2002 (A-7) asking him to report to the Chief Medical Officer district hospital Agra for second opinion and in compliance of it, he appeared before Chief Medical Officer Agra who referred the case to S.N.Medical College for medical opinion. S.N.Medical college Agra submitted the report (A-10) certifying that he was medically unfit to do the job of tailoring due to poor eye sight. He goes on to state that a medical board comprising of Addl.Director, Medical Health and Family Welfare, Agra also certified (A-11) on 16.10.2002 that he was unfit to do the job of tailoring because of poor eye sight. The Commandant Central ordinance Depot Agra issued a letter dated 13.1.2003 (A-14) asking the applicant to apply for invalid pension and in compliance of it applicant submitted his application on 31.1.2003 (A-15) for invalid pension. It appears the authority concerned at Agra, was not sure about the opinions so given by the doctors, so he wrote a letter dated 28.5.03 (A-17) asking the applicant to appear before the medical Board. The applicant appeared before the Medical Board on 10.6.2003, which after re-examination, certified on 26.8.03 (A-20) that the vision of the applicant was almost lost and he was partially blind. Not satisfied with this, the Commandant Central Ordinance Depot Agra issued letter dated 6/11.9.03 to Addl. Director Medical health & Welfare, requesting him to re-examine the applicant and give report but it replied vide letter dated 24.12.03 (A-22) that the applicant had already been examined and no further examination was necessary. Surprisingly enough, Commandant Central Ordinance Depot issued letters dated 20.1.04, and 25.2.2004, asking the applicant to report to the

military hospital at Agra, for medical examination. The sum and substance of the applicant is that once he has already been medically examined and re-examined by the authorities pursuant to the letter issued by the Commandant and once he has been found medically unfit to do his job due to poor eye sight or partial blindness, there is no justification with the Commandant in asking the applicant to have him re-examined by military hospital. He alleges in para 4.24 of the OA that impugned letters for getting examined by the military hospital are in violation of the provisions contained under Rule 38 of CCS (Pension) Rules. It is averred in para 4.29 that several employees working in Central Ordinance Depot have been granted invalid pension on the basis of opinion of district hospitals and there appears no reason with the respondents, in forcing the applicant to get him examined by the military hospital or by the Board consisting of the doctors of the military hospital.

3. The respondents have filed reply contesting the claim of the applicant. According to them invalidity of the petitioner has to be established by military medical Board in terms of Article 442 (d) of CSR as amended from time to time and so impugned letters were rightly issued by the authority concerned. They say that applicant did not qualify for invalid pension on 13.1.2003, on the basis of the medical certificates/medical opinion given by Addl. Director Medical health and Family Welfare. Reference to disability Act 1995 has also been made, so as to say that where an employee acquires disability due to occupational hazard, the employer should as far as possible, employ him in the same job or in some other job protecting his pay and service benefits and if no vacancy is available then to keep him on supernumerary strength till he retires. It has also been said that Central Ordinance Depot, Agra's letter dated 13.1.2003 has been withdrawn vide letter dated 27.3.2004. They say in para 6 that writ petition filed by the applicant before Allahabad High Court has already been dismissed vide order dated 13.11.2003 (CA-1). As regards the plea of the applicant that impugned letters are in violation of Rule 38 of CCS (Pension) Rules, it is said that the same stands superseded in view of Office memorandum dated 19.1.2004.

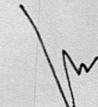
4. In his Rejoinder the applicant asserts in para 6 that provisions of Article 442 (d) of CSR are not applicable to him as the same is applicable to those civilian employees of the Defence who have reached an agreement, for doing field service and since no such agreements was reached in his case so the same is being wrongly applied to his case. He goes on to state that Rule 38 of CCS (Pension) Rules applies to him and according to that rule certificate of the Chief Medical Officer or other authorities of the Health & Family Welfare was sufficient enough to grant him invalid pension. As regards the news published in the news paper regarding his involvement in some racket, engaged in alluring candidates to get them recruited, he alleges that so far no FIR etc has been lodged against him. It is also said that Rule 38 or Rule 442 (a) (d) of CSR has not been substituted or amended so far.

5. Parties counsel have filed their respective written arguments. I have gone through the entire material on record including the written arguments.

6. Writ petition No.50412 of 2003 filed by Abdul Anis was dismissed on 13.11.03 on the ground of alternative remedy so that dismissal does not come in the way of the applicant. The question is as to whether Rule 38 of the CCS (Pension) Rules applies in the case of the applicant or Rule 442 (d) of CSR will apply to the case of the applicant. Rule 38 of the Rules of 1972 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 Govt. 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;



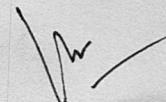
(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

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.

7. Rule 2 of the Pension Rules of 1972 provides that these shall apply to government servants appointed on or before 31st of December, 2003 including civilian government servants in the defence services. There is no dispute that the applicant was appointed prior to 31.12.2003. There is further no dispute that he is civilian government servant in the defence services. Apparently Rules of 1972 will apply to the applicant and matter will relating to grant of invalid pension be governed by Rule 38, of the Rules of 1972. Clause (d of para 442 pf C.s.R, will not be attracted to the case of applicant as no such agreement as referred to there was reached for doing field service.

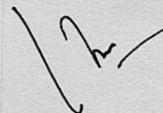
8. I have not been able to appreciate the manner in which the respondents have dealt with the case of applicant for grant of invalid pension. If invalidity of the applicant was to be certified by the military hospital or by the Board comprising of the doctors of the military hospital as pleaded in the reply, then why the Commandant, central ordinance depot asked the applicant to appear before the doctors of the civil hospital or before the Medical Board comprising of the Addl.Director Medical health Services. I think certification of invalidity to grant of invalid pension under Rule 38 of the Rules of 1972, was rightly given by the Chief Medical Officer or by the Board comprising of Addl.Medical Director. It was in consonance with the provisions contained under Rule 38 of the Rules of 1972. Insistence of the respondents for getting the applicant medically examined by the military hospital is totally misconceived and ill-founded. After the certification of



invalidity of the applicant by Chairman Medical Board (A-11) and (A-20) dated 6.11.02 and 26.8.03 there was no necessity at all for issuing the impugned letters, asking the applicant to get himself re-examined medically by the military hospital or by the Board comprising of the doctors of the military hospital. More over, it has not been refuted satisfactorily that invalid pension was granted to certain employees of the Central Ordnance Depot, on the basis of such medical certificates, issued by the Chief Medical officer or other competent doctors of the medical and health services. There appears to be no reason as to why the respondents have tried to drag the matter to such an extent, by getting the applicant medically examined again and again.

8. In so far as Memorandum dated 19.1.2004 (Annexure CA-5) is concerned, it does not appear to be relevant in the context of the grant of invalid pension. It was issued for general information that Section 47 of Persons with Disability Act 1995 had been amended and according to the amended provisions, employees acquiring disability during service should not be dispensed with but should be adjusted and accommodated till they attain the age of superannuation and no promotions shall be denied to them on the ground of such a disability. But here, applicant himself wants that he should be granted invalid pension as he has lost his vision and is not in a position to do the job. When he himself wants that he should be retired on the ground of invalidity the question of application of Section 47 of the Act of 1995 does not arise. I have not been able to understand as to how this Memorandum can be construed so as to amend Rule 38 of the Rules of 1972. I am of the view that provisions contained u/s 47 of Act of 1995 and the provisions contained under Rule 38 of the Rules of 1972 operate in different fields.

10. In the result, the letters dated 20.1.04 and 25.2.2004 (A-1 & A-2) respectively deserve to be quashed as after the opinion dated 16.10.2002 (A-1) and certificate dated 26.8.2003 (A-20) certifying that the applicant is unfit to do the job of tailoring due to partial loss of vision or due to partial blindness, there was no necessity for



asking him to get himself examined by the military hospital. Rule 38 does not permit such a course, after the said medical opinions.

10. Accordingly, the two letters dated 20.1.2004 and 25.2.2003 (A-1 & A-2) are quashed and the respondent no.3 is directed to grant invalid pension to the applicant pursuant to order dated 13.1.2003 (A-14) and applicant's application dated 31.1.2003 (A-15), within a period of three months from the date a certified copy of this order is received by him. No order as to costs.

1, J. M. A.
14.2.2008
VICE CHAIRMAN

Dated: Feb. 14, 2008

Uv/

*Cancelled vide order
dated 7.3.08, on
application of applicant*
✓
7.3.08