

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1234 of 1995

Allahabad this the 24th day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)

Anil Kumar Srivastava, S/o Shri B.P. Srivastava,
C/o Dr. S.S. Ganguly, K 65/48 Gokul Clinic, Kabir
Chaura, Varanasi.

Applicant

By Advocates Dr. R.G. Padia
Sri P.K. Ganguly

Versus

1. Union of India through Ministry of Home Affairs,
Government of India, New Delhi.
2. Director, Intelligence Bureau, Ministry of Home
Affairs, Government of India, New Delhi.
3. Joint Director, Subsidiary Intelligence Bureau,
Lucknow.
4. Central Intelligence Officer, Varanasi.
5. Assistant Director, Central Intelligence Office,
Varanasi.

Respondents

By Advocate Sri Ashok Mohiley

ORDER

By Hon'ble Mr. D.S. Baweja, Admin. Member

The applicant has stated his case as follows;

He was appointed as Assistant Central Intelligence

Office under Director, Intelligence Bureau under Government of India. After completion of his professional training, he was posted in N.E.F.A. region and remained there from 03.8.71 to 30.9.75. The applicant submits that he developed Vertebiac troubles with severe pain in the Lumbar region and the ~~disease~~ was diagnosed as SCIATICA. From 08.10.1975 to 30.6.79, the applicant was posted at Bhagalpur. Thereafter the applicant was transferred to Leh/Ladakh Border area and continued there till 29.5.1982. The applicant contends that severe winter aggravated his ~~disease~~ and on repeated representations, he was transferred to Varanasi on 29.5.82 where he continued upto 21.12.87. The applicant was transferred from Varanasi to Delhi on 21.12.1987 and there he under went treatment in the various hospitals. On a reference made to All India Institute of Medical Sciences his ~~disease~~ was diagnosed as ANCOLYSING SPONILLIASIS. The applicant served in Jammu and Kashmir region from 09.7.90 to 11.6.92 and thereafter he was transferred to Varanasi on 10.6.92. While at Varanasi when the applicant was on leave, he fell ill seriously. The applicant was examined by a medical board of Government S.S.P.G. Hospital on 25.6.91 and was declared belonging to the category of Permanent Physcially/Orthopedically Handicapped person on account of suffering from ANCOLYSING SPONILLIASIS. Thereafter the applicant was allowed the benefits as applicable to the handicapped persons in regard to railway concession and rebate in the income tax. The applicant again became sick while at Varanasi and was examined by a Doctor on 08.12.1993 and recommended rest. The respondent no.4 - Central Intelligence Officer, Varanasi requested

Chief Medical Officer, Government S.S.P.G. Hospital to examine the applicant by the Specialist and ascertain whether the applicant was fit for duty or not in future and period after which he will be fit for assuming duty. The Chief Medical Officer as per his letter dated 12.5.94 advised the respondent no.4 that the applicant was suffering from ANCOLYSING SPONIILLIASIS, having an incurable disease and self limiting course and was likely to be fit to resume his duty within 2 months. After submission of the medical report by the Chief Medical Officer, the applicant made request for sanction of leave from December, 1993 onwards which is applicable to physically handicapped employees. The applicant alleges that the leave was not sanctioned to the applicant and instead the payment from March, 1995 has been stopped. Being aggrieved, the present application has been filed on 22.11.1995.

2. In the background of the above submissions, the applicant has sought the following reliefs;

- (a) to set aside the order dated 16.3.95 whereby the payment of salary from March, 1995 has been stopped.
- (b) to set aside the order dated 13.7.95 rejecting the request for grant of pensionary benefits under the C.C.S. Extra Ordinary Pension Rules.
- (c) to direct the respondents to grant payment of salary and arrears from March 1995 onwards.

3. The respondents have filed the counter-affidavit to the O.A. as well as supplementary counter-affidavit for the rejoinder-reply. The respondents submit that the

and invalid retirement. Further the claim of the applicant for retirement with grant of pensionary award under C.C.S. (Extra Ordinary Pension) Rules, is not tenable as the ~~disease~~ ^{from} ~~is~~ which the applicant is suffering, is not covered in Schedule IA arising out of the service. Keeping these submissions in view, the respondents plead that the applicant is not entitled for the reliefs prayer for and the application deserves to be dismissed.

4. The applicant has filed the rejoinder-affidavit to the main counter-affidavit as well as to the supplementary counter-affidavit. The applicant has controverted the submissions of the respondents and re-affirming his averments made in the O.A. The applicant further submits that since the Chief Medical Officer as per his report dated 12.5.94 has given the opinion that the applicant is suffering from incurable ~~disease~~ ^{again} the insistence by the respondents to appear ~~for~~ for medical examination before the Medical Board is nothing but to harass the applicant.

5. Heard, Dr. R.G. Padia and Sri P.K. Ganguly, learned counsel for the applicant and Sri A. Mohiley, ~~learned~~ ^{learned} counsel for the respondents. Arguments made during the hearing have been carefully considered and the material brought on record has also been examined.

6. From the rival contentions, there are two issues which require to be deliberated. The first issue concerns sanction of the special disability leave and non-payment of salary from March, 1995 onwards. pg. 6/-

The second issue is with regard to type of pension admissible to the applicant on his retirement due to not being medically fit to continue in service.

7. With regard to the first issue, the applicant has impugned the order dated 16.3.95 with a prayer to quash the same. As per this impugned order, the payment of the salary has been stopped to the applicant from March, 1995 onwards on the ground that inspite of repeated request, the applicant has not submitted the medical certificate in the prescribed proforma to regularise his absence from 22.4.94. The applicant has also brought the copy of the letter dated 15.2.95 on record through which it has been advised that there is no provision to grant any special disability leave on the grounds advanced by the applicant. However, this order has not been impugned with a prayer to quash the same. The issue of non-payment of salary from March, 1995 onwards is linked with the sanction of the leave for the period which applicant is claiming that he is entitled for sanction of special leave for the said period. From the averments of the applicant, it is noted that he first reported sick on 08.12.1993 after being examined by the specialist of S.S.P.G. Hospital, Varanasi. The respondent no.4 subsequently requested the Chief Medical Officer, S.S.P.G. Hospital, Varanasi to examine the applicant and indicate as to when he is likely to be fit. The Chief Medical Officer as per his report dated 12.5.94 advised that the applicant is likely to be fit within a period of 2 months. The applicant thereafter requested for sanction of leave from December, 1993 onwards as admissible to physically handicapped employees. However,

the applicant is silent as to what happened after a period of 2 months within which, the Chief Medical Officer had given the opinion that he will be liable to join the duty. The applicant has not stated that he was declared fit after 2 months or was given a further sick certificate. From the letter dated 16.3.95, it is noted that the respondents have been requesting the applicant to submit necessary medical certificate. In the absence ~~therefore~~ of any such details, it is difficult to appreciate the contention of the applicant with regard to stoppage of payment of salary from March, 1995 onwards. The respondents have clearly submitted that in the absence of any medical certificate, the leave as due to the applicant, has been sanctioned to avoid any hardship and since no leave is due, the payment of salary has been stopped from March, 1995 onwards to avoid any over payment. The applicant instead of specifically controverting the submissions of the respondents, has labored in stressing his contention that he is entitled for the sanction of leave being permanently handicapped. The applicant has not cited the rules under which the special leave is permissible to physically handicapped. From the letter of the respondents at A-2, it is noted that there is no provision for grant of special disability leave on the grounds advanced by the applicant. On going through the C.C.S. (Leave) Rules, it is noted that Rule 45 provides for sanction of special disability leave. The Rule 45 provides for sanction of special disability leave for accidental injury incurred in, or in consequence of the due performance of his official duties or in consequence of his official position, or by illness incurred in the performance of any particular duty. The applicant has not brought on record whether

such findings have been recorded with regard to his disability though it is admitted by the respondents that the applicant had been declared permanently physically handicapped. There is no averment that the Medical Board has given the findings that his disability has arisen out of due performance of his job. The applicant has been working on the job subsequent to this declaration of being physically handicapped in 1991. Even the report of the Chief Medical Officer does not indicate that disability have arisen out of his job. In view of this, until and unless findings are recorded by the competent medical authority as provided in the rules, I am unable to appreciate any merit in the contention of the applicant. With regard to the opinion of the medical authority and the extent of disability of the applicant, the matter will be examined further subsequently while considering the claim of the applicant with regard to pensionary benefits. I will, therefore, advert to this issue subsequently after considering the issue of benefits of pension raised by the applicant.

8. The second issue is with regard to the claim of the applicant that he is entitled for pensionary award under C.C.S. (Extra Ordinary Pension) Rules. The applicant has prayed for quashing of the order dated 13.7.95 at annexure A-3. On going through the letter dated 13.7.95 and also considering the averments made by the applicant and the respondents, I am of the considered opinion that this issue is still at the preliminary stage. The respondents have indicated that incase the applicant is declared unfit for further service, he may be retired on invalid pension. On the other hand, the applicant claims that he is entitled for award under the Extra Ordinary Pension Rules. On

going through the rules for the award of Extra Ordinary Pension, it is noted that such award is permissible only if the disability is attributable to the government service. This opinion has to be expressed by the concerned medical authority and the detailed procedure and the form of the medical certificate has been detailed in the rules. The counsel for the applicant was at pains to press for the claim of the applicant for award under the Extra Ordinary Pension Rules, stating that the disease L ^{from} which the applicant is suffering is incurable, L is covered in item-D of Schedule-1A of the Extra Ordinary Pension Rules. The respondents on the other hand have refuted the claim of the applicant, stating that the Schedule- 1 A does not cover the disease from which the applicant is suffering. With the present status as detailed above, it is obvious that any decision with regard to the nature of the pension admissible to the applicant on being invalidated to continue in service, will depend upon the report of the medical authority and the provisions of the relevant rules. From the averments it is quite clear that neither the report of the medical board declaring the applicant as permanent physically handicapped as well as of the Chief Medical Officer dated 12.5.94 has expressed any opinion whether the applicant is declared invalid to continue further in service or the disease from which he is suffering is attributable to the nature of the service of the applicant. In view of this, the opinion of the medical board is vital. As brought out by the respondents in their averments ~~that~~ the applicant has already ^{been} asked to undergo the medical examination before the medical board in view of different opinions expressed by the medical authorities. If the applicant appears before

this Medical Board, the necessary opinion with regard to the claim of the applicant for invalidation and benefits of Extra Ordinary Pension, could be given by the Medical Board. Based on this opinion, the competent authority could take decision as per the provision of the extant rules. During the hearing, the learned counsel for the applicant fairly conceded that to settle this issue it would be appropriate that the applicant undergoes the medical examination by the Medical Board as directed by the respondents as per order dated 12.1.1996. Keeping this in view, the respondents are directed to hold the medical examination of the applicant through the Medical Board to consider the fitness of the applicant for continuing in service or otherwise as well as the claim of the applicant for grant of extra ordinary pension. The Medical Board shall be held as early as possible but not later than 3 months from the date of receipt of this order. The applicant would appear before the Medical Board on the stipulated date as directed. After receipt of the report of the Medical Board, the competent authority would pass the suitable orders on the claim of the applicant within a period of 2 months and, thereafter, necessary advised sent to the applicant. In view of these directions, the judgment in the case of 'Shiv Murti Vs. Union of India (1997) 2 U.P.L.B.E.C 1179', cited by the applicant does not apply to the case of the applicant.

9. Now coming to the claim of the applicant for non-payment of salary from March, 1995 onwards and non-sanction of the leave as claimed, I refer to the deliberations in para-8 above. As indicated earlier, the special disability leave is admissible under the conditions laid

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down in the Rule-45 on the report of the medical authorities. This issue may also be referred to the Medical Board so that the Medical Board can also give the recommendation with regard to the disability of the applicant and contribution of the same by the nature of his job. For this also, the competent authority would pass suitable order after the receipt of the report of the Medical Board as indicated in para-8 above, with regard to sanction of the leave and payment of salary and advise to the applicant within the same time schedule.

10. In the light of the above discussions, the O.A. is disposed of with the directions contained in para-8 and 9 above. No order as to costs.

D. Rangappa
Member (A)

/M.M./