

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH
 NEW DELHI

(6)

O.A. No. 197 OF 1989.
 TACKED

DATE OF DECISION 17-7-1990.

K.R. DAYANANDAN,

Petitioner

MR. I.S. SUPEHIA

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA

Respondent

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANLARAN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

K.R. Dayanandan,
Retired Inspector,
Central Excise,
C/2, Samta Apartments,
Keshavnagar, Sabarmati,
Ahmedabad.

.... Petitioner.

(Advocate: Mr. I.S. Supehia)

Versus.

1. The Union of India, through
The Collector of Central Excise,
Race Course, Baroda.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A. No. 197 OF 1989

Date: 17-7-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant has challenged the order No.F.
No. 11/25-Pen/EOP/KRD/80 dated 28.3.1989 (Annexure A-9)
issued by the Collector, Central Excise and Customs,
Vadodara, holding that the applicant is not eligible
for Disability Pension. The applicant's prayer is
that he be granted disability pension with effect
in the
from 20.8.1973 or, alternative, from 19.7.1977.

2. The relief is pressed on this background: The
applicant, when in the Department of Central Excise
in the rank of Inspector, suffered from Pulmonary
Tuberculosis (PT for short) and was certified by
the Medical Board in certificate dated 19.7.1977
to be completely and permanently incapacitated for
Government service of any kind. He was therefore
allowed to retire on invalid pension with effect
from 19.7.1977 under Rule 38 of Central Civil
Services (Pension) Rules 1972 (Pension Rules for

short) by an order dated 21.6.1978 which order was, later, modified to give retrospective effect from 20.8.1973 under orders of Gujarat High Court in applicant's S.C.A.No. 605/79. The applicant, after about 6½ years on 11.1.1980, applied for disability pension under the CCS (Extraordinary Pension) Rules (EOP Rules for short). As his application was rejected by the Assistant Collector, Central Excise, Ahmedabad, the applicant filed S.C.A.No. 6515/84 in Gujarat High Court which was transferred to this Tribunal and numbered as T.A.No. 389/86. This T.A. was disposed of by order dated 1.12.1987 with direction to the applicant to make a representation to the Respondent, and to Respondent to decide it within two months which having been done and the representation rejected, the applicant successfully moved for the revival of the T.A. The revived T.A. was disposed of with the direction dated 3.10.88 that the Respondent should peruse the relevant record and pass a speaking order which the Respondent did by order dated 28.3.1989 rejecting the claim. Hence the present application. As the 1977 certificate of the Medical Board certified the applicant "completely and permanently incapacitated" for further service, the applicant's contention is that his case is of 100 % disability for the award of which he applied, albeit after about 6½ years on 11.1.1980. The applicant's allegation is that the Respondent, on his application, failed to obtain a fresh certificate in prescribed Form C even if that required sending the applicant for medical examination. The applicant's further allegation is that the Respondent failed to do so despite drawing of his attention by letter dated 10.2.1984. In addition, his contention is that

Form No.23 for Invalid Pension and Form No.C for Disability Pension are the same and for either purpose the Medical Board would therefore have given substantially the same certificate and, therefore, for the technical reason of absence of medical certificate in Form C for Disability Pension, he should not have been denied the Pension. He thus assails the impugned order dated 28.3.1989 on this ground and the further grounds that it suffers from errors in reckoning the applicant as if on duty from 1970 upto 20.8.1973 whereas in fact he was not and was under medical treatment and retired on 20.8.1973 on invalid pension and that the Collector of Central Excise and Customs, Vadodara who passed the impugned order is not qualified to say on the medical issue of causal connection between disablement and nature of service which could be said only by a competent medical authority. He relies on provisions of Rule 3-A(1)(a) of the EOP Rules which lay down that a "disease" which is attributable to Government Service is to be accepted for disablement and on provisions of Rule 5(b) of the same Rules which stipulates that "A disease which had led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for Government Service". The applicant avers that no such note of PT was made when he was accepted for service and also avers that PT figures in Schedule A-1 of the EOP Rules in the list of diseases which can be contacted during service. He avers that out of 21 years of his service he spent about 10 years in textile mills, about 6 years in tobacco processing industries and about one year in a cement factory in injurious environment which

(2)

produced PT in him.

3. The sole Respondent has resisted the application on the grounds that the Union of India has not been joined as party respondent, that it is barred by limitation, that the applicant had acquiesced in the invalid pension, that the applicant had produced a medical certificate dated 10.8.1973 from the Civil Surgeon Ahmedabad and another from the TB Demonstration and Training Centre, Ahmedabad, both of which recommended his invalidation from service which recommendation being accepted, order of such pension under Rule 38 of Pension Rules with effect from 19.7.1977 was issued. This order was given retrospective effect from 20.8.1973 (for reasons mentioned earlier), that the applicant applied for disability pension by his application dated 11.1.1980 after 6½ years of his invalidation, that he produced no medical certificate in support of his claim, that the Respondent referred his case to the President, Standing Medical Board to comply with the Tribunal order dated 3.10.1988 in T.A.No. 389/86 but the President expressed inability to file up Form C as the Members of the Board who had examined and certified the applicant for invalidation from service in 1977 were no more in service, and that the direction of the Tribunal contained in order dated 3.10.1988 were fully kept in view in issuing the impugned order dated 28.3.1989. The Respondent disputes the applicant's averment that certificate for invalid pension should be relied upon for sanction of disability pension also as the two are the same and the Medical Board would therefore have given for disability pension the certificate which it gave for invalid pension.

Principally, the stand of the Respondent is that there being no disability certificate it is not possible to sanction the disability pension and that for nonexistence of such a certificate the applicant himself has to blame as he applied for disability pension by his application moved 6½ years after his invalidation and produced no medical certificate in support of the claim in the application and even though the Respondent referred the applicant's case to the President of the Medical Board, the President did not give the certificate of disability and hence there is no acceptable material for sanction of disability pension.

4. We have heard the counsel for the parties and perused the record. Their submissions conformed to the pleadings.

5. Provision for invalid pension exists in Rule 38 of Pension Rules and is one of the several pensions to which an employee governed by these Pension Rules is eligible for. Rule 7 of these Rules permits a Government Servant to earn only one pension in the same service or post at the same time or by the same continuous service. The EOP Rules provide for compensation to persons in Central Government of Departments of the nature provided under Workmen's Compensation Act, 1923, to industrial workers, etc. and the sanction is termed as an award and is admissible under Rule 5, over and above any pension or gratuity under any other rules to compensate for accident, injury, disease received due to Government service and duly certified to be so far an award. Rules 3-A(1)(a) and 3-A(2) of EOP Rules which are relevant to the applicant's case are as below :

3-A.(1)(a) Disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which

- (i) is attributable to Government service, or
- (ii) existed before or arose during Government service and has been and remains aggravated thereby.

(2) There shall be a causal connection between

- (a) disablement and Government service, and
- (b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these Rules.

Word "certified" in the above is significant as the award cannot be made if not certified. Rule 4 of the Rules provides that degree of default or contributory negligence on the part of a Government servant may be taken into consideration for making an award. Rule 6 of the Rules which lays down when the award shall not be made is reproduced below :-

"6. No award shall be made in respect of -

- (i) an injury sustained more than five years before the date of application, or
- (ii) death which occurred more than seven years
 - (a) after the injury due to violence or accident was sustained, or
 - (b) after the Government servant was medically reported as unfit for duty on account of the disease of which he died."

The objection of the Respondent on grounds of limitation gets overruled by the above Rule as the applicant's case does not fall in any of the above categories. Rule 3(4) of these Rules defines "disease" as one mentioned in Schedule 1-A and PT figures at the top at (i) in the schedule in the list of "Diseases affected by climatic conditions" and also at (iv) in the "Diseases affected by stress and strain". It does

(Signature)

not figure under any other group including, noticeably, the group "Environmental Diseases" which is relevant to the applicant's claim as he attributes the PT in him to the injurious environment in which he long performed his duty. A Government servant is required to apply for disability pension in Form A of Schedule IV of the Rules. Items 7, 8 and 9 of the Form being especially relevant to the applicant's case are reproduced below:

- "7. Percentage of Disability sustained due to Injury/Disease (as certified by the Medical authorities) and circumstances which resulted in that disability :
8. Pay at the time of injury sustained, disease contracted (as certified by the Medical Authorities);
9. Pension claimed:"

These make it imperative that the form of application should contain information based on medical certificate. Admittedly the applicant possesses no such certificate and is therefore not placed in a position to fill up the form also. Form C is the form in which the Medical Board would have been required to report on the applicant had the applicant been examined for disability pension. This form is excerpted below:-

FORM 'C'

(Form to be used by the Medical Board when reporting on injuries/Diseases/Death.).

(Rule 13(4)(iii))

Instructions to be observed by the Medical Board while preparing the Report.

(1) The Medical Board before recording their opinion should invariably consult the proceedings of the previous Medical Board, if any, as also all previous Medical/Hospital documents connected with the Government servant brought before them for examination, or who has died.

(2) If the injuries/Diseases be more than one, they should be numbered separately, giving percentage of disability for each, with full details.

(3) In answering the questions in the prescribed Form, the Medical Board will confine itself exclusively to the medical aspect of the case, and will carefully discriminate between the Government servant's/claimant's unsupported statement(s) and the documentary evidence available.

(4) The Medical Board will not express any opinion, either to the Government servant examined (or any of his relatives or friends, etc.) or in their Report, as to whether he or his family is entitled to compensation or as to the amount of it, nor will it inform the Government servant or any other person connected with the Government servant of anything about the nature of the Medical Report given by it.

(5) The Medical Board shall give their Report herein below in the light of the provisions of O.M.No.23(15)-E.V.(A)/73-Main & Pt. I, dated the 20th January, 1978 (Decision 6(A)) particularly Schedule I and I-A, IV and the Appendix annexed thereto.

(6) The Report of the Medical Board on each occasion, shall be supported by all the necessary and full Medical and Hospital documents which shall be maintained and preserved for reference, from time to time, as may be necessary, until the same would no longer be required for reference.

It is the contention of the applicant that the above Form is substantially the same as Form 23 prescribed for invalid pension under Rule 38 of the Pension Rules. This form is reproduced below :

FORM 23

(See Rule 38(3))

FORM OF MEDICAL CERTIFICATE

Certified that *I/We) have carefully examined AB son of CD a in the His age by his own statement is years, and by appearance about years. I/(We) consider AB to be completely and permanently incapacitated for further service of any kind in the Department to which he belongs in consequence of..... (here state disease or cause). His incapacity does not appear to *me/us to have been caused by irregular or intemperate habits.

NOTE :- If the capacity is the result of irregular or intemperate habits, the following will be substituted for the sentence :-

'In *my/our opinion on his incapacity *is directly due to the irregular or intemperate habits/has been accelerated or aggravated by the irregular or intemperate habits.'

If the incapacity does not appear to be complete and permanent, the certificate should be modified accordingly and the following addition should be made:

"*I am/we are of opinion the AB *is fit for further service of a less laborious character than that which he had been doing/may, after resting for..... months, be fit for further service of less laborious character than that which he had been doing."

A mere look at the above two forms shows that the two vastly differ in their contents which is as it should be for the Form C certificate has to answer to the extraordinary nature of the award whereas Form 23 certificate is for one of the several kinds of normal pensions available to a Government servant. However, even if the Form 23 certificate is, for the sake of argument, considered for the disability pension claim, it shows the disability but not the circumstances under which it was contracted which is so essential to know to determine, under Rule 3-A(1)(a)(i), whether the same is attributable to Government Service.

6. The above close - and sympathetic - analysis of the case leaves us with the clear impression that the applicant, at the time he was examined by the Medical Board for invalid pension, had no realization that his PT was in any manner attributable to his Government service or that it was to any extent aggravated by the Government service. The realization to apply for disability award appears to have dawned on the applicant when he applied for it in 1980, after about 6½ years of his retirement on invalid pension. The realization did not seem to exist even at the stage he filed SCA No. 605/79 in Gujarat High Court which brought order to advance the date of his invalid pension from 19.7.1977 to 20.8.1973. No doubt he, from 1980 onwards, has been pursuing his realisation vigorously for sanction of disability award. But having long missed the bus for the required formalities or a application and

(18)

consideration of medical board pursuant to it, his claim can be neither resurrected nor reconstructed for a legal order in his favour. The application can therefore not be allowed when viewed from a purely legal angle. However, in the special circumstances of the applicant's case consisting of his losing a possible benefit by his own carelessness and the progressively falling value of the rupee making it increasably difficult for people in applicant's status to subsist, we direct that the applicant's case be reported by the Respondent, within three months of this order, to the Ministry of Finance in a self-contained report as a case not clearly covered by the EOP Rules for early consideration by the Ministry of Finance on ex-gratia basis in terms of the provisions in this regard in G.I.MF OM No.F 19(18)-E.V.(A)/66 dated 26th February, 1966 mentioned on page 270 of Swamy's Compilation, Eleventh Edition.

7. The application is disallowed subject to our above directions. Parties to bear their own costs.

N.R. Chandran

(N.R. CHANDRAN)
JUDICIAL MEMBER.

M. M. Singh

(M.M. SINGH)
ADMINISTRATIVE MEMBER