

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No. 346/86

Rajanna Pochetti,
Room No. 10/3,
New H Type,
Range Hills,
Khadki, Pune-411-020.

...

Applicant

V/s

1. The Union of India,
Secretary,
Defence Department,
New Delhi.
2. The General Manager,
Ammunition Factory,
Khadki,
Pune-411-001.

...

Respondents.

Coram: Hon'ble Vice-Chairman B.C. Gadgil

Hon'ble Member(A) J.G. Rajadhyaksha

Appearance:

1. Mr. J.M. Divekar,
Advocate
for the applicant
2. Mr. J.D. Desai for Mr. M.I. Sethna
for Respondents.

ORAL JUDGMENT

Date: 15-4-1987

(Per B.C. Gadgil, Vice-Chairman)

Regular Civil Suit No. 1474 of 1985 on the file of the 5th Joint Civil Judge Sr. Division, Pune is transferred to this Tribunal for decision.

2. The applicant (original plaintiff) was serving in the Ammunition Factory, Khadki, since many years, i.e. from 2-10-1934. It appears that the administration thought that the applicant, on account of physical infirmity, would be unable to perform his duties. Central Civil Service (Medical Examination) Rules, 1957 provide for such a contingency. Under Rule 2 it permits the authority concerned to ask the Government servant to undergo a medical examination. On the basis of such medical examination, the concerned authority

can direct the employee to retire from service. This procedure was followed in the case of the applicant in 1979. The medical certificate issued then showed that the applicant was incapacitated from rendering service and that this incapacity had arisen on account of his own intemperate habits. Thus the applicant was made to retire; but no pension was granted to him. The applicant felt aggrieved by the retirement as well as the denial of pension and he filed the suit in question for appropriate remedy. After the suit was transferred to this Tribunal, the respondents filed a reply stating that the applicant accepted the medical certificate and had given a written say to that effect. It was further contended that in view of the provisions of Rule 38 of the Central Civil Service (Pension) Rules the applicant is not entitled to any pension.

3. At the time of the argument of this application Mr. Divekar for the applicant frankly stated before us that he is not challenging the retirement of the applicant, and that the only grievance is about refusal to grant any pension. Hence it will be necessary to decide as to whether refusal to grant such pension is legal or not.

4. It is material to note that Rule 2(2) of the Central Civil Service (Medical Examination) Rules provides that the authority concerned may retire an employee from service if there is a permanent incapacity which would prevent him from rendering any service in future. None of the provisions of the said rules provide that on such retirement the concerned employee should not get any pension. However, the respondents rely upon the provision of Rule 38 of Central Civil Service (Pension) Rules. The marginal note or the Heading of this rule is "Invalid Pension". Sub Rule (1) says that invalid pension may be granted to a Government servant who retires from service on account of any bodily infirmity which permanently incapacitates him from service. Sub Rule (2) provides as follow:-

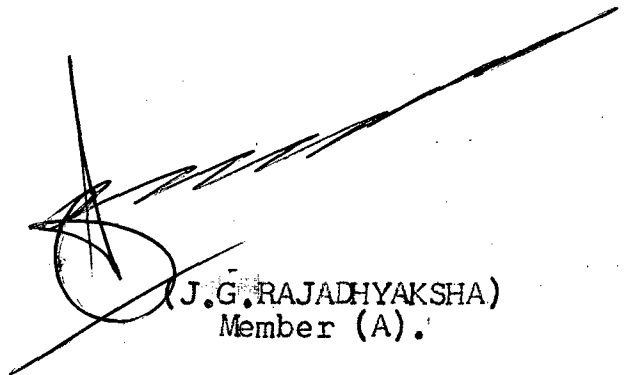
" A Government servant applying for invalid pension shall submit a medical certificate of incapacity from any of the following medical authority viz...."

Sub Rule (5) as it stood in 1979, however, provides that no invalid pension shall be granted if the incapacity is directly due to the intemperate habits of the Government servant. The contention of the respondents is that this Sub rule 38 (5) of the Central Civil Service (Pension) Rules, 1972 should be applied even when a Government servant is made to retire under Rule 2 of the CCS (Medical Examination) Rules. In our opinion this would not be permissible. The medical examination rules do not expressly provide that a person who was made to retire should not get any pension under certain circumstances. It is true that rule 38 of the Pension Rules has made such a provision, but it is pertinent to note that the said rule 38 contemplates voluntary premature retirement on grounds of incapacity asked for by the Government servant. This can be clear if we see the above mentioned underlined portion of the rule 38 (2) which says that a Government servant applying for invalid pension should submit a medical certificate. After such certificate is produced, how the matter should be processed is laid down in subsequent sub rules (3) to (5). Thus rule 38(5) comes into picture only when the Government servant, himself applies for invalid pension. It will be very difficult for the respondents to contend that by analogy this provision should also be followed when the Government itself takes a decision to retire a Government servant under the Medical Examination rules. The matter would be more clear if we take into account an omission in this respect in the said Medical Examination rules. Under these circumstances, we are of the opinion that though the order retiring the applicant from service is valid, still the Government cannot refuse to pay the retirement pension and other benefits that are payable to him.

5. The application, therefore, partly succeeds. The retirement of the applicant in 1979 is maintained. However, the respondents are directed to pay to the applicant the pension and all other pensionary benefits on the basis that the applicant has retired from service from 15-2-1979. This direction should be complied expeditiously, say within a period of 4 months. Parties to bear their own costs.



(B.C. GADGIL)
Vice- Chairman



(J.G. RAJADHYAKSHA)
Member (A).