

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS**

+ W.P. No. 30594 of 2015

% Dated 22.09.2015

The State of Telangana,
Rep. by its Principal Secretary,
Home Department & others

....Petitioners

Vs.

\$ B. Chandmal & others

....Respondents

! Counsel for the petitioners : GP for Services (Telangana)

^ Counsel for Respondents 1 & 2 : Sri Jogaram Tejavath

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> HEAD NOTE:

? Cases referred

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P. No. 30594 OF 2015

Between:

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Rep. by its Principal Secretary,
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Counsel for the petitioners : GP for Services (Telangana)

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DATE OF JUDGMENT PRONOUNCED: 22.09.2015

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | YES |
| 3. Whether Their Lordship wish to see the
fair copy of the Judgment? | No |

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 30594 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The State of Telangana and several of its officers are the petitioners in this Writ Petition. They challenge the sustainability of the orders passed by the Andhra Pradesh Administrative Tribunal in O.A.No.200 of 2015, dated 22.04.2015. The said O.A. has been instituted by one Sri B. Chandmal, a Police Constable attached to Khammam District Unit of the State Police, who has since retired on medical invalidation grounds, and his son Sri B. Sunil Nayak.

The 1st applicant Sri Chandmal, while working as a Police Constable with the Civil Police of Khammam District Unit appears to have suffered a critical setback to his health and hence, submitted an application seeking his retirement from service on medical invalidation grounds. As is too well-known, a person will be able to earn terminal benefits if he had retired from service on attaining the age of superannuation or upon according permission to retire prematurely or upon imposition of punishment of compulsory retirement for a proven misconduct. In such cases, pensionary benefits calculated proportionately to the length of service rendered by one would be granted.

The Andhra Pradesh Revised Pension Rules, 1980 (henceforth

be referred to as 'the Rules'), which are also, for the present, applicable for the servants of the State of Telangana, as new set of Rules have not yet been framed by it, deal with various varieties of pensions, which are liable to be granted to the public servants or his dependents, as the case may be. Rule 37 of these Rules declares that a government servant, who is declared by the appropriate medical authority to be permanently incapacitated for further service in accordance with the instructions on the subject, may be granted invalid pension. Thus, a government servant, who is declared by a competent medical authority as permanently incapacitated for further service alone can be granted such medical invalidation pension. This would eliminate bogus/imaginary grounds of medical incapacities claimed. Rule 45 of the Rules has provided for the quantum of pension that would be payable proportionate to the length of service.

In the instant case, the application seeking retirement on medical invalidation grounds has been entertained on 06.09.2011. It was processed and placed before the Medical Board, which examined Sri Chandmal and found him to be truly incapacitated to perform his duties as Police Constable. The Medical Board found Sri Chandmal to be suffering from ***“Right Side Hemiplegia, Diabetic Mellitus, CVA, HTN, underwent Coronary Artery Bypass Grafting X3 under CPB”*** and hence, filed its report on 14.12.2011. Based thereon, the application of Sri Chandmal has been processed but the District Level Scrutiny Committee headed by the District Collector found the proposal to be incomplete, inasmuch as certain essential service particulars of Sri Chandmal have not been furnished by the Office of the Superintendent of Police, for the said committee to take a decision in the matter. Therefore, on 19.03.2012, they called for the missing details. The same appears to have been submitted on 10.04.2012 and based upon the findings recorded by the Medical Board, the District Level Scrutiny Committee made a recommendation for accepting the request of Sri Chandmal for retirement on medical invalidation grounds

on 31.05.2012. The same was accepted and Sri Chandmal has been accordingly retired from service on medical invalidation grounds on 30.06.2012.

Sri Chandmal seems to have solicited consideration of the case of his son for appointment on compassionate grounds as the State, as a policy, has been considering the claims of the dependents of medically invalidated servants for appointment in public service, so as to help the family of the public servant to tide over the difficulties encountered by them due to the sudden fall out from service of the bread-winner. That Application has been rejected by an order passed on 07.01.2015 by the Superintendent of Police, Khammam District holding that as on the date of his retirement i.e. 30.06.2012, the employee was having left over service of only four years nine months, whereas for consideration of appointment on compassionate grounds on medical invalidation, the employee concerned should have a left over service of five years. Since, in the instant case, the left over service was only four years nine months, but not five years, the claim has been rejected.

That decision was the subject matter of challenge before the Andhra Pradesh Administrative Tribunal. The Tribunal has noticed that there was a change in the policy of the State Government which was brought into force through notification in G.O.Ms.No. 182 General Administration (SER.G) Department, dated 22.05.2014 which amended the earlier social welfare scheme of consideration of cases for compassionate appointment announced through G.O.Ms.No. 661 General Administration (SER.G) Department, dated 23.10.2008. The modification now brought-forth through G.O.Ms.No. 182, dated 22.05.2014 would set out that the requirement of left over period of service of five years should be reckoned from the date on which the Medical Board has tendered its opinion declaring the individual as medically invalid, as against reckoning the said period from the date of actual retirement on medical invalidation grounds. Though this

amendment has been brought-forth by the State Government on 22.05.2014 but, the Superintendent of Police, Khammam has not taken the same into account or consideration. Hence, it has set aside the rejection order dated 07.01.2015 and directed consideration afresh the case of the son of Sri Chandmal on compassionate grounds, within a period of three months.

The reason why the State Government has modified its earlier policy decision by setting-forth that the requirement of left over service be reckoned from the date of evaluation of the medical condition of the public servant by the competent medical authority is a very salutary one. As we have already noticed, it is Rule 37 of the Rules, which holds the key for one to understand the rationale behind such a modification. It is not every government servant, who desires to retire on medical invalidation grounds, who would be accorded any such benefit. Retirement on medical invalidation grounds would only become available to such government servants, who are declared by the appropriate medical authority to be permanently incapacitated for further service of the government. Therefore, all imaginary and non-genuine claims of medical incapacity would get weeded out by subjecting such claimants for medical examination by a competent medical authority. That explains the reason why a Medical Board has been constituted in the instant case instead of one single physician/surgeon examining Sri Chandmal. It is the collective wisdom of the Medical Board that would result in the assessment as to whether the individual shall be declared as medically incapacitated for further continuance in service of the government or not, duly taking note of the nature of duties required to be performed. Very appropriately therefore, the State Government has modified their earlier scheme by requiring a left over service of five years to be reckoned as of the date of the assessment/opinion of the appropriate medical authority. Further, this amendment has also recognized the fact that upon receipt of medical invalidation retirement claims, the

competent authorities will not be able to process it straightaway and some more time may, in the process, be consumed. They have to make a reference to the appropriate medical authority and that medical authority must necessarily be provided for time to examine and consider the issue relating to the ability of one to continue in service of the State any further or not. Therefore, it might take sometime for the competent medical authority to assemble, assess and then arrive at any such conclusion. Therefore, the date of assessment of the Medical Authority, which tenders its opinion, what ultimately matters and of crucial significance with regard to the incapacity of the individual to continue in service or otherwise. In the instant case, as we have noticed, the Medical Board tendered its opinion on 14.12.2011, whereas it has translated itself into a reality six and half months later by actual retirement of Sri Chandmal on 30.06.2012. Therefore, when the left over service of Sri Chandmal is reckoned as of 14.12.2011, the infirmity pointed out that he fell short by three months when reckoned so on 30.06.2012 becomes unsustainable. The gap in between 14.12.2011 and 30.06.2012 being more than six months, it is obvious that if the left over service is reckoned with reference to 14.12.2011, the case of Sri Chandmal would not have suffered any such disability. For the aforesaid reasons, we find no irregularity or illegality in the exercise of jurisdiction carried out by the Tribunal and accordingly, we dismiss the Writ Petition at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

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