

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3160 of 2012

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Nawal Kishore Sharma S/O Late Chhotu Singh R/O Shayam Nagar Niwas At
Mohalla- Manpur, Lokhibad, P.O.-Buniyadganj, P.S.- Gaya Mufassil, District-
Gaya

... .. Petitioner/s

Versus

1. Union Of India, Government Of India, Pariwahan Mantralaya, Transport Bhawan, Ministry of Shipping and Transport Corporation Of India, New Parliament House, New Delhi - 110001
2. The Shipping Corporation Of India Through Its Chairman Government Of India Enterprises 16th Floor, Shipping House, Madam Cama Road, Mumbai-21
3. The Chairman, Shipping Corporation Of India Government Of India Enterprises 16th Floor, Shipping House, Madam Cama Road, Mumbai-21
4. P and D Director, Administration Department Shipping Corporation Of India Government Of India Enterprises, 16th Floor, Shipping House, Madam Cama Road, Mumbai-21
5. Vice President Crew Department Shipping Corporation Of India Government Of India Enterprises, 16th Floor, Shipping House, Madam Cama Road, Mumbai-21
6. The Shipping Master Ministry Of Shipping, Government Shipping Office, Nou Bhawan, 10 R.K. Marg, Ballard Estate, Mumbai-400038
7. The Director, Seaman Employment Office, Mumbai Government Of India, Ministry Of Shipping, Road Transport And Highway Department Of Shipping, Nou Bhawan, 10, R.K. Marg, Ballard Estate, Mumbai-400038
8. The Director General, Shipping House, Balchand Hirachand Marg, Mumbai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Senior Advocate Mr. Pramod Kumar Singh, Advocate
For the UOI	:	Mr. Anjani Kumar Sharan, ASG
For the SCI	:	Mr. Santosh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
CAV JUDGMENT

Date : 26-03-2019

Heard the parties.

In the present case, the petitioner has made a prayer for
quashing the order dated 07.10.2011 passed by Vice-President



(FPC), Shipping Corporation of India, whereby and whereunder the Shipping Corporation of India has refused to grant disability compensation to the petitioner (Annexure 12) and further made a prayer that a writ of mandamus be issued to the respondents to make payment to the petitioner by way of compensation for the following amount (a) 100% disability compensation to the tune of Rs. 14.85 Lacs or any other amount payable as per the fresh agreement after 31.03.2010 (b) pecuniary damages caused to the petitioner due to permanent disability resulting in loss of earning capacity as 10 years of service was still remained before the petitioner was declared unfit for the work of Seaman (c) Rs. 3,000/- per month which is being incurred by the petitioner for his medical treatment every month to which he is entitled to recover every month throughout his life (d) payment of statutory interest to which he is entitled as the payment of compensation has become due from 18.03.2011 i.e. the date from which he has been declared permanently unfit by the competent authority. He has further made a prayer for quashing the order dated 12.04.2011 passed by the Director, the Seaman Employment Office, Mumbai, Government of India (Annexure 9) whereby and whereunder the petitioner has been disengaged on medical ground from the sea services on account of permanent disablement. He has further made a prayer



to issue a writ of mandamus commanding and directing the respondent Authorities to create a supernumerary additional post for the petitioner and provide financial benefit such as salary etc. till the age of superannuation. He has also made a prayer to grant employment to his son by way of compensating benefit.

The short facts of this case is that petitioner joined the Offshore Department of Shipping Corporation of India in 1988 having registration no. BE45769 in the roster of Shipping Corporation of India and he continued to discharge the duty in the Offshore Department, but he made an application for transfer to the Shipping Corporation of India to SCI's Foreign Going Seaman Roster and for that he has tendered resignation, which was accepted and, accordingly, the petitioner stood released from the Offshore Services w.e.f. 19.08.1996. The aforesaid resignation was accepted vide letter dated 20.08.1996 in which it has been mentioned that the application filed by the petitioner vide letter dated 19.08.1996 (Annexure 1) tendering resignation from the SCI's Offshore Fleet Service and requesting for immediate release and, accordingly, the petitioner was released from the SCI's Offshore Fleet Service w.e.f. 19.08.1996 and the copy was endorsed to the Main Fleet Department for their information and necessary action with regard to his induction on SCI's Foreign



Going Seaman's Roaster through the Seaman's Employment Office, Mumbai and, accordingly, copy was also addressed to the Director, Shipping Corporation of India vide letter dated 27.07.1996 informing recommendation of the case of the petitioner for induction in SCI's Foreign Going Seaman's Roaster and requesting for needful act in the matter. Accordingly, the petitioner was transferred from Offshore Fleet Services to the SCI's Foreign Going Seaman's Roaster and for that the petitioner was issued a fresh registration book dated 06.04.1990 (Annexure 2) and after that he remained attached with SCI's Foreign Going Seaman's Roaster since the year 1997. The petitioner was discharging duty in the Foreign Going Vessel traveling to many foreign countries starting from Mundra Port at Gujarat and finally he began to perform his duty in Vessel known as Rajiv Gandhi Vessel. It will be relevant to mention that certain service conditions have been fixed on the basis of settlement in between Indian National Ship Owners Association & another and the Union of India & others in view of the order of High Court of Judicature at Bombay in Writ Petition No. 2375 of 2007 governing the condition of service of Foreign Going / Home Trade / Offshore Petty Officers. The Agreement is effective during period 01.04.2006 to 31.03.2008 and from 01.04.2008 to 31.03.2010 and, thereafter, until revised by



a fresh Agreement. This Agreement decides the condition of service including the aspect of the matter of the compensation on account of disability compensation or severance compensation.

Clause 21 of the Disability Compensation, which part of Annexure 3, stipulates that from 01st April, 2006 the compensation payable to Foreign Going / Home Trade / Offshore Petty Officers will be as follows:

(a) death compensation – Rs. 12.85 Lacs.

(b) 100% disability compensating – 14.85 Lacs.

In case of Petty Officers declared partially incapacitated whilst in employment above disability compensation shall be paid on proportionate basis. This Death & Disability Compensation shall not be paid if the death and/or disability has resulted due to the Petty Officer's own willful act.

Clause 25 of the Agreement (Annexure-3) deals with severance compensation, which is as under:

“With effect from 01/04/2006, a Rating borne on a Company's Roster continuously for a period of not less than 5 years if declared permanently medically unfit for sea service by Company's Medical Officer, severance compensation to be paid such Rating as under.”

For Ratings below age of 55 years :



@ 3 months' Basic Wages per year of aritcleed service including appliable leave periods on Company's vessels and @ 1 ½ months' Basic Wages per year of prospective service subject to a minimum compensation of Rs.2,75,000/-.

For Ratings between age of 55 to 58 years :

@ 3 months' Basic Wages per year of prospective service subject to 4 months Basic Wages of Compensation of Rs.1,75,000/- whichever is higher.

For Ratings above age of 58 years :

@ 3 months' Basic Wages per year of prospective service subject to 4 months Basic Wages or Compensation of Rs. 1,25,000/- whichever is higher.

The above provision of compensation will not be applicable to a rating dealt with under the provisions Death & Disability Compensation.

On 18.09.2009, the petitioner, before signing Onshore for Foreign Going Rajiv Gandhi Vessel, gave a medical test, as per the statutory provision, conducted by the Marine Medical Services in which he was found medically fit so as to proceed in the Vessel for discharging the official duty. The petitioner was put to examination of entire body parts such as eyes, ears, nervous system, cardio vascular system and all were found to be normal.



Accordingly, the medical report dated 18.09.2009 (Annexure-4) reflects that the petitioner was completely well in physical health to attach with foreign going Vessel, after that the petitioner had executed the agreement for employment of Seafarer for Onshore duty (Annexure-5).

In the Agreement the details of employer name and details of Seafarers have been incorporated in the Articles of Agreement for Employment of Seafarers in which the Shipping Corporation of India Ltd. has been shown to be Employer and the present petitioner has been shown to be an Employee. Column 7 in the right hand mentioned CDC date of issue/expiry: 14/10/1998/ 05/07/2016 and Item No. 9 in the right hand mentioned PP date of issue/ expiry : 26/11/1996/ 25/11/2016.

The Agreement has been executed and signed by the petitioner on 18.06.2010. The petitioner was attached with crew in-charge and was working in the Engine Room of the Ship. The main work of the petitioner was cleaning the engine, filling oil in the generators, cleaning of tanks, boiler, filling of chemicals and acids in the pipe lines, main engine cleaning in which the gas is filled up, pre fire room oil gas bottom oil cleaning, gas painting, filling fresh water generator plate cleaning with acid lue oil plate cleaning, acid mixing works. Those works were very harmful and



hazardous to the health of the petitioner and as the result due to direct contact of hazardous acid and harmful gas, the petitioner got ill and complained pain in the abdomen, swelling in the right leg and difficulty in breathing. Accordingly, the master of the Vessel sent the petitioner to Ashore at Mundra Point for medical treatment. On the advice of the Port Medical Officer, the petitioner was sent, with the assistance of the local agent of respondent no.2, for further investigation (X-ray) and to consult with the physician. The Shore Medical Officer advised the petitioner for hospitalization and, accordingly, the petitioner was signed off on 18.06.2010 and was admitted at Sterling Hospital, Mundra on the same day where the petitioner was diagnosed to be suffering from Dilated Cardiomyopathy (heart ailment) and in order to save his life, the petitioner on his personal arrangements came to Mumbai referred to Company's Medical Officer and he was admitted in the hospital and remained in the medical treatment until 18.03.2011 and the petitioner was declared permanently unfit for Sea service (Annexure-22). The Official Log Book Entry (Annexure-6) speaks as follows: This is to place on records that at date, time & place mentioned herein that Mr. N.K. Sharma, ERS, CDC No.:BY-61840, reported for Cough, Abdomen pain, Swelling on right leg & difficulty in breathing. Accordingly, sent him for Medical



treatment Ashore at Adani, Mundra Port. Medical Officer at Adani Port advised for further investigation/check ups, X-Ray and also to consult Physician. He was sent to Shore Medical Officer as advised by the Adani Port Medical Officer. The Medical Officer Ashore advised him for the admission in the Hospital and made him unfit for duty. Accordingly, he has been signed off on Medical grounds w.e.f. 18.06.2010 for further medical treatment. The doctor, namely, S. S. Shetty of Shipping Corporation of India vide letter dated 18.03.2011 (Annexure 8) declared the petitioner permanently unfit for sea service due to reason that he was suffering from Dilated Cardiomyopathy. In pursuance of permanently unfit for sea service due to the heart disease declared by the doctor, the petitioner filed an application for disability compensation as payable to other similarly situated person attached with seaman, Shipping Corporation of India. He sent several representations requesting for the disability compensation on account of permanent disqualification for the sea service and, ultimately, Shipping Corporation of India vide letter dated 07.10.2011 (Annexure 12) rejected the claim to grant disability compensation but only paid the severance compensation of Rs. 2,75,000/- having been recorded that the petitioner has been declared permanently unfit for sea service due to the proven



organic disease, he is entitled to receive severance compensation as per Clause 25 of existing NMB Agreement reached between INSA and Seaman's Union dated 15.02.2008 at the instance of Hon'ble High Court of Mumbai as the petitioner has been declared unfit for sea service due to heart problem (organic ailment) he is entitled to receive severance compensation amounting to Rs. 2,75,000/- and further held that petitioner is not entitled to receive disability compensation since same become payable only in case a sea man becomes incapacitated as a result of injury. It has been mentioned that Clause 5.9.F (ii) of the Agreement for entitlement of 100% disability compensation reads as under:

"A rating on being medically unfit for sea service at sea as a result of injury whilst in employment shall be paid 100% compensation."

On that basis, he refused to pay the disability compensation and requested the petitioner to accept the severance compensation of Rs. 2,75,000/-. The petitioner challenged the action of the respondent. In the first instance the company has taken a plea of territorial jurisdiction, which was accepted by this Court, but, ultimately, the matter has been remanded back by Hon'ble the Supreme Court for consideration on merit vide order dated 07.08.2014 passed in Civil Appeal No. 7414 of 2014.



Learned counsel for the petitioner has submitted that on account of medical disability, he has been declared to be permanently unfit for sea service and, as such, he will fall under the category of disablement compensation not under the category of severance compensation and he is entitled for the compensation as per the disability compensation for Rs. 14.75 Lacs and the payment of Rs. 2,75,000/- is nothing but have acted illegally in depriving the substantial amount, which the petitioner is entitled. In alternative he has submitted that petitioner is entitled to rehabilitation in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47(1) of the said Act reads as follows:

“No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.”



So in view of the aforesaid provision, the petitioner is entitled to a matching suitable post till reaching the age of his superannuation. The provisions of the Act are equally applicable to the Shipping Corporation of India and instead of paying the meager amount, they should have created the supernumerary post and should have posted a matching place till his superannuation. In support of his submission, he has placed reliance on the judgments reported in *2008 (4) PLJR 152 (SC)= (2008) 1 SCC 579 (Bhagwan Dass Vs. Punjab State Electricity Board)*, *(2013) 7 SCC 243 (Anil Kumar Mahajan Vs. Union of India and Ors.)*, *(2003) 4 SCC 524 (Kunal Singh Vs. Union of India and Anr.)*, *(2016) 7 SCC 761 (Jeeja Ghosh and Anr. Vs. Union of India and Ors.)*. In view of the aforesaid decisions, the petitioner is entitled to the benefit of rehabilitation by adjustment by creating supernumerary post. Learned counsel for the petitioner has submitted that this Court must interfere with the order dated 07.10.2011 passed by Shipping Corporation of India.

The Shipping Corporation of India has filed the counter affidavit. It has been taken a plea that petitioner was a contractual employee and is not covered by the provision of Disability Act. He has placed reliance on the Final Agreement dated 15.02.2008 (Annexure R-1) and submits that the Agreement is effective from



01.04.2006 to 31.03.2008 and from 01.04.2008 to 31.03.2010, until further fresh agreement. As per the terms and conditions of the Agreement, the period of service automatically would come to an end after expiry period of agreement. He has submitted that Clause 25 of the said Agreement applies not clause 21 of the agreement as disease was developed on account of use of illegal liquor, which caused him to heart disease on that account he has been declared unfit to discharge the duty in Sea and his case would fall under Clause-25.

He has further submitted that he has suppressed the facts of his ailment as he was suffering from such disease for last 10 months on account of excess consumption of the alcohol. It has further been submitted that the petitioner had suppressed the material fact before taking the employment on MV Rajiv Gandhi and by giving wrongful declaration about his health condition in pre-sea joining, the medical examination dated 18.09.2009, under self declaration column wherein, in the medical history, the petitioner has declared that he was not addicted to alcohol, having no any heart related disease and any mental disorder, whereas from the medical report dated 23.06.2010, it appears that petitioner was suffering from breathlessness since last 8-10 months. He has further submitted that the period of the registration



of the petitioner has come to end on 25.11.2016. He has further submitted that his case is covered by Clause 25 and not by Clause 21 of the Agreement. Clause 21 applies to those persons who received the injuries that makes the persons 100% disabled and unfit for the work to discharge the Sea service. Counsel for the petitioner, in reply, has submitted that even if there is an Agreement but statutory provision of Disabilities Act would Act has overrinding affect and the petitioner will be entitled to the benefit as provided under Section 47 of the Disability Act by way of rehabilitation of the petitioner by creating the supernumerary post. Learned counsel for the petitioner has submitted that they never took this ground, ever of the consumption of excess liquor is the cause of disease. Learned counsel for the respondents has submitted that the Agreement (Annexure-R-2) is in between the employer/employer's agent and Seafarer about the service condition.

Learned counsel for the petitioner has submitted that in the impugned letter, there is no such stipulation that the petitioner has developed heart disease on account of excess consumption of the liquor and it has only mentioned diagnosed to be suffering from heart disease was the cause of disengagement, as such, the respondent cannot introduce the new plea through the counter



affidavit as the impugned letter will be looked from the angle reasons mentioned therein, can not be supplemented by the statement made in the counter affidavit. In support of this plea, the petitioner has placed reliance on the judgment reported in ***AIR 1978 SC 851 (Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi)***.

It has further been submitted by the respondents that earlier the petitioner was appointed on permanent employment and, later on, he was on contractual appointment, which is reflected from the letter dated 27.07.1996, which itself speaks that the petitioner voluntarily resigned from permanent service in order to join Sea service for foreign tour and, as such, he cannot claim the protection under Section 47 of the Disability Act.

Having considered the rival submissions of the parties, this Court has to decide the issue as to whether the petitioner will be entitled for compensation in terms of Clause 21 of the Agreement, which deals with Disabilities Compensation or will be entitled for compensation in terms of Clause 25, which deals with Severance Compensation. In alternative, whether he will be entitled for rehabilitation in terms of Section 47 of the Disability Act. Further the plea can be allowed to be introduced that this heart disease had developed on account of consumption of excess liquor.



In the present case, first this Court will decide as to whether the petitioner is entitled to relief in terms of Section 47 of the Disability Act. While deciding this issue, it has to be examined the provisions of the Disability Act as to whether the petitioner would fall under the provisions of the said Act. Section 2 (i) of the Act, which defines disability means- (i) blindness; (ii) low vision; (iii) leprosy- cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness. Establishment has been defined in Section 2 (k) of the Act- “Establishment” means a corporation established by or-under a Central, provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government. Section 2 (l) of the Act defines hearing impairment. Section 2 (n) defines leprosy cured person. Section 2 (q) defines mental illness. Section 2 (t) defines person with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority. Section 2 (u) defines person with low vision. Section 2 (w) defines rehabilitation, which is as follows :- rehabilitation refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory,



intellectual, psychiatric or social functional levels. Chapter II of the Disability Act is a Chapter dealing with creation and functioning of Central Coordination Committee. Chapter III of the said Act deals with creation and function of the State Coordination Committee. Chapter IV of the Act deals with Prevention and Early Direction of Disabilities. This Chapter deals with the power and function of the Government and the local authorities to take certain steps for prevention of occurrence of disability. Chapter V of the Act deals with the duties of Government and local authorities to provide children with disabilities free education and to make schemes and programmes for non-formal education, research for designing and developing new assistive devices, teaching aids, set up teachers' training institutions to develop trained manpower for schools for children with disabilities, prepare a comprehensive education scheme providing for transport facilities, supply of books, educational institutions to provide amanuensis to students with visual handicap. Chapter VI of the Act deals with employment of disabled person and reservation of posts for blindness or low vision, hearing impairment, locomotor disability or cerebral palsy in the posts identified for each disability, the manner the employment can be offered to the disabled person. Chapter VII of the Act deals with aids and appliances to persons with disabilities,



schemes for preferential allotment of land for certain purposes and Chapter VIII deals with non-discrimination with disabled person while traveling through transport or in road. Section 47 of the Act deals with non-discrimination in Government employment. It will be relevant to quote Section 47 of the Act :-

“47. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section”.

Section 47 of the Act which postulates that the employer would not dispense with, or reduce in rank, an employee, who acquires a disability during the service. In the present case, the



emphasis has been given that Section 47 of the Act is squarely covered this case as while discharging the duty, the petitioner has suffered from Dilated Cardiomyopathy (heart ailment) and on that ground, he was declared permanently unfit for sea service.

The question would arise as to whether if an employee develops any type of occupational disease would be covered under the Disability Act or will be confined to those disability, which has been mentioned under the Disability Act as the Disability Act only recognizes the disease, which has been mentioned in Section 2 (i) of the Act and in different sub-sections of Section 2 of the Act. The disease mentioned in the Section 2(i) of the Act has been explained and the Disability Act only recognizes for granting employment to those, who suffers from disability mentioned in Disability Act. In such a situation, as to whether Section 47 of the Act would be applicable to those disease, which are not mentioned in the Disability Act. Certainly, this Act has been famed to provide the benefit to those persons suffering from the said disease and not to other diseases and that has not been treated to have been disability under the Disability Act and Dilated Cardiomyopathy has not been mentioned neither in different sections of the Disability Act nor has been given the benefit of employment to those suffering from that disease.



In such circumstances, this Court is of the view that Section 47 of the Act would not comprehend to grant the benefit of those suffering from the heart related disease. The judgment, which has been cited by the petitioner, has no application in the present case and will be applicable only to those persons, who have developed the disability, which has been mentioned in the Disability Act and cannot be extended to other diseases which does not come under the definition of Section 2 (i) of Disability Act and in this view of the matter, the submission made by the petitioner is rejected and the petitioner cannot be granted the benefit under Section 47 of the Disability Act.

Now, the question would arise as to whether the petitioner would be entitled to the benefit of compensation under Clause 21 of the Agreement, which deals with Death and Disability Compensation. In the event of death, compensation of Rs. 12.75 Lacs has been provided and for 100 percent disability, compensation of Rs. 14.75 lacs has been provided, whereas, Clause 25 of the Agreement deals with severance compensation which stipulates that the period not less than five year, if declared permanently unfit for sea service by the Company's Medical Officer, severance compensation is to be paid such rating as mentioned thereunder and, accordingly, he has been paid



Rs.2,75,000/- at it is apparently clear that the petitioner has entered into sea service in terms of the Agreement and in two places, two conditions have been mentioned, one dealing with 100% disability and in other place declaring the person medically unfit for the sea service. In the course of sea service, seafarer develops different types of disease and one of the disease heart disease has been published in Article by Dilipan Thomas in Marine Safety wherein scholar has identified seven dangerous diseases/disorders, seafarers should be aware of. First is the Handarm Vibration syndrome. Second is the Cardio-Vascular Disease, as this disease is relevant for the purpose of the case, it is quoted hereinbelow :

“Cardio- vascular disease is as commonly found in the seafaring community as in the general population. Various mortality studies have revealed that the percentage of seafarers who die because of cardio vascular diseases is because of common factors which are a combination of genes, age, smoking and other reasons influenced by conditions aboard such as stress, diet, lack of exercise etc. With minimum number of crew on board ships, multitasking, and lack of leisure and recreation facilities, high stress levels are prevalent among seafarers, which is a major cause for Cardio Vascular diseases”.

Third is the Musculoskeletal Disorder (MSD), Fourth is the Cancer, Fifth is the Sexually Transmitted Disease (STD), Sixth is the Pandemic and Epidemic Disease and seventh is the



Hypertension. All disease are the occupational disease caused to the seafarers on account of nature of job inside the ship.

In further literature of Markas Ollie Barker speaks as follows :-

“Seafarers experience a lot of job-related risk factors for cardiovascular diseases (CVD). Considering the healthy-worker effect due to the biennial pre-employment examination and the periodical medical fitness tests, a (slightly) elevated risk for CVD among seafarers is assumed compared to the reference population ashore. In seafaring, the most important, influenceable risk factors for CVD refer to the ship-specific stress situation, the malnutrition and the lack of exercises on board. Furthermore, the prognosis of acute severe CVD often depends on the measures taken in the first few hours after occurrence of the symptoms. Owing to the lack of health professionals on board and the limited treatment options of events at sea, effective cardio-pulmonary resuscitation is often delayed and the outcome of cardiac events is worse compared to that ashore”.

So, Dilated Cardiomyopathy is the condition of heart in which heart becomes enlarge and cannot pump the blood effectively. This is a coronary heart disease and is occupational disease infected to the seafarers.

The question would arise as to whether the petitioner would fall under Clause 21 or Clause 25 of the Agreement.



On interpretation of both the clauses, clause 21 is the effect of compensation is a disability compensation, which has been dealt with when the person became 100% disabled suffered during and in course of employment applied in a case when petty officer partially unfit while in employment, the compensation shall be paid to proportionate basis. The Death & Disability Compensation shall not be paid if the Death and/or Disability has resulted due to the petty officer's own willful act, whereas, in clause 25 of the Agreement is under the category where declared permanently medical unfit for the sea service. Two phrases have been mentioned in two clauses. In Clause 21, it stipulates disability which incapacitated the petty officer in a way of causing disability during employment. It means that the person has been incapacitated in the term of disability, but in Clause 25 of the Agreement is specifically deals with a situation that the person is permanently declared unfit for the sea service. So this clause deals with unfit for sea service. Here, there is nothing stipulating to disability of a person, which incapacitated in his performance in normal day to day affair. A person may be unfit for the particular job may be fit for another job as the person may not be able to perform the sea service but may be 100% fit for discharging duty for another job of general nature. The development of disease may



be disability for the performance of the sea service and, on the other hand, it may not be a disability to perform the other nature of job. In such circumstances, it is very difficult to accept the plea of the petitioner that the petitioner would fall under the category of Clause 21 of the Agreement as the petitioner has been declared unfit for the sea service, but he has not been declared as a disabled person for performance of another nature of job and day to day his normal chore.

In this view of the matter, this Court does not find any substance in the argument of the petitioner as well as no merit in the present case and, accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	NAFR
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