

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No. 300 of 2016

Ex LAC Sivan Nainar (711357 R) Appellant/Petitioner

-vs-

- 1.Union of India
rep. by Secretary to Government
Ministry of Defence,
New Delhi.
 - 2.Air Officer Commanding,
Airforce Record Office,
Subrato Park,
New Delhi 110 010.
 - 3.The Commanding Officer,
No.7, Airforce Hospital,
Nathasing Road,
Uttarpradesh State.
 - 4.The Senior General Manager,
Heavy Vehicles Factory,
Avadi,
Chennai 600 054.
- Respondents/Respondents

Writ Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.21328 of 2008 dated 08.06.2010 on the file of the High Court of Judicature at Madras.

Prayer in WP.No.21328 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issue of Writ of Certiorarified Mandamus to call for the records from 3rd respondent relating to the impugned order bearing No.AFRO Signal No.PRD/67 dated 25.03.1997 and direct the Respondents to provide the petitioner alternative employment with pay Protection and other benefits as per the provisions of Sec.47 of

the Persons with disabilities (Equal Opportunities) Protection of rights and full participation) Act 1995.

For Appellant : Mr.S.Ayyathurai
For Respondents : Mr.A.Murugan
Central Government Counsel

JUDGEMENT

[Judgement of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal is filed challenging the order passed in W.P.No.21328 of 2008. The Writ Petitioner is the appellant before this Court. The facts necessary for disposal of the appeal is briefly narrated herein below.

2.On 28.10.1991, the appellant was enrolled into the Indian Air Force, hereinafter referred to as the IAF. Thereafter by order dated 31.03.1997 the appellant was discharged from the services of the IAF as he was found medically unfit. However while discharging him from service it was made clear that the appellant was fit for Civil employment. The appellant had rendered a total service of 5 years and 32 days. Infact on 25.10.1993, he was placed on Low Medical Category CEE (Psy) for the disability of Schizopherinia. Thereafter, once again on 29.10.1994 he was placed before the Invalidating Medical Board who assessed his disability as Affective Psychosis at 70% for 2 years and had clearly opined that the disability could not be attributed to his service with the IAF.

3.It appears that, meanwhile, the appellant had applied and was appointed as an Assistant Cashier-cum-Supervisor under the Ex-serviceman category with the 4th respondent. The 4th respondent had insisted upon the appellant obtaining his discharge certificate. The appellant had also made a request to the respondents herein to grant him a disability pension as he satisfied the criteria eligibility. The disability pension when sanctioned was also required for submission before the 4th respondent.

4.On the request of the appellant the IAF had granted him a certificate clearly mentioning that the said discharge certificate was not one falling in the category of Ex-serviceman. It was indicated that the appellant has been discharged as he was medically unfit for further service. However, it was clearly mentioned that the appellant was fit for Civil employment. Despite producing this certificate the

4th respondent had proceeded to terminate the service of the appellant stating that the appellant who was overaged had been granted age relaxation considering the fact that he had applied under the category of Ex-serviceman. Once he is unable to produce proof to show that he is an Ex-serviceman then he would fall under the general category in which even he would be overaged. The 4th respondent had also terminated his service after issuing the showcause notice.

5. After being dismissed from service by the 4th respondent, the appellant had made a request to the 3rd respondent to issue him with a duplicate discharge certificate. Since there was no response the appellant had filed W.P.No.21328 of 2008 for the following relief:

"issue a Writ in the nature of Certiorari/Mandamus after calling for the records from the 3rd respondent relating to the impugned order bearing No.AFRO Signal No.RRD/67 dated 25.03.1997 quash the same and direct the respondents to provide appellant alternative employment with pay protection and other benefits as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

6. The said Writ Petition was dismissed by the learned single Judge. Challenging the same the appellant is before this Court.

7. Heard the counsel on either side.

8. Admittedly the appellant had been discharged from the services of the IAF by order dated 31.03.1997 as he was found medically unfit for service in the Indian Air Force. As per Rule 153 of the Pensionary Regulations of Indian Air Force, 1961, the primary condition for the grant of disability pension is as follows:

"(a) Disability must be either attributable to or aggravated by service.

(b) Degree of disablement should be assessed at 20% or more."

9. Therefore, not only should the degree of disability be more than 20%, it should also be attributable or aggravated by the service in the IAF. The Medical Board has assessed the appellant's disability and clearly opined that it is neither attributable nor aggravated by IAF service and therefore the appellant cannot be considered for grant of disability pension.

10. It is not in dispute that the appellant was enrolled into the services of the IAF as a combatant and he had been performing his duties for a period of 5 years and 32 days. The disability assessed by the Invaliding Medical Board was 70% for

2 years. Though the degree of disability was more than 20% the appellant was denied the disability pension only on the ground that the disability was not attributable or aggravated by his service in the Indian Air Force. Therefore as per the provisions of Rule 153 the appellant did not qualify for grant of disability pension.

11.It is to be noted that the appellant has lost his employment with the 4th respondent only on the ground that he was not an Ex-serviceman though initially they had admitted him. This Court is of the view that the 1st and 2nd respondent ought to consider the case sympathetically taking into account the degree of disablement as assessed by The Board and consider the appellant for disability pension. The appellant shall make a representation to the 1st respondent through the 3rd respondent for grant of disability pension taking into consideration the fact that his disability was assessed at 30%. On receipt of the said representation the respondents shall sympathetically consider the request for disability petition to the appellant. The said exercise shall be completed within a period of 3 months from the date of receipt of a copy of the Judgement.

The Writ Appeal is disposed off on the above lines. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government, Union of India,
Ministry of Defence, New Delhi.
2. Air Officer Commanding,
Airforce Record Office, Subrato Park, New Delhi 110 010.
- 3.The Commanding Officer,
No.7, Airforce Hospital,Nathasing Road, Uttarpradesh State.
- 4.The Senior General Manager,
Heavy Vehicles Factory, Avadi, Chennai 600 054.

AKM/30.10.19/4P-4C /

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