2019 INSC 1220

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4714-4715 OF 2012

UNION OF INDIA & ORS. .....APPELLANT(S)

VERSUS

V.R. NANUKUTTAN NAIR .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1) The challenge in the present appeals is to the orders passed by the Armed Forces Tribunal, Regional Bench, Kochi[1] on 26th October, 2010 and April 12, 2011 holding that the respondent[2] is entitled to service element of disability pension from the date of discharge.

2) The facts in brief are that the applicant was discharged on 30th June, 1978 after completion of 10 years and 169 days of service. He was in low medical category since 1970. He was granted disability pension @50% on account of suffering from Viral Myocarditis post discharge, but the applicant was denied the benefit of service element of disability pension. It is the denial of this service element which led the applicant to invoke the

1 for short, 'Tribunal'
2 hereinafter referred to as the 'applicant'

jurisdiction of the Tribunal.

3) The stand of the appellants before the Tribunal was that the applicant is not entitled to service element of disability pension as he was released on expiry of engagement before completion of pensionable qualifying service of 15 years and was not invalided out of service on account of disability, though he has been paid service gratuity and death-cum-retirement gratuity.

4) The learned Tribunal relied upon Regulation 101 of Navy (Pension) Regulations, 1964[3] to hold that since applicant has been invalided from service on account of disability, therefore, he is entitled to full disability pension including the service element. The reliance was also placed upon Regulation 107 of the Regulations which contemplates that where the individual has not rendered sufficient service to qualify for service pension, the personnel will be entitled to proportion of the minimum service pension appropriate to the individual's ranks and group. It is the said order passed by the Tribunal which is the subject matter of challenge in the present appeals.

5) Ms. Divan, learned Additional Solicitor General for the appellants argued that the applicant was not boarded out of service on account of disability but on account of completion of the engagement. The learned ASG traced the history of the grant of disability pension. It is submitted that disability pension was

3 for short, 'Regulations'

initially granted when a member of the Armed Forces could not be retained in the Force on account of disability, attributed to or aggravated by military service. Such course was creating hardship to the personnel boarded out on account of injury suffered due to military service. Therefore, the concept of disability pension was introduced. The disability pension has two components i.e. service element and the disability element. The disability element is related to disability whereas; the service element is to be granted as per the rules and regulations applicable. The qualification service for earning pension is 15 years; therefore, an individual who has not rendered 15 years of qualifying service and was not boarded out on account of disability is not entitled to service element of pension.

6) It is argued that Regulation 105B of the Regulations would be applicable if an individual is not invalided out of service on account of disability and has not opted for continuation in the Armed Forces. The said Regulation provides that on completion of period of engagement, apart from service pension admissible which is on completion of 15 years of service, a disability element is also granted.

7) It is argued that initially, the Regulations contemplated 10 years of engagement with another 10 years as reservist. Therefore, an individual would not be entitled to pension merely upon completion of 10 years of active service but would become entitled to service

pension upon completion of 15 years of service including 5 years as reservist. It is argued that such situation has undergone change when on 3rd July, 1976, the Government of India contemplated 10 years as initial period of engagement, with the option of re-engagement of the existing sailors on completion of 10 years of engagement. It is argued that the period of engagement in case of the applicant was 10 years approximately, therefore, he has not completed the qualifying service of 15 years in terms of Regulation 78 of the Regulations. Thus, he is not entitled to service element as the same is payable only after completion of 15 years other than to an individual who is boarded out from service on account of disability. The reliance is placed upon a judgment of this Court reported as ***T.S. Das & Ors.*** v. ***Union of India & Anr.***[4] wherein, the Court held as under:

> "29. As aforesaid, on introducing the new policy on 3-7-1976, the Fleet Reserve was discontinued and instead the Sailors in service at the relevant time were given an option to continue in active service for a further term of 5 years. Some of the Sailors opted to continue till completion of 15 years, who, then became eligible for "service pension" having qualifying service.
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> 30. The quintessence for grant of reservist pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years "each". Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the Sailor concerned cannot claim benefit under Regulation 92 for grant of reservist pension. For, to qualify for the reservist pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6

4 (2017) 4 SCC 218

> of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of reservist pension. …"

8) On the other hand, learned counsel for the applicant supported the order of the Tribunal to contend that Regulation 105B of the Regulations was introduced to clarify that the benefit of disability element who has completed the period of engagement shall be in addition to the service pension. The provision was to grant benefit and not to deny the benefit of the service element. It was inserted to avoid payment of service element twice i.e. as part of disability pension and again as service pension. In respect of an individual who has either been invalided out of service or has completed less than 15 years of qualifying service for pension, the disability pension including service element is computable and payable in terms of Regulation 107 of the Regulations. Such Regulation deals with an individual who has not rendered sufficient service to qualify for service pension. The service element is granted in proportion to the minimum service pension appropriate to an individual's rank and group, in which the number of his completed years of qualifying service bears to 15, but in no case less than two-thirds of the minimum service pension. Such Regulation would be rendered otiose, if the argument of the appellants is to be accepted.

9) The relevant clauses from the pension Regulation read as under:

“78. Minimum qualifying service for pension. - Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years.

xx xx xx

101. Conditions for the grant of disability pension. – Unless otherwise specifically provided, a disability pension may be granted to a person who is invalided from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty per cent, or over.

101A. Individuals discharged on account of their being permanently in low medical category. – Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment suitable to their low medical category could be provided shall be deemed to have been invalided from service for the purpose of the Rules laid down in Appendix V of these Regulations.

101B. Reservists discharged on account of being placed in a low medical category. – (1) A reservist who is placed permanently in a lower medical category (other than ‘E’) and is discharged from the Fleet Reserve on that account will be deemed to have been invalided out of service for the purpose of the rules laid down in Appendix ‘V’ of these regulations.

(2) An individual who is found to be ineligible for the grant of disability pension shall be paid service gratuity as admissible under regulation 89.

xx xx xx

105B. Disability at the time of discharge. – (1) A sailor, who is discharged from service after he has completed the period of his engagement and is, at the time of discharge found to be suffering from a disability attributable to or aggravated by naval service may at the discretion of the competent authority be granted in addition to the service pension admissible, a disability element as if he has been discharged on account of that disability.

xx xx xx

(3) The provisions in sub-regulations (1) and (2) shall also apply to sailors discharged from service on completion of the period of their engagement and who have earned only a service gratuity.

xx xx xx

107. Amount of disability pension. – In cases where the accepted degree of disablement is twenty per cent, or over, the monthly rates of disability pension consisting of service and disability elements, shall be as follows, namely:

(1) *Service element*	
(a) Where the individual has rendered sufficient service to qualify for a service pension.	Service pension admissible in accordance with his rank and group last held, and length of service.
(b) Where the individual has not rendered sufficient service to qualify for service pension.	(i) If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority, the minimum service pension appropriate to his rank and group.
	(ii) In all other cases, that proportion of the minimum service pension appropriate to the individual's rank and group which the number of his completed years of qualifying service bears to fifteen but in no case less than two-thirds of the minimum service pension.

Provided that for the purpose of this clause, service rendered before the age of seventeen years shall be treated as qualifying service.

Explanation. – The service element shall be assessed –

(i) in the case of ordinary seaman or equivalent, on the basis of the minimum service pension laid down for able seaman or equivalent of the same group.

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> Appendix V – Nature, Assessment and Attributability of Disability and Entitlement to Disability Pension.
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> 2. Invalidment from service is a necessary condition for the grant of disability pension. An individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalided from service. Sailors who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have bene invalided out of service."

10) We have heard learned counsel for the parties and find no merit in the present appeals.

11) The disability pension has two elements: disability element and the service element. The disability element is in relation to the extent of disability suffered by an individual whereas the service element is to be granted keeping in view of rules and regulations. Service pension and service element are synonymous. The expression service element is used in the case of payment of disability pension whereas, service pension is used for the pension payable on account of services rendered.

12) In the present case, we are concerned with the situation where the individual has completed his period of engagement in the low

medical category but not the qualifying service for pension in terms of Regulation 78 of the Regulations. The question is whether the applicant is entitled to service element of disability pension corresponding to the number of years he has put in the service of Navy.

13) We do not find any merit in the argument that as per Clause (1) of Regulation 105B, the service element is admissible only if the following conditions are satisfied:

(i) That discharge was on account of disability attributable to or aggravated by Naval Service.

(ii) The individual is entitled to service pension only on completion of 15 years of service in terms of Regulation 78.

14) In terms of Regulation 101A of the Regulations, an individual who is placed in lower medical category and is discharged because no alternative employment suitable to his low medical category and an individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalided from service in terms of Clause 2 of Appendix V of the Regulations. Therefore, in terms of such Regulations, individuals who are invalided out of service on account of disability for the reason that no alternative employment suitable to their low medical category or an individual who at the time of his release under the Release Regulations is in a lower medical category, are entitled to disability pension.

15) Clause 1 and 2 of Regulation 105B are applicable to sailors who are discharged from service on completion of the period of engagement and who have earned only a service gratuity in terms of Clause (3) of the said Regulation. Clause 1 pertain to the grant of service pension in addition to the disability element. Therefore, in terms of Clause 3, service element would be payable to an individual who has been paid service gratuity.

16) We find that the purpose of the Regulation 105B is to exclude dual payment of the service element of disability pension, when an individual is entitled to service pension as well. In the absence of such Regulation, an individual would be entitled to disability pension including the service pension. Therefore, the service element cannot be granted again as part of disability pension. It is to avoid the payment of service element twice over. The Regulation 105B has not used the expression 'on completion of qualifying service'. The interpretation as argued by the learned ASG leads to addition of words in Regulation 105B which is not permissible as the Regulations have to be interpreted harmoniously and not by adding words to the Regulations. A person who has completed the period of engagement is entitled to disability element apart from service pension. The expression 'service pension' admissible is not restricted to the qualifying service provided under Regulation 78. It is not for the Courts to remedy the defect in the Statute. The reference may be made to an early

judgment of this Court reported as ***Nalinakhya Bysack*** v. ***Shyam Sunder Haldar***[5], wherein it was held as under:-

> "9. …It must always be borne in mind, as said by Lord Halsbury in *Commissioner for Special Purposes of Income Tax* v. *Pemsel* [LR (1891) AC 531 at p 549], that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the court cannot, as pointed out in *Crawford* v. *Spooner* [6 Moo PC 1: 4 MIA 179] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta* v. *Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co., Ltd.* [(1933) LR 60 IA 13; AIR (1933) PC 63] , for others than the courts to remedy the defect. In our view it is not right to give to the word "decree" a meaning other than its ordinary accepted meaning and we are bound to say, in spite of our profound respect for the opinions of the learned Judges who decided them, that the several cases relied on by the respondent were not correctly decided."

17) In another judgment reported as ***Petroleum and Natural Gas Regulatory Board*** v. ***Indraprastha Gas Limited & Ors.***[6], this Court held:

> "35. After so stating the Court has referred to the observations made by Lord Diplock in *Duport Steels Ltd.* [*Duport Steels Ltd.* v. *Sirs*, (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] wherein it has been ruled thus: (All ER p. 541 *h-j*)
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> > "… the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that inten-

5 AIR 1953 SC 148
6 (2015) 9 SCC 209

tion was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous *it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral*. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."

(emphasis supplied)

36. Recently, in *Sarah Mathew* v. *Institute of Cardio Vascular Diseases* [(2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , while interpreting Section 468 CrPC, the Court has opined: (SCC p. 99, para 45)

"*45*. It is argued that a legislative casus omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Coop. Housing Society* [*Shiv Shakti Coop. Housing Society* v. *Swaraj Developers*, (2003) 6 SCC 659] , *Bharat Aluminium* [(2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with

> other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case."
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> 38. We must take note of certain situations where the Court in order to reconcile the relevant provision has supplied words and the exercise has been done to advance the remedy intended by the statute. In *Surjit Singh Kalra* v. *Union of India* [(1991) 2 SCC 87] , a three-Judge Bench perceiving the anomaly, held: (SCC p. 98, para 19)
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> > "*19*. True it is not permissible to read words in a statute which are not there, but 'where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words' (Craies *Statute Law*, 7th Edn., p. 109). Similar are the observations in *Hameedia Hardware Stores* v. *B. Mohan Lal Sowcar* [(1988) 2 SCC 513 at pp. 524-25] where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See *Siraj-ul-Haq Khan* v. *Sunni Central Board of Waqf* [AIR 1959 SC 198 : 1959 SCR 1287].)"

18) It, thus, transpires that by judicial interpretation, words cannot be added to a statute, which would include the Rules, Regulations and Instructions issued under a Statute, as an excuse to give effect to

its plain meaning of the language of the regulations. If the legislature has left a lacuna, it is not open to the Court to fill it on some presumed intention of the legislature. But where the Courts find that the words appear to have been accidentally omitted, or if adopting a construction deprives certain existing words of all meaning, it is permissible to supply additional words but should not easily read words which have not been expressly enacted. The Court should construct the provisions harmoniously having regard to the context and the object of the statute in which a provision appears, to make it meaningful. An attempt must always be made so to reconcile the relevant provisions, so as to advance the remedy intended by the statute. Thus, it is not possible to read completion of qualifying service in Regulation 105B of the Regulations.

19) In view of the principles of interpretation relating to *Casus Omissus*, we find that a reading of the Regulations does not lead to an inference that the service element should be limited to an individual who has completed minimum 15 years of engagement. Regulation 78 cannot be read into Regulation 105B when no such qualification is provided in Regulation 105B.

20) Still further, the Regulation 107 providing service element in the event of an individual who has not completed the qualifying service will become otiose. A reading of all the regulations harmoniously and keeping in view the object of grant of disability

pension, we find that the interpretation which advances the object and purpose of the grant of disability needs to be accepted being a beneficial provision for a class of individuals who have suffered disability in the course of duty.

21) The quantification of disability pension in the cases of an individual, who has not completed qualification service is dealt with in Regulation 107. Sub-clause (a) of Clause (1) of Regulation 107 deals with the situation where the individual has rendered sufficient service to qualify for a service pension i.e. 15 years of service in terms of Regulation 78. However, sub-clause (b) comes into play where the individual has not rendered sufficient service to qualify for service pension. In cases where the disability was suffered while flying or parachute jumping, the minimum service pension is appropriate to his rank and group but in all other cases, the service pension is restricted to minimum of two-thirds of the minimum service pension. For such reason, the disability element would be in addition to the service pension by cumulative reading of Regulation 78, Regulation 105B and Regulation 107 of the Regulations. The service pension is to be assessed on the basis of the minimum service pension laid down for an able individual of the same group in Regulation 107 of the Regulations.

22) Learned counsel for the appellants refers to an order passed by this Court in ***Bhola Singh*** v. ***Union of India & Ors.***[7]. We find that

7 Civil Appeal No. 4486 of 2002 decided on 10th August, 2010.

this Court has not referred to Regulation 105B as well as Regulation 107 of the Regulations to maintain an order of the High Court to deny service element of pension to an individual who has completed the initial fixed period of 10 years. Since the appeal has been decided without any reference to statutory regulations, we find that the reliance of the appellants on the said order is not helpful to the arguments advanced. We find that the reliance on the judgment of this court ***T.S. Das*** is not tenable for the reason that it was not the case of grant of disability pension. It was the case of grant of special pension.

23) In view of the above, we find no merit in the present appeals, the same are dismissed. The appellants shall pay the arrears of service element preferably within a period of four months from today in terms of directions issued by the Tribunal.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
NOVEMBER 07, 2019.