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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJIV KHANNA; J., DIPANKAR DATTA; J.
CIVIL APPEAL NO. 1666 OF 2015; 20th March, 2024
SATYANAND SINGH *versus* **UNION OF INDIA & ORS.**

Compensatory jurisprudence – Case of wrong medical diagnosis causing premature discharge from service –In case of premature discharge from service of armed forces, extreme caution and care in ensuring correct diagnoses was required. The Armed Forces Tribunal (AFT) failed to observe that there is no medical literature to show that the appellant was suffering from AIDS defining illness. In spite of being aware of the adverse and pernicious impact on the appellant, respondents acted grossly careless and negligent. The appellant had submitted four diagnostic reports, showing that his CD4 cell count was above 300 cells/mm^3, as opposed to the respondents' 2003 Guidelines defining an AIDS illness to be one where the CD4 cell count is below 200 cells/mm3. The Medical Board, arbitrarily, wrongly and rejected the appellant's prayer on flimsy and wrong grounds by applying the 1992 Guidelines. Held, the appellant's reinstatement in service is not an available option now and also that direction for grant of pension, cannot be considered an equitable restitution of what the appellant has suffered by reason of psychological, financial and physical trauma, hence monetary compensation on account of wrongful termination of services is awarded to the appellant. *(Para 6, 7, 8, 9 & 23)*

For Appellant(s) Mr. Satya Mitra, AOR Ms. Kawalpreet Kaur, Adv. Mr. Umesh Kumar, Adv. Mr. Nayab Gauhar, Adv.

For Respondent(s) Mr. R. Bala, Sr. Adv. Mr. Rajesh Kr. Singh, Adv. Mr. Mohan Prasad Gupta, Adv. Mr. Sanjay Kr. Tyagi, Adv. Ms. Sweksha, Adv. Dr. N. Visakamurthy, AOR Dr. Arun Kumar Yadav, Adv. Mr. Debashish Mishra, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

THE CHALLENGE

1. The present civil appeal lays a challenge to the judgment and order dated 05th September, 2012 ("impugned judgment", hereafter) of the Principal Bench of the Armed Forces Tribunal at New Delhi ("AFT", hereafter), whereby the AFT rejected the appellant's prayer seeking reference of his diagnosis as AIDS inflicted, to a fresh Medical Board.

BRIEF RESUME OF FACTS

2. The factual matrix of the case, insofar as is relevant for the purpose of a decision on this appeal, is noted hereinbelow:

(i) The appellant was enrolled in the Indian Army on 30th October, 1993 as a Havaldar. He continued discharging his duties on a clerical post without impediment until the year 1999, when he began suffering from fever, headache and vomiting. For treatment he was referred to the Jabalpur Military Hospital. Here, the appellant tested positive for HIV.

(ii) On 9th January, 2000, the Army Headquarters issued a Notice ("Notice", hereafter) stating that all persons who are HIV+ve and are suffering from pulmonary or extrapulmonary tuberculosis, would be considered as AIDS cases.

(iii) Thereafter, on 20th August, 2001, the appellant developed similar symptoms yet again, for which he was referred to the Jabalpur Military Hospital. The doctors there prescribed certain medicines to the appellant, which he claims led to his developing double vision. The appellant was referred to the Command Hospital at Pune for further treatment.

(iv) In view of the appellant's ocular afflictions, the doctors, suspecting the same to be a symptom of neuro-tuberculosis, began treating him for the same. Vide Medical Report dated 14th September, 2001 ("Medical Report" hereafter), the appellant was reported to be suffering from *"AIDS defining illness in the form of neurotuberculosis"*, and thus was officially diagnosed with AIDS. The appellant was then recommended to be invalided out in the "P5" category. Per the medical categorisation of the Army, "P5" referred to those persons who were suffering from *"gross limitations in physical capacity and stamina".*

(v) As a consequence of the report dated 14th September, 2001, the appellant was referred to the Invaliding Medical Board ("IMB" hereafter), which confirmed his diagnosis of suffering from AIDS.

(vi) On 26th December, 2001, after 8 years and 58 days of service, at the young age of 27, the appellant was discharged from service under Rule 13 (3), Item III(iii) of the Army Rules, 1954[1] ("Rules" hereafter) on the ground of having been found medically unfit for further service.

(vii) On 23rd May 2003, the "Guidelines for Management and Prevention of HIV/AIDS Infection in the Armed Forces" ("2003 Guidelines" hereafter) came into force. In a shift from the Notice, the said policy included into its consideration the CD4 cell count of the personnel, and that the condition for invalidment would be, *inter alia*, a CD4 cell count below 200 cells/mm3.

(viii) The appellant approached the Madhya Pradesh High Court, seeking quashing of the discharge order dated 26th December, 2001 and reinstatement with all consequential benefits. A learned Judge of the High Court, *vide* order dated 20th April, 2006, allowed the appellant's writ petition.

(ix) However, in exercise of intra-court appeal jurisdiction, an Hon'ble Division Bench of the High Court *vide* its order dated 28th March, 2007 reversed the order under appeal. The Division Bench observed that in accordance with Para 355 (f)[2] of the Regulations for the Army, 1987 ("Regulations", hereafter), the appellant was not discharged solely on the ground of having contracted a sexually transmitted disease. The appellant's discharge from service was held to be valid on the ground that AIDS would incapacitate his physical capacity, thus coming within the ambit of Rule 13 of the Rules. An application for review of the said order was also dismissed *vide* order dated 27th August, 2007.

(x) The appellant challenged both the orders before the Supreme Court. A 3-Judge Bench of this Court *vide* order dated 01st April, 2009 allowed the appellant to withdraw his appeal, while directing that he could avail of the available statutory remedies.

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[1] An enrolled person under the Army Act who has been attested on the ground of being found medically unfit for further service could be discharged by the Commanding Officer, to be carried out only on the recommendation of an invaliding Board.

[2] "355. Contraction of sexually transmitted disease - The following principles will be observed in dealing with OR including reservists and non - combatants, who contracts sexually transmitted disease:
f) An OR is not to be discharged from service solely on account of his having contracted sexually transmitted disease. If, however, he has been absent from duty on account of sexually transmitted disease for a total period of four months, whether continuous or not, his case may be brought to the notice of the authority empowered to order his discharge from the service, for consideration as to whether he should be discharged from the service under the table annexed to Army Rule 13 item III if attested, and under item IV if not attested.

(xi) The appellant availed of his statutory remedy by making an application to the Director General Armed Forces Medical Service ("DGAFMS" hereafter) seeking a Review Medical Board. The DGAFMS, *vide* order dated 20th October, 2009, rejected the appellant's prayer on the ground that the criteria for discharge was satisfied in terms of the Army's prevailing policy at the time, i.e., the "Guidelines for Prevention and Control of HIV Infections in the Armed Forces" dated 30th November, 1992 ("1992 Guidelines" hereafter). Furthermore, the appellant was also denied disability pension, AIDS being categorised as a self-inflicted condition.

(xii) The order passed by the DGAFMS was subjected to challenge by the appellant before the AFT which, *vide* the impugned judgment, rejected his prayer on the ground that the Medical Report had concluded after sufficient investigation and detail that he was suffering from (i) CNS Tuberculosis and (ii) Immune Surveillance for HIV. The IMB, which confirmed the findings of the Medical Report, was held to have been rightly constituted with the required experts. The appellant argued that he was misdiagnosed with AIDS, his CD4 cell count being 379 cells/mm^3 till as late as 05.08.2012 as opposed to the benchmark of 200 cells/mm^3 set by the World Health Organisation. The AFT rejected this argument on the ground that such a CD4 cell count was marginal and would not entitle the appellant to be declared AIDS free, thus obviating the need for referring him to a Review Medical Board.

CONTENTIONS OF THE PARTIES

3. Learned counsel for the appellant, Ms. Kawalpreet Kaur, relied on the 1992 Guidelines to argue that in terms thereof, all personnel with HIV infection were to be retained in service, the only restriction on their employment being, *inter alia*, that they would not be posted to high altitude areas. Ms. Kaur further contended that there had been an error in diagnosis in the Medical Report itself, since the appellant never suffered from tuberculosis which was taken as a defining illness for AIDS. It was urged that the appellant was merely suffering from double vision, which cleared up by 15th November, 2001. However, the doctors misdiagnosed the appellant's double vision for a tuberculosis related symptom of blindness. Consequently, in view of the Notice, the appellant having been found to be both HIV+ve and suffering from tuberculosis, was invalided from service. Ms. Kaul further argued that as per the Army's 2003 Guidelines, the appellant was fit for service since his CD4 cell count remained above 200/mm^3 till as late as 2012. This defining indicator for AIDS was argued to have been erroneously disregarded by both, the IMB and the AFT. In support of the same, it was further argued that the appellant was asymptomatic till date, without undergoing any anti-retro viral therapy as would have been prescribed for a person suffering from AIDS; thus, establishing without a doubt, that the appellant never developed AIDS to begin with. Ms. Kaur concluded by arguing that the appellant's case was one of wrongful discharge, based on a wrong diagnosis.

4. *Per contra*, Mr. Balasubramanian, learned senior counsel for the respondents contended that the appellant had never been discharged solely on the basis of his HIV+ve status, the same being evident from his uninterrupted service from 1999 till April 2001. The doctors at the time, on the basis of their best professional judgment and giving due regard to the medical knowledge prevalent in 2001, diagnosed the appellant with neuro-tuberculosis, which led to a change in status of the appellant from HIV+ve to "AIDS related complex". It was further argued that the appellant responded well to anti-tuberculosis treatment, thus confirming the diagnosis of the time. It was further contended that his survival ought to be attributed to be a natural variation in the course of the disease rather than a misdiagnosis on the part of the medical professionals. With respect to the

appellant's allegation that his double vision was mistaken for blindness, Mr. Balasubramanian further argued that the appellant had placed no documents on record to prove such a claim, and that the tuberculosis diagnosis was made only after detailed investigations. It was also argued that AIDS would expectedly lead to a deterioration in the health of the appellant, which is why he was discharged under the P5 category, having been found grossly unfit for medical service.

ANALYSIS

5. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

6. The AFT, in the impugned judgment, has referred to extensive medical literature citing the hazards of HIV and how it can lead to a deterioration in the physical condition of those who get detected as HIV+ve. However, while the medical literature contemplates myriad infirmities which accompany such a disease and consequently render an individual unfit for military service, the AFT failed to observe that the appellant in the present case was not diagnosed with any such symptoms. The appellant was treated by the Command Hospital at Pune in 2001, and by the respondents' admission, successfully responded to the treatment administered. Nothing has been brought on record to indicate that the appellant was thereafter unfit to continue in service as a Clerk.

7. We have no doubt in our mind that this is a case of wrong diagnosis and false alarm with imperilling consequences for the appellant. The respondents' contention that doctors in 2001 have used their best professional judgment to opine that the appellant was HIV+ve, in our opinion, should be rejected, in the absence of any medical literature to show that the test results as per then prevailing medical standards justify the diagnosis that the appellant was suffering from AIDS defining illness. On the other hand, there are lapses galore on the part of the respondents. They were, in spite of being aware of the adverse and pernicious impact on the appellant, grossly careless and negligent.

8. The appellant was diagnosed with neuro tuberculosis, which diagnosis was without examination by a neurologist whose opinion, according to us, would seem to be elementary. The AFT's opinion that the need of the medical specialist was fulfilled by placing an oncologist on Board is something with which we cannot agree. The appellant while serving in the army was being prematurely discharged; thus extreme caution and care in ensuring correct diagnoses was required. The respondents have deliberately tried to cover up the wrong diagnosis in spite of the 2003 Guidelines and the test reports of the appellant. The respondents had the opportunity from 2007 onwards to rectify and correct themselves after the order of the single Judge of the High Court dated 20th April, 2006. The Medical Board, which was constituted upon the appellant availing the statutory remedy, arbitrarily, wrongly and in our opinion deliberately vide order dated 20th October, 2009 rejected the appellant's prayer on flimsy and wrong grounds by applying the 1992 Guidelines. Even disability pension was denied by categorising the appellant as suffering from AIDS, a self-inflicted condition.

9. Significantly, the appellant had submitted between the period of 2007 and 2012, as many as four diagnostic reports, showing that his CD4 cell count was above 300 cells/mm^3, as opposed to the respondents' 2003 Guidelines defining an AIDS illness to be one where the CD4 cell count is below 200 cells/mm^3.

10. The apathetic attitude of the respondents to the appellant's plight is evident in the repeated submission that has been made before all fora, i.e., the appellant's case had been re-examined several times and thus did not merit another look. It is borne out from

the record that other than the Medical Report, which the appellant alleges was made by a doctor who did not treat him, and the review of such report by the IMB, his case was never again considered on its merits. The dismissal of the appellant's application by the DGAFMS *vide* order dated 20th October, 2009 can only be called perfunctory at best, since it did not take into account any of the material subsequently produced by the appellant.

11. The respondents' submissions, as elaborate as they may be, in defence of the AIDS diagnosis which was used to discharge the appellant from service, are rendered unworthy of acceptance on the face of his existence today, as an asymptomatic HIV+ve individual without the intervention of any anti-retroviral therapy.

12. The severance of the employer – employee relationship can never be said to be an easy choice, for it not only results in the employee losing his livelihood, but also affects those who depend on him for their survival. And if the employer happens to be the Indian Army, the loss is even greater, since it has the effect of suddenly displacing a soldier from the regimented lifestyle of the military. The appellant, who was trained to live a disciplined life since the tender age of 19, was unnecessarily and without cogent reason thrust into civilian life with little warning or preparation. The psychological trauma that such displacement can bring about needs no elaboration. However, the cruel passage of time has unfortunately rendered the appellant's original hopes of reinstatement an unrealised dream.

13. The appellant, as an alternative relief, has consistently prayed for disability pension but was denied the same on the ground that the disease is self-inflicted.

14. At this juncture, we consider it apposite to refer to certain provisions of the Notice published by the Army:

"4. Pulmonary Tuberculosis and HIV infection will not be assessed separately for attributability / aggravation. HIV aggravation is a 'STD' and hence AIDS is self-inflicted, neither attributable nor aggravated.

5. The policy on awarding longevity and percentage of disability for HIV+ve service personnel brought before release medical Board is as follows :-

'As per existing instructions, JCOs/ORs or their equivalent in the Navy/Air Force placed in permanent low Medical category are permitted to continue in service only in case the Unit COs render a certificate to the effect that sheltered appointment shall be provided. Otherwise such individuals are brought before Release Medical Board for releasing from service. It is unlikely that HIV positive cases in perm low Medical Category would be given sheltered appointment and recommended for retention in service by unit cos'.

6. Following procedure will be followed in HIV+ve service personnel brought before Release Medical Board.

a) Longevity: By the time HIV+ve case is brought before Release Medical Board, it is likely that he had acquired the infection about 1-2 years earlier. Therefore, it is likely that he would develop AIDS within next 6-8 years. After development of AIDS the average life span is only 1-2 years. Therefore loading of age by 2 years at the time of Release Medical Board is considered appropriate.

b) Percentage of disability: In fact viral multiplication during this period is average and the immune system being systematically destroyed. Apart from infection, HIV+ve cases will suffer emotionally, psychologically and socially. Taking all these factors in consideration, 40% disability for *asymptomatic cases and upto 100% for symptomatic cases will be awarded."*

15. A perusal of the Notice reveals that in terms of Para 6A, a person who has been diagnosed as HIV+ve was expected to develop AIDS within 6-8 years, and thereafter, have

a limited lifespan of only 1-2 years. We cannot help but record reservation as the policy reflects the systemic discriminatory practice and predisposition treating HIV as aggravation of STD and AIDS is self-inflicted. *In arguendo*, even going by the respondents' own policy, the appellant could not be said to be suffering from AIDS since, in flagrant defiance of the policy assessment, the appellant is reportedly still alive and suffering from no serious ailment.

16. A further examination of the respondents' policy reveals that though AIDS was always deemed to be a self-inflicted disease, there was still a provision for conferring disability status to those afflicted with the same. Yet, time and again, we find the respondents here have mechanically denied the appellant's request for disability status in a most arbitrary and unreasonable manner. It is pertinent to note that in yet another instance of the deep-rooted bias against individuals diagnosed as HIV+ve, the Notice allows for sheltered appointments to those diagnosed with such a condition, while in the same breath stating that the provision of such sheltered appointments is an unlikely possibility.

17. We may note here that in ***CPL Ashish Kumar Chauhan v. Commanding Officer***[3], the concerned member of the Air Force was diagnosed as HIV+ve because of a blood transfusion that did not proceed along laid down protocol and went awfully wrong for which this Court had to award appropriate quantum of compensation. Reference is made to the said decision at this stage only to highlight that AIDS is not always a selfinflicted disease and there appears to have been no worthy attempt on the part of the respondents to ascertain the root cause of the appellant's physical distress.

18. The Constitution, through its Preamble, guarantees to all its people 'Justice', in the deliverance of which, the Courts of the land have developed a nuanced compensatory jurisprudence through a catena of judgments, for a wide compass of situations.

19. This Court, towards the end of the last century held in ***D.K. Basu v. State of West Bengal***[4] that:

"54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts."

20. In ***P.S.R. Sadhanantham v. Arunachalam***[5], this Court while emphasising its power to do full and complete justice, ruminated:

"6. The jural reach and plural range of that judicial process to remove injustice in a given society is a sure index of the versatile genius of law-inaction as a delivery system of social justice. By this standard, our constitutional order vests in the summit Court of jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which master-minds the broad observance throughout the Republic of justice according to law, is Article 136."

21. While discussing award of 'just compensation' in a personal injury case, this Court in ***K. Suresh v. New India Assurance Co. Ltd.***[6] had the occasion to observe that:

"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his

[3] 2023 SCC OnLine SC 1220
[4] (1997) 1 SCC 416
[5] (1980) 3 SCC 141
[6] (2012) 12 SCC 274

inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."

22. Not too long ago, in ***CPL Ashish Kumar Chauhan*** (supra), this Court while awarding compensation to a person discharged from the Indian Air Force, ruled:

"103. ***People sign up to join the armed forces with considerable enthusiasm and a sense of patriotic duty. This entails a conscious decision to put their lives on the line and be prepared for the ultimate sacrifice of their lives. A corresponding duty is cast upon all state functionaries, including echelons of power *within* the armed forces to ensure that the highest standards of safety (physical/mental wellbeing, medical fitness as well as wellness) are maintained. This is absolutely the minimum required of the military/air force employer for not only assuring the *morale* of the forces but also showing the sense of how such personnel matter and their lives count, which reinforces their commitment and confidence. Any flagging from these standards - as the multiple instances in the present case have established, only entails a loss of confidence in the personnel, undermines their morale and injects a sense of bitterness and despair not only to the individual concerned but to the entire force, leaving a sense of injustice. When a young person, from either sex (as is now a days the case) enrols or joins any armed forces, at all times, their expectation is to be treated with dignity and honour. The present case has demonstrated again and again how dignity, honour and compassion towards the appellant were completely lacking in behaviour by the respondent employer. Repeatedly the record displays a sense of disdain, and discrimination, even a hint of stigma, attached to the appellant, in the attitude of the respondent employer. Although this court has attempted to give tangible relief, at the end of the day it realizes that no amount of compensation in monetary terms can undo the harm caused by such behaviour which has shaken the foundation of the appellant's dignity, robbed him of honour and rendered him not only desperate even cynical."

23. It has been submitted by the counsel for the appellant that he is presently aged 50 years and is into a small business of his own. Having considered the plight of the appellant, which his employer failed to address, as well as the social stigma attached to persons who are diagnosed as HIV+ve patients, coupled with the position that the appellant's reinstatement in service is not an available option now and also that direction for grant of pension, which we propose to make, cannot be considered an equitable restitution of what the appellant has suffered by reason of psychological, financial and physical trauma, we deem it fit to additionally award him monetary compensation.

24. Having been discharged from the services of the Indian Army at the prime age of 27, the appellant was robbed of the opportunity of further serving the nation for many more years on account of a most unfortunate turn of events, the responsibility for which can lie on no shoulders other than the respondents 2 to 4. It is also borne from the record that the appellant neither received his leave encashment, nor received reimbursement for the expenses incurred by him in medical tests.

25. We would be remiss in not recognising the particular circumstances of the appellant's discharge from service which compounded the agony of the process, i.e., a wrongful diagnosis of AIDS and subsequent termination of services on the same ground. It is no secret that despite the enactment of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, and the slew of awareness measures taken by Governments in recent times, the stigma and discrimination which lamentably accompanies an HIV+ve diagnosis is still an illness that

afflicts the minds of society today. The discriminatory sentiment of deeming persons who are HIV+ve to be unfit for employment, is starkly evident from the way in which the appellant has been responded to and treated by the various authorities. By misdiagnosing the appellant with AIDS, the respondents indubitably subjected the appellant to further misery in not only combating social stigma against a disease which the appellant never suffered from but also from the dreadful thought of an imminent death resulting from an incurable disease.

26. In view of the extreme mental agony thus undergone by the appellant, in not only facing the apathetic attitude of the respondents 2 to 4 but in facing the concomitant social stigma and the looming large death scare that accompanied such a discharge from the armed forces, we deem it fit to award a lumpsum compensation of Rs.50,00,000/- (Rupees fifty lakh only) towards compensation on account of wrongful termination of services, leave encashment dues, non-reimbursement of medical expenses and the social stigma faced, to be paid by the respondents 2 – 4 to the appellant within eight weeks from the date of this judgment without fail. In addition to the above, the appellant shall be entitled to pension in accordance with law as if he had continued in service as Havaldar and on completion of the required years of service retired as such, without being invalided. We make it clear that since the appellant had not continued in service beyond 26th December, 2001 and there was no occasion to assess his performance for securing a promotion, he shall not be entitled to raise any plea in relation thereto. However, in computing the quantum of pension payable to the appellant, the respondents shall take into account allowances / increments that the appellant would have been entitled to, had he continued in service till the date of his retirement as Havaldar.

27. For the reasons aforesaid, the impugned judgment is set aside and the civil appeal stands allowed.

28. We are conscious that whatever amount by way of compensation has been directed to be paid to the appellant, by the respondents 2 to 4, can in no manner compensate for the ordeal he had to face over the years; there could never be an appropriate substitute for such adversity but such financial compensation might act as a balm to soothe the mind and steady the future. Now that we have been informed that the appellant is active and involved in a business of his own, our prayers are with him to lead a long and healthy life.