

Before M.M.Kumar and T.P.S. Mann, JJ.

UNION OF INDIA AND OTHERS,—Appellants

versus

EX. RECT SUKHJINDER SINGH,—Respondent

LPA No. 87 of 2011

In CWP No. 17474 of 2009

9th March, 2011

Constitution of India, 1950—Art. 226—Single Judge allowing disability pension restricting payment of arrears to 3 years preceding date of filing of petition—UOI taking false plea in appeal that according to opinion of Medical Board disability suffered by petitioner neither attributable to nor aggravated by military service—Misrepresentation of facts—Misuse of process of Court—Appeal dismissed with costs of Rs. 50,000.

Held that, in the case of a private citizen filing a writ petition, a Full Bench of this Court in **Chiranjit Lal and others versus Financial Commissioner, Haryana and others**, 1978 PLR 582 has held that when there has been a *mala fide* and calculated suppression of material facts which if disclosed would have disentitled such a party to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on the interim as well as ultimate relief claimed then such a party by their own conduct would forfeit the right of relief which they seek to claim. When such a conduct is adopted by the Central Body and its Officers, as is evident from ground No. 7 of the Memorandum of Appeal, it assumes further seriousness. The Public Authority always file pleadings after due verification of the record. However, in the present appeal all that has been completely forgotten. Therefore, the appeal is liable to be dismissed with heavy costs.

(Para 6)

S.S Sandhu, Central Government Standing Counsel *for the appellants.*

B.S. Sehgal, Advocate *for the respondent.*

M.M. KUMAR, J.

(1) This appeal under Clause X of the Letters Patent filed by the Union of India and its Officers is directed against the judgment dated 13th November, 2009 rendered by the learned Single Judge holding that the matter was covered in favour of the writ petitioner-respondent by a Division Bench judgment of this Court rendered in C.W.P. No. 10451 of 2007 decided on 27th March, 2008. The learned Single Judge has extracted the relevant part of the Division Bench judgment to conclude that in view of the letter dated 3rd February, 2000 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, New Delhi the percentage of disability has to be assessed at 50%, if the percentage of disability pension is less than 50%. It was in terms of the aforesaid observation that the petition has been disposed of by the learned Single Judge by restricting the payment of arrears to three years preceding the date of filing of the petition.

(2) When the matter came up for hearing on 21st January, 2011 We have noticed the following contentions raised by the counsel for the appellants and then issued notice of motion. Order dated 21st January, 2011 is set out below which reads as under :—

“Learned counsel for the appellants placing reliance on ground No. 7, of the grounds of appeal has argued that the Medical Board has expressed the opinion that the disability suffered by the writ petitioner-respondent was neither attributable to nor aggravated by military services as it was on account of constitutional disorder which has no connection with the military services. He has further argued that Hon'ble the Supreme Court in the case of **Union of India and Others versus Surinder Singh Rathore** (Civil Appeal No. 1960 of 2008, decided on 13th March, 2008) has concluded that the opinion given by the Medical Board has to be given its due weighage, cannot be ignored or substituted by the authorities/courts.

Notice of motion for 23rd February, 2011.”

(3) At that stage, we have asked the learned Standing Counsel to produce the copy of opinion of the Medical Board but he reperedented

that the same was not available with him on that day. However, he has produced the original Medical Board Proceedings Invalidment/Release in Low Medical Category Soley/Not Soley on Medical Grounds. In column 13, the following question has been posed: "Do you consider the disability is attributable to service ? (Give reasons). "The answer given is" Yes, due to stress and strain of physical training". Underneath para 7, the remarks given are fit to be invalidated out of service in medical category S-5 of SHAPE factor.

(4) The aforesaid record now produced before us would show that on the first date of hearing while obtaining notice of motion, there was active concealment and even misrepresentation of facts from the Bench. Ground No. 7 further fortifies the false plea put forward against the view taken by the learned Single Judge and the same is reproduced here under :—

"That the invaliding Medical Board of the respondent was carried out at Military Hospital Kirkee on 21st December, 2004. This Invaliding Medical Board was approved by the competent Medical Authority, i.e. DDMS HQ MG and G Area Mumbai, 27th December, 2004. The Invaliding Medical Board had opined his disability on Form No. AFMSF-16 (ver 2002) i.e. Manic Episode F-30 as neither attributable to nor aggravated by service and constitutional disorder not connected with Military services."

(5) Mr. Bhim Sen Schgal, learned counsel for the writ petitioner-respondent has further pointed out that in the case of **Union of India and others versus Ex. N.K. Sarabjit Singh** (L.P.A. No. 748 of 2010 decided on 9th July, 2010) similar question had arisen and while relying upon a Division Bench view of this Court rendered in C.W.P. No. 10451 of 2007 decided on 27th March, 2008, the Letters Patent Appeal filed by the Union of India was dismissed.

(6) Having heard the learned counsel for the parties and perusing the original record, we are amazed at the conduct of the appellant and its Officers. The instant appeal has been filed through the Secretary, Government of India, Ministry of Defence, South Block, New Delhi; Chief of the Army Staff, Army Headquarters, New Delhi; the Principal Controller of Defence

Accounts (Pension), Draupati Ghat, Allahbad (UP) and couple of other Officers. A perusal of ground No. 7 of the appeal shows that a false plea has been set out which is simply against the record. In para 13 of the original proceedings of the Medical Board, it has been categorically found that the disease of 'Manic' Episode F 30' is aggravated by military service whereas the proceedings of the Medical Board have been misquoted in para 7 of the grounds of appeal to say that the Medical Board had opined that the disease 'Manic' Episode F 30 is not aggravated by military service. It is well settled principle of law applicable to equitable jurisdiction that when the facts are actively concealed or there is a misrepresentation then the party seeking to hear the appeal becomes disentitled to it. Such a conduct has been repeatedly condemned by the Courts. In the case of a private citizen filing a writ petition, a Full Bench of this Court in **Chiranji Lal and others versus Financial Commissioner, Haryana and others (1)** has held that when there has been a *malafide* and calculated suppression of material facts which if disclosed would have disentitled such a party to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on the interim as well as ultimate relief claimed then such a party by their own conduct would forfeit the right of relief which they seek to claim. When such a conduct is adopted by the Central Body and its Officers, as is evident from ground No.7 of the Memorandum of Appeal, it assumes further seriousness. The Public Authority always file pleadings after due verification of the record. However, in the present appeal all that has been completely forgotten. Therefore, the appeal is liable to be dismissed with heavy costs.

(7) There is another aspect of the matter because the instant appeal is an illustration of frivolous litigation initiated at the instance of Union of India and its Officers. The appellant-Union of India has framed the National Litigation Policy which has been reported as (2010) 6 SCC J-17. The aforesaid policy has been completely overlooked by the appellants. In Paragraph VI, the issue of filing of appeal has been dealt with. In accordance with Item D, the following provision has been made :—

“VI. Filing of appeals

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| (A) to (C) | X | X | X | X |
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(D) In service matters, no appeal will be filed in cases where :

- (a) the matter pertains to an individual grievance without any major repercussion ;
- (b) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.” (emphasis added)

It is obvious that no appeal is to be filed in cases where the matters pertain to pension or retiral benefits, provided it does not involve any principle or financial implications. A perusal of the order passed by the learned Single Judge would shows that the impugned judgement was based on a Division Bench Judgement (*supra*). It is, thus, wholly unwarranted for the appellants to invoke the appellate jurisdiction of this Court once the matter stands already decided in respect of the issues concerning computation of disability element of pension. If the disability is less than 50% then the element of disability has to be rounded of to 50% provided it is over 20%. Accordingly, we find that the appeal is frivolous and misuse of the process of the Court.

(8) In view of the aforesaid, the appeal is dismissed with costs of Rs. 50,000. The costs shall be paid to the writ petitioner-respondent by the Union of India but the same shall be recovered from the Officer or Officers, who has pleaded a false ground after holding an enquiry and fixing the responsibility.

R.N.R.