

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12432 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BASIRBHAI R KHILJI

Versus

ADDL DIGP & 1

Appearance:

MR MM TIRMIZI	for Petitioner
MR BB NAIK	for Respondent No. 1
SERVED BY RPAD	for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/02/96

ORAL JUDGEMENT

In this petition under article 226 of the Constitution of India, the petitioner has claimed the following prayers:

"(A) Your Lordships be pleased to issue a writ or mandamus or any other appropriate writ, order or directions in the nature of mandamus or writ, order or directions directing the respondents to pay the

pension to the petitioner from 1.7.91 onwards i.e. from the date of invalidation with interest at the rate of 24% per annum with immediate effect."

(C) Your Lordships be pleased to quash and set aside the impugned order at Annexure.D of the respondents for recovery of the amount of Rs. 22,231/- for 413 days when the petitioner was under treatment."

2. From the list of events, the facts of the petitioner's case may be recapitulated. The petitioner was appointed as armed constable and posted at Gandhinagar in the C.R.P.F. Group Centre and then transferred to Nimaj Training Centre in Madhya Pradesh in or about March 1987. In December 1987 the petitioner was posted at Gandhinagar. He was thereafter posted at Amrutsar (Punjab). In December 1989 he was posted at Srinagar (J& K). On or about January 17, 1990, the petitioner suffered from Pyogenic Meningitis and Sensorineural Deafness. Between 19.1.90 to 14.2.90 he was admitted to SMHS Hospital, Srinagar. On or about 10.4.90, he was certified to be 100 percent deaf. In around 1991, notice for invalidation by Addl. D.I.G.P. inter alia stating that the petitioner should be retired from one month after the communication of medical report, which letter was going to be received by the petitioner. Accordingly in June 1991 Office Order of invalidation was passed on or about 12.12.91. Sanction order was passed by the Jt. Assistant Director (Welfare) New Delhi sanctioning Rs. 1,000/- per month from risk fund as the petitioner has been invalidated out from service from 1.7.91 onwards. Recovery of Rs. 22,231/- was directed against the petitioner as per the letter dated 7.5.93. In view of the invalidation in service, the petitioner moved appropriate petition/representation for consideration of his case for pension but I.G.P. CRPF New Bombay rejected the petitioner's application for pension as he has not completed the required ten years service as per his letter dt. 22.1.94.

3. The contention of the petitioner in this petition is that what the petitioner has been paid is an amount of Rs. 1000/- p.m. from the Risk Fund (Welfare Fund) and not the invalid pension as per the CCS (CCA) Rules. On going through the affidavit, I find that the stand of the respondent is that the petitioner is not entitled to invalid pension as he has not put in the qualifying period of service of ten years. On going through the order passed on the petitioner's application I find that this is the ground given by the concerned authority while rejecting the application of the petitioner. However, the authority has not clarified whether an employee who is invalidated also requires completion of qualified service of ten years for the purpose of being entitled to

invalid pension. Hence it is necessary to direct the authorities to reconsider the petitioner's representation in accordance with the relevant Rules. In the circumstances, the following directions are issued:

The petitioner's application/representation for invalid pension shall be considered by the concerned competent authority of the respondents in accordance with the rules and bearing in mind the petitioner's case about the separate entitlement to invalid pension as distinct from the entitlement from the Risk Fund. If the entitlement from the Risk Fund is the same as invalid pension, necessary reasoned order may be passed in that respect after considering the matter from all points of view. The competent authority of the respondents shall take a decision as stated hereinabove in accordance with law and rules as expeditiously as possible preferably on or before 30.6.96

If the petitioner makes a detailed representation against the proposed recovery of Rs. 22,231/- within a period of one month from today to the concerned authority, the authority shall consider the same sympathetically and appropriate orders shall be passed in accordance with law in that respect as expeditiously as possible and preferably before 30.6.96. However, the recovery shall remain stayed for a period of one month from the date on which the petitioner receives a decision, if the decision is adverse to the petitioner, in that respect.

Subject to the above directions Rule is discharged.

D.S. permitted.
for correction pl.see original.
cgg