

THE PHILIPPINE VETERANS AFFAIRS OFFICE, PETITIONERS, VS. ASTERIO Q. TAMAYO, RESPONDENT.

G.R. No. 74322. July 29, 1988

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FERNAN, C.J.:

This is a petition for review on certiorari filed by the petitioner Philippine Veterans Affairs Office [PVAO] seeking a review of the decision rendered on August 7, 1985 by the Regional Trial Court of Manila, Branch XIII in Civil Case No. 82-13507, entitled "Asterio Q. Tamayo vs. Philippine Veterans Affairs Office," ordering said petitioner PVAO to pay it herein respondent Asterio Tamayo, his wife and each unmarried minor child below 18 years [qualified children], the full benefits provided by Section 9 of Republic Act No. 65, as amended by Republic Acts Nos. 1920 and 5753 from May 20, 1948 to August 8, 1972, minus the sum already paid to them during said period. Petitioner PVAO was further ordered to pay P2,000.00 as attorney's fees and costs of suit. Payment of the award was, however, made subject to the availability of funds.

The undisputed facts are as follows:

Respondent Tamayo is a World War II veteran. He was an enlisted member in good standing of the Philippine Commonwealth Army, inducted into the service of the USAFFE. He actively participated in the battle of Bataan and in the liberation drive against the enemy during the last World War.

As he became disabled due to injuries sustained while in the military service, he sought the benefits granted to war veterans under Section 9 of Republic Act No. 65, otherwise known as the "Veteran's Bill of Rights". Said section provides as follows:

"Sec. 9. The persons mentioned in Sections one and two hereof, who are permanently incapacitated from work owing to sickness, disease or injury sustained in line of duty shall be given a life pension of Fifty Pesos a month, unless they are actually receiving a similar pension from other Government funds and shall receive in addition, the necessary hospitalization and medical care."

Respondent Tamayo's claim was approved on May 20, 1948. He was, however, given only P12.50 instead of P50.00 a month pension on the ground that his disability rating was only 25%.

When Section 9, R.A. No. 65 was amended by R.A. No. 1920 on June 22, 1957, the disability benefits were raised from P50 to P100 a month, plus P10.00 for each qualified child. Respondent Tamayo was given P50.00 a month, without the additional P10.00 on the same ground previously mentioned. Subsequently, however, on August 14, 1964, respondent Tamayo's pension was raised to P100 and his qualified children were each given P10.00 monthly pension on the ground that respondent Tamayo's disability rating had increased to 100%.

On June 22, 1969, Section 9 of R.A. No. 65 was further amended by R.A. No. 5753, raising the veteran's pension to P200 a month plus P30 a month for his wife and each qualified child. Despite said amendment, respondent Tamayo continued to receive only P100 a month plus P10.00 for each qualified child. It was only on August 9, 1972 that respondent Tamayo was finally paid the full benefit of P200.00 plus P30.00 for each qualified child.

On November 2, 1982, respondent Tamayo filed a complaint with the then Court of First Instance of Manila, seeking to recover the differential pensions allegedly due him, his wife and qualified children since May 20, 1948, pursuant to the aforementioned Section 9 of R.A. No. 65, as amended.

On August 7, 1985, the trial court sustained respondent Tamayo's plea, thus:

"... it is the submission of this court that the power of the defendant [herein petitioner] under Section 9 of Republic Act No. 65, and amendments, is limited to the determination of whether or not the veteran-applicant of World War II is permanently incapacitated from work or not. If not, then said applicant is not entitled to any pension. If permanently incapacitated then said veteran is entitled to full pension benefits under Section 9 of Rep. Act No. 65, and amendments..."[1]

Moreover, the court a quo ruled that the aforementioned law did not give the petitioner PVAO authority to rate the disability of veterans.

On appeal to us, petitioner PVAO contends that the lower court erred in awarding full pension benefits to respondent Tamayo because in *Board of Administrator vs. Agcaoili*,^[2] and *Philippine Veterans Officer vs. Añoover*,^[3] Its authority to rate and classify disabilities was upheld. Since respondent Tamayo's disability was rated 25%, he cannot be awarded full pension benefits under Section 9, R.A. No. 65, as amended.

Likewise, petitioner PVAO alleges that the award of P2,000.00 for attorney's fees and costs is contrary to the doctrine of state immunity from suit, under which petitioner PVAO, as a government entity, claims protection.

On the other hand, while respondent Tamayo accepts petitioner PVAO's contention that full pension benefits are available only to those who are permanently incapacitated from work, he, nevertheless, objects to its authority to rate disability because the aforesaid Section 9 of R.A. No. 65, as amended, does not provide a rating schedule of disability. Besides, the fact that the Veterans Board approved his claim for full disability and eventually granted him the same is a tacit acknowledgement that he is entitled thereto. Since his right to receive full pension benefits has been established, he cannot thereafter be deprived of the same except by a subse-quent amendatory act.

Respondent Tamayo furthermore contests the applicability to the petition at bar of the *Agcaoili* and *Añoover* cases cited by petitioner upon the reasoning that in both cases the veterans acknowledged in a joint stipulation of facts that they were not permanently incapacitated and thus, were disqualify from claiming full pension benefits. Such stipulation, it is alleged, is not present in the case at bar.

Verily, Republic Act No. 65 and its amendments do not provide for a rating schedule of disability. However, Section 6 of R.A. No. 65 creating a Philippine Veterans Board in the Department of National Defense to carry into effect the purposes of said law, imposes on said Board the duty "to pass upon the merits and qualifications of persons applying for the rights and/or privileges extended by this Act, pursuant to such rules as it may adopt to insure the speedy and honest fulfillments of its aims and purposes." Section 7 thereof further provides that "the Board shall adopt with the approval of the Secretary of National Defense such rules and regulations as may be necessary to carry out the provisions of this Act x x x."

Republic Act No. 2664, otherwise known as the Philippine Veterans Administration Act, approved on June 18, 1960, consolidating into the Philippine Veterans Administration the Board of Pensions for Veterans, the Philippine Veterans Board, the Claims Office, the Veterans Back Pay Commission and the Veterans Administration "subject to existing laws x x x to promulgate and issue rules and regulations as may be found necessary to govern its operations and to carry out the aims and purposes of this Act and of all other laws to be administered by the Administration." [4]

These enabling provisions, to our mind, are sufficiently broad as to include the authority to rate disabilities of

veterans. In fact, in so doing, the Philippine Veterans Board, later the Philippine Veterans Administration, now Philippine Veterans Affairs office, had interpreted and implemented the basic law in a manner more beneficial to the veterans. For if we consider Section 9 of Republic Act No. 65 relied upon by respondent Tamayo only veterans who are permanently disabled are entitled to the benefits provided thereunder. And as we have stated in the case of Board of Administrators vs. Agcaoili, supra, reiterated in PVAO vs. Añoover, supra, "the words 'permanently incapacitated' have a restrictive signification which cannot be conveniently disregarded." Without conceding to the petitioner the authority to rate disabilities, respondent Tamayo's claim for benefits under Section 9 of R.A. No. 65 would have been denied outright in 1948 as he was then only 25% disabled. But because of the liberal interpretation, coupled with petitioner's rule-making powers, which ironically respondent Tamayo seeks to withhold from it, respondent Tamayo, and no doubt countless other war veterans, were granted partial benefits of the law pursuant to its laudable objective of providing economic assistance to war veterans in recognition of their patriotic and gallant services to the country during the war.

Respondent Tamayo does not pretend that he was permanently disabled in 1948 when he first applied for benefits under R.A. No. 65. He only contends that having approved his claim, petitioner is precluded from rating his disability. This contention has been shown to be unmeritorious in our previous discussion on the authority of petitioner to rate disabilities. Additionally, respondent Tamayo was fully cognizant that his disability was rated at only 25%. Yet from 1948 until 1964, he took no steps whatsoever to seek a reconsideration of such rating. Such unexplained inaction or silence for a considerable period cannot but be taken as an admission on his part of the correctness of the rating given his disability. Again, during the hearing of the case on March 18, 1985, when the parties agreed that the only issue between them is legal and not factual, respondent Tamayo is deemed to have admitted the correctness of petitioner's rating. Otherwise, he should have insisted on presenting proofs to show that he was permanently disabled as early as 1948. Having been deemed to have admitted the correctness of the rating given his disability, although not in a formal stipulation of facts, respondent Tamayo cannot demand the full benefits of Section 9, R.A. No. 65, as amended until August 14, 1964 when his disability rating was increased to 100%.

We note that while respondent Tamayo's disability was re-rated to 100% on August 14, 1964, it was only on August 9, 1972 that he was given full benefits of P200 a month plus P30 for his wife and qualified child under the amendatory law enacted on June 22, 1969.[5] In other words, he should have received P200 a month plus P30.00 for his wife and each qualified child from June 22, 1969 until August 9, 1972. Having received only P100 a month plus P10.00 per qualified child during this period, he is entitled to the difference of P100 a month and P30 a month for his wife and P20.00 a month for each qualified child from June 22, 1969 until August 9, 1972.

With respect to the award of attorney's fees, we find no special circumstances, and none had been shown by respondent, that would justify an affirmance thereof. There is no showing that PVAO acted in bad faith in refusing respondent's claims. We take judicial notice of the fact that petitioner was unable to pay the increase in benefits provided under Republic Act No. 5753 due to the failure of Congress to appropriate the necessary funds to cover all claims for benefits, pensions and allowances.[6] Neither is there any cogent reason for us to depart from the established rule that "costs of suit are not recoverable against government entities and officers when they are sued purely in their official capacity as was petitioner in this case." [7]

WHEREFORE, the decision under review is hereby MODIFIED. Petitioner Philippine Veterans Affairs Office is hereby ordered to pay respondent Asterio Q. Tamayo the differential benefits due him from June 22, 1969 to August 9, 1972 as indicated in the body of the decision. Considering the age and state of health of respondent TaMayo, this decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Cortes, JJ., concur.

[1] Decision, p. 39, Rollo.

[2] 58 SCRA 72

[3] 125 SCRA 364

[4] Sec. 11, R.A. No. 2664, 56 O.G. 6739

[5] R.A. No. 5735

[6] See Agcaoili and Añoover cases, *supra*.

[7] Agcaoili and Añoover cases, *supra*.

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