
(1995) 12 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 14970 of 1992

Anil Kumar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Citation : (1995) 12 AHC CK 0039

Hon'ble Judges : R.K.Mahajan, J

Final Decision : Allowed

Judgement

R. K. Mahajan, J.—By this Writ Petition, the petitioner has made a proper in the nature of certiorari quashing the orders dated 3131990 ; 451990 (Annexures I and II to the writ petition) passed by respondent No. 4 and the order dated 3121991 (Annexure V to the writ petition) passed by the respondent No. 1. The petitioner has also prayed that a writ in the nature of mandamus be issued directing the respondent No. 2 to reinstate the petitioner in service and to pay the salary from the date of the discharge on 3131990 or in the alternative direct the respondents to grant the disability pension to the petitioner in accordance with law.

2. The petitioner's grievance is that he had been recruited as soldier in the Indian Army on 13th December, 1982 at Varanasi after being thoroughly examined by the Medical Board and after completing all the necessary formalities, he was declared successful. He has not been given the disability pension assessed 20% by the Medical Board which occurred during the period of service. Resume of facts leading to the writ petition are as under :

3. The petitioner joined as soldier in the Army on 13th December, 1982 at Varanasi. Thereafter the petitioner reported for training in Jat Regiment Centre, Bareilly. There also the petitioner was examined by the competent medical officers and was declared fit and was put in category A. After the above training in Jat Regiment, Bareilly, the petitioner was transferred for Trade Training at Remount Veterinary Groups, Meerut (hereinafter referred to as R. V. C.) in the

year 1983. He was found fit there by the Medical Board. It is further alleged that after the completion of the above training, the petitioner was posted at Hempur, District Nainital on 2nd June, 1984. The petitioner remained medically fit and was placed continuously in medical category A. It is alleged that Hempur is a hilly area and due to stress and strain in Military Service and nature of duties such as long route marches covering about 20 miles a day, severe battle in training involving horse riding at faster speed for along distance. With all the personal arm and equipments and night training including ship less right etc., the petitioner developed some minor physical problem and then he was placed in low medical category B in September, 1985. A review was held in March, 1986 and the petitioner was upgraded to medical category A. Thereafter the petitioner was transferred from Hempur, District Nainital to R.V.C. Saharanpur on 30th April, 1987 where he was again medically examined by the Medical Board and was declared fit to category A. It is also averred in the petition that the petitioner was technically tested in horseriding in which he was declared successful and certificate of technical proficiency was issued on 19th December, 1987. To the petitioner mentioning that the petitioner had an physical efficiency to discharge the duty. The case of the petitioner is that he performed all types of his duties during this period at different places where ever he was posted till 1988 and remained in medical category A. However, at the last due to stress and strain of the Military service, as mentioned earlier, he developed some physical trouble and, therefore, the medical authorities placed the petitioner in low medical category C temporarily for six months in the year 1989. The petitioner had improved his health and his medical category was upgraded to category B temporarily for six months and thereafter the petitioner was placed in category B permanently during the year of 1990. It is alleged by the petitioner that he was discharged from service on the basis of the report of the Medical Board placing him in category B. Permanent vide order dated 3131990 passed by the respondent No. 2 Centre Commanding Officer. The petitioner has described the , order of discharge of illegal, arbitrary and against the rule as the persons placed in category B permanently cannot be discharged from service because they are deemed to be fit for performing all types of duties except conducting battle duties in war front. The petitioner was also not given sheltered post in alternative and, therefore, he has described the action of respondents not fair. He has further averred that the persons similarly situated are in service and he had been discriminated. Petitioner's further grievance is that the Medical Board recommended that since he is in category B, he be given disability pension as it had been caused and aggravated due to Military Service but despite that recommendation, the respondent No. 4, the Chief Controller of Defence Accounts (Pensions), Allahabad rejected the claim of the petitioner on 491990. Later on, appeal was filed but the appellate authority has not accepted the claim of the petitioner. Under these circumstances, the petitioner has moved this Court to quash the impugned" orders.

4. The respondents controverted the allegations and denied the claim of the

petitioner in to to.

5. I have heard the learned counsel for the parties. The Learned counsel for the petitioner has, however, during the course of arguments, confined his claim regarding the grant of disability pension only and submitted that the authorities concerned have interpreted the disability pension rules wrongly. The learned counsel for the petitioner has further relied on a judgment of Punjab High Court delivered on 17th January, 1992 in Civil Misc. Writ Petition No. 16728 of 1990 granting disability pensioner benefit to the petitioner, whose disability was 20 per cent.

6. After hearing the learned counsel for the parties, I am on the view that the petitioner is entitled for getting the disability pension. The petitioner was at first placed in category A, later on in Category B due to hyper tension and thereafter he was discharged. At the time of recruitment at all stages, he was medically declared fit and as such no other inference can be drawn that he suffered mental illness during the course of his duties when he was in service. I would like, to quote Rule 173 of Section IV Disability Pensionary Awards :

173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or. over. The question whether a disability is attributable to or aggravated by military service for the purpose of disability pensionary awards."

Reference would be made to Appendix II pertaining the rules for entitlement of disability pension which run as under :

"(1) With effect from 1st April, 1949, in supersession of all previous orders on the subject, the entitlement to disability and family pension, children's allowance and death gratuities, will be governed by following rules. Invaliding from service is a necessary condition for the grant of a 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. JCOs/ORs/NCs (E) 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 invalided out of service.

(2) Disablement or death shall be accepted as due to military service provided it is

(a) the disablement is due to a wound, injury or disease which

(i) is attributable to military service ; or

(ii) existed before or arose during military service and has been and remains aggravated thereby.

(3) There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

(4) In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given to the claimant. This benefit will be given more liberally to the claimant in field, service cases."

7. In respect of diseases, the following rules will be observed as provided by Rule 7 of Appendix II.

"7. In respect of diseases, the following rules will be observed :

(a) Cases, in which it is established that conditions of military service did determine or contribute to the onset of disease but influenced the subsequent course of the disease, will fall for acceptance, on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the and that the conditions were due to the circumstances of duty in military service.

(d) * * * * *

8. A perusal of the above provisions would show that the disease which leads to an individual's discharge is ordinarily deemed to have arisen in service if no note of it was made at the time the individual's acceptance for service in the Armed Forces. In the present case, no such note was made at the time of acceptance of the petitioner for service. It is also not the case of the respondents that the disorder could not have been detected on medical examination at the time of recruitment in the army. Under such circumstances, it is very difficult to accept that the petitioner is not entitled to get 20 per cent disability pension and according to the rules, as mentioned above, the petitioner is entitled to get the same in accordance with law. Action of the respondents in not doing the needful cannot be sustained as arbitrary and against pension rules. Now the concept of the pension has been changed as it is not more a bounty but it is a right to property. It is not a charity to be given by the Government as the employee has earned it by virtue of putting the best period of his life in the service of society. Under Article 41 of Constitution of India, the State is under duty to provide public assistance to disable persons.

9. Accordingly, the writ petition is allowed. The impugned orders are not set aside and the respondents are directed to pay the petitioner the disability pension. The petitioner will be entitled to the payment of arrears of pension with interest at the rate of 12 per cent which is payable within three months from the date of production of a certified copy of this order before the authorities concerned. In the circumstances of the case, there will be no order as to costs.