

(2009) 01 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 4482 (H) of 2002

B. Raju

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Citation : (2009) 121 FLR 824

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : S. Sanal Kumar, for the Appellant; P.S. Sreedharan Pillai, John Varghese and Thomas Mathew Nellimoottil, for the Respondent

Judgement

S. Siri Jagan, J.—The Petitioner entered service of the Indian Army on 9.9.1983 as a Vehicle Mechanic. He suffered disability attributable to army service to the extent of 30%, as a result of which, was put in a lower medical category. He was discharged from army service on 31st July, 1999. He is receiving service pension. He applied for pension in respect of the disability element also, which has not been allowed on the ground that the Petitioner was discharged from service on his own request and therefore, he is not eligible for disability pension.

2. The Petitioner has filed this writ petition seeking the following reliefs:

(A) A direction calling for the records of the Medical Board conducted on 6.11.1998 for examining the Medical Fitness and disability of the Petitioner.

(B) Issue a writ of mandamus or any other appropriate writ, order or direction directing the second Respondent to grant disability pension and other benefits to the Petitioner with effect from his date of discharge from service i.e., on 31.7.1999.

The contention raised in the counter-affidavit also is that the Petitioner is not eligible for disability pension, since the Petitioner was discharged from service on his own request. According to the Respondents, persons who obtained discharge

on their own request are not eligible for disability pension. Only persons who are invalided out of military service are eligible for disability pension is the contention raised. Although, in Ext.-P-1, it has been stated that the Petitioner has been discharged from service because of unwillingness to accept alternate employment, in the counter-affidavit, it is admitted that the same was a wrong entry on account of affixing a wrong seal.

3. I have considered rival contentions in detail. It is not disputed before me by the Respondents that the Petitioner's disability was aggravated by army service and the disability was assessed as 30%. It is also not disputed that at the time of discharge the Petitioner was put in a lower medical category than that in which, he was recruited at the time of entering army. The relevant provision in the pension regulations of the Army is Regulation 173, which reads thus:

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 as 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

Appendix II referred to Rule 173 contains the entitlement Rules. Clause (1) of Appendix II relating to entitlement rules reads thus:

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.

Therefore, reading Rule of Regulation 173 with Clause (1) of Appendix II, it is clear that even if a person has not been invalided out of service, he would be deemed to have been invalided out of service, if an individual at the time of release under the Release Regulations, was put in a lower medical category than that in which he was recruited. It is not disputed before me that although on his own request, the Petitioner has been released under the Release Regulations. Whether in such circumstances a discharged air force personnel is entitled to disability pensions was considered by me in respect of the Air Force Pension Regulations in O.P. No. 39594 of 2002, in which considering the provisions of the Air Force Pension Regulations, I have held thus:

The primary conditions for grant of disability pension is contained in Regulation 153 which reads thus:

153. 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 air force service and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II.

The relevant paragraph of Annexure-II refer to in Regulation 153 reads thus:

1. With effect from 1st April, 1948, 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 the 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. Airmen 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 been invalided out of service.

(Emphasis supplied)

Reading Regulation 153 with Appendix II together, I find considerable force in the contention of the Petitioner. Admittedly, it is not disputed before me that the Petitioner was released under the Release Regulation. It is also not disputed that as per the medical records the Petitioner has contracted a disability of 20% attributable to service and on account of that disability he was put in a lower medical category and at the time of release he was in a lower medical category than which he was in when he entered service. That being so, the Petitioner squarely comes within the above said provision in Appendix II as a result of which he must be deemed to be invalided out of service, consequent to which Regulation 153 becomes applicable to the Petitioner. That being so, the Petitioner is certainly entitled to grant of disability pension as provided in Regulation 153.

5. Insofar as the corresponding provisions in the two regulations are in pari materia the ratio of the decision in O.P. No. 39594/2002 squarely applies to the Petitioner's case. Therefore, the Petitioner cannot be denied disability pension on the ground that he was discharged from the army on his own request.

6. Of course, the learned Counsel for the Respondents submits that since he is already drawing service pension, he is not eligible to draw disability pension also. That issue has also been considered by me in the above said decision as follows:

But admittedly the Petitioner is drawing service pension under Regulation 104 of the Pension Regulations no individual is entitled to draw more than one pension under those regulation. The Counsel for the Petitioner would submit that the Petitioner is not seeking two pension but he is only seeking pension, taking into account the disability element also of the pension. According to the Petitioner,

under Regulation 161, the amount of disability pension has to be calculated on two counts; one on the service element and the second on the disability element. According to the Petitioner, he is eligible for pension, taking into account the disability element also. I leave it to the Respondents to decide that issue in accordance with Regulation 104 read with Regulation 161. If the Petitioner is entitled to calculate pension on the basis of the disability element also in addition to the service element his pension would be revised accordingly.

7. Therefore, following the decision in Original Petition No. 39594 of 2002, I leave it to the Respondents to decide that issue in accordance with the Regulations. If the Petitioner is entitled to pension on the disability element also in addition to the service element, his pension would be revised accordingly. Appropriate orders in accordance with the above findings shall be issued within a period of two months from the date of receipt of a copy of this judgment and arrears, if any, due to the Petitioner on account of such revision shall be disbursed within another month therefrom.

The original petition is disposed of accordingly.