

(2015) 12 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : SWP No. 668 of 2002

Bhadur Lal (Ex. Rfn.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 5
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2016) 2 JKJ 418

Hon'ble Judges : Mr. Tashi Rabstan, J.

Bench : Single Bench

Advocate : Mr. R.S. Jamwal, CGSC, for the Respondents; Ms. Surinder Kour, Sr. Advocate, Mr. Rajiv Gorka and Ms. Vandana Kumari, Advocates, for the Appellant/Petitioner

Final Decision : Allowed

Judgement

Mr. Tashi Rabstan, J. - Through the medium of this writ petition, petitioner is seeking writ of Certiorari to quash Communication No.

02/13745882/Rfn., dated 06.10.1982 and writ of mandamus directing the respondents to consider the case of the petitioner for grant of disability

pension from the date he was discharged from service on medical grounds, i.e. 02.04.1982, on the grounds taken in it.

2. The facts as averred in the writ petition are that petitioner came to be enrolled in the Indian Army as Infantry Soldier after he was found

medically fit. He, after his enrolment, was deputed for training to Army Training School at Jabalpur on 29.07.1981. While he was undergoing entry

level training, he developed pain in his back and was admitted in Military Hospital, Jabalpur, where he remained till 21.09.1981 as indoor patient

and was discharged with 28 days' sick leave. As he had no relief in his pain, he was again admitted in Army Hospital Jabalpur on 30th November,

1981. Finally, Invalidating Medical Board was constituted on 1st March, 1982 at Military Hospital, Jabalpur. The Board examined petitioner and

took a view that he was unlikely to be a fit soldier due to his invaliding disability. The Board recommended his discharge on medical grounds under

the medical category "EEE". The opinion rendered by Medical Board was approved by the Officiating ADMS HQ MP B&O Area Jabalpur on

13th March, 1982. The petitioner was invalided out of service w.e.f. 02.04.1982 under Army Rule 13(3) Item IV as an unattested Soldier

(Recruit) due to invaliding disability "SCIATICA (LT) 353" with 20 percent disability.

3. The petitioner, after his discharge on medical grounds, approached respondents with his claim for disability pension. His claim, though duly

forwarded by the JAK RIF to CCDA (P) Allahabad, was rejected vide letter No. G3/82/5521/IV/ 703 dated 26.08.1982. The Competent

Authority was of the opinion that the disease from which the petitioner was found to be suffering was not attributable to or aggravated by the

Military service. The decision was communicated to the petitioner. The petitioner appealed order of CCDA(P) Allahabad dated 26.08.1982 on

22.05.1985 to the Government of India. As the competent authority did not find any reasonable ground to alter the decision of CCDA(P)

Allahabad, the appeal was rejected and order conveyed to the petitioner vide Order No. 7(239)/86/D (Pen-A), dated 29.06.1987. The petitioner

again preferred an appeal on 18th June, 1992, i.e. after a gap of 5 years. The second appeal was considered by the Government of India, Ministry

of Defence and rejected. The decision was conveyed to the petitioner vide Order No. 6(27)/92/D (Pen-A&AC)/IInd Appeal dated 21.04.1994.

4. Being aggrieved, petitioner filed writ petition being SWP No. 668/2002, which came to be dismissed vide order dated 07.05.2013. Against

said order, LPA was preferred by the petitioner and Hon'ble Division Bench vide dated 10.03.2014 set aside judgment of learned Single Judge by

providing an opportunity to the petitioner to file amended writ petition and writ petition was directed to be remanded back to the Writ Court for

decision afresh in accordance with law. Hence, this petition thereby seeking quashment of communication No. 02/ 13745882/Rfn., dated

06.10.1982, whereby respondents have rejected petitioner's claim for grant of disability pension on the ground that it was not attributable to or aggravated by military service.

5. Writ petition was opposed by respondents on the grounds that disability suffered by petitioner was neither attributable to nor aggravated by military service. It is insisted that Regulation 173 of Pension Regulations for the Army, 1961 (Part-1) stipulate that ""Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual, who is invalided out of service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or over"". It is contended that disability suffered by the petitioner was adjudicated by the Pension Sanctioning Authority, i.e., PCDA (P) Allahabad as neither attributable to nor aggravated by military service and also not connected to military service. The appeals, as contended by respondents, preferred by the petitioner were rejected by the competent authority.

6. I have heard learned counsel appearing for the respective parties and considered the rival contentions meticulously.

7. The facts that are not in dispute are that while undergoing military training, petitioner was admitted to Military Hospital, Jabalpur, on 29th July,

1981, where he was diagnosed as ""SCITICA (LT) 353"" and was treated for the said disability and thereafter sent on sick leave for 28 days. On

rejoining from sick leave, he was again admitted to Military Hospital, Jabalpur, for review. After thorough examination, the Classified Specialist

(Surgery) at Military Hospital, Jabalpur, declared him as not likely to become a fit soldier and recommended to be invalided out from service in

low medical category ""EEE"". There was no relief in his pain and he was again admitted in the Army Hospital Jabalpur on 30th November, 1981.

Finally, Invalidating Medical Board was constituted on 1st March, 1982 at Military Hospital, Jabalpur. The Board examined him and took a view

that petitioner was unlikely to be a fit soldier due to his invaliding disability. The Board recommended his discharge on medical grounds under the

medical category ""EEE"". The opinion rendered by Medical Board was approved by the Officiating ADMS HQ MP B&O Area Jabalpur on 13th

March, 1982. The petitioner was invalided out of service w.e.f. 02.04.1982 under

Army Rule 13(3) Item IV as an unattested Soldier (Recruit)

due to invaliding disability ""SCIATICA (LT) 353"" with 20 percent disability.

8. What Regulation 173 of Pension Regulations for the Army, 1961 envisions, is important to be noticed. It provides:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual

who is invalided out of service on account of a disability which is attributable to or aggravated by military service is non-battle casualty and is

assessed at 20 per cent or over.

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

9. A bare glance of Regulation 173 makes it clear that disability pension in normal course is to be granted to an individual (i) who is invalided out of

service on account of a disability which is attributable to or aggravated by military service and (ii) who is assessed at 20% or over disability unless

otherwise it is specifically provided.

10. From above discussion, the short question arising for consideration is: whether disability of petitioner is attributable to or aggravated by military

service and whether he is entitled to disability pension or not?

11. It would be relevant to reproduce Column No. 3 of Part-1 Personal Statement, Annexure-1, i.e. Medical Board Proceedings Invaliding All

Ranks; and column (i) Confidential at page No.3 of the Annexure-1, annexed by the respondents with their objections to the amended writ

petition, hereunder:

3. Did you suffer from any disability mentioned in question 2 or anything like it before joining the Armed Forces? If so give details and date.: No.

i. The specific condition and period in service which aggravated the disability: Due to stress and strain of military training.

12. Significantly, as would be evident from the above extracts, the petitioner had on being queried during his examination, denied to have been

suffering from any of the disabilities at the time of joining the army service. Though as per Clause 2(a) of Part-III, Medical Board was required to

express its views on the aspects as to whether the disabilities were attributable to service during peace or under field service conditions, were

aggravated thereby and remains so or were not connected with service, and was required to state the reasons with regard to each of the disabilities

of which its opinion was based. No reason whatsoever was cited by the Medical Board in support of this conclusion.

13. It is not in dispute that the Medical Board has assessed the disability of petitioner at 20%. Moreso, the Medical Board has opined that disease

suffered by the petitioner is due to stress and strain of Military training which has aggravated the disability to him.

14. Regulation 173 provides that whether the disability is attributable to or aggravated by military service is to be determined under the rule, i.e.

Entitlement Rules for Casualty Pensionary Awards, 1982, in Appendix-B, of which Rule 5 reads as under:

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following

presumptions:

PRIOR TO AND DURING SERVICE

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or

recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due

to service.

15. A glance of Rule 5 reveals that when no physical disability is noted or recorded at the time of entrance of an individual, the member is

presumed to be physically and mentally fit. In the present case, petitioner, at the time of entry into service, was medically fit. Respondents have not

come up any document to show such an entry recorded at the time of petitioner's initial entry into service.

16. In the given circumstances, it is not difficult to gather that petitioner's disease was noticed at the time of his enrolment in the service nor was the

disease such as capable of being noticed by the medical experts. It shows that his ailment was attributable to the military service after it had gone

unnoticed at the time of his enrolment.

17. It is beaten law laid down by the Apex Court as well as various High Courts of this Country that an army personnel is entitled to disability

pension if the disease/disability is occurred during his active service, therefore, the opinion of the Medical Board has great significance in this

regard. In the present case, the proceedings of the Medical Board, referred to here in above, clearly reveal that nothing was noted or recorded

that the petitioner was suffering from any physical disability at the time of his initial entry into the service.

18. This Court in case, titled as, *Puran Chand v. Union of India*, [2013 (2) JKL 473 [HC]] while deciding an identical issue has held that since

no note was recorded about the disability at the time of selection and enrolment, the petitioner would be presumed to have been in sound physical

and mental condition and his subsequent disease or deterioration in health is to be treated due to service.

19. A Division Bench of this Court in case of *Union of India v. Sikander Singh*, 2011 (1) JKL 878 [HC]: 2012 SLJ 390 has also taken the

same view.

20. The Apex Court in *Dharamvir Singh v. Union of India*, AIR 2013 SC 2840 has held as under:

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board has not given any reason in

support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of

acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned

order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982',

the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant

was suffering from ""Generalised seizure (Epilepsy)"" at the time of acceptance of his service, it will be presumed that the appellant was in sound

physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

21. I am also fortified by the view taken by the Hon'ble Apex Court in Civil Appeal No. 2904 of 2011, titled *Union of India and another v.*

Rajbir Singh decided on 13.02.2015 and Civil Appeal Nos. 4357 and 4358 of 2015 titled *Union of India and others v. Manjeet Singh*

decided on 12.05.2015.

22. In view of the above discussion, the writ petition is allowed and the orders rejecting the disability pension claim of petitioner are quashed.

Respondents are directed to grant disability pension to the petitioner from the date he has been invalided out of service. Such exercise be

completed within a period of three months from the date a certified copy of this order is served upon them. In case it is not done within the

aforesaid period, the petitioner would be entitled to interest @ 6% per annum.

23. Disposed of along with connected CMA(s), if any.