
(2009) 11 RAJ CK 0049
In the Rajasthan High Court

Bhagat Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 WLN 238

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution, the petitioner has challenged the order Annex. 8 dt. 03.05.2006 and Annex. 9 dt. 17.12.2005, declining to grant disability benefit cover under Army Group Insurance Fund and seeks direction to the respondent No. 2 and 3 to grant benefit of disability benefit cover to the petitioner from the Army Group Insurance Fund with interest from the date such benefit became due.

2. Briefly stated, the facts, which are relevant and necessary for decision of this writ petition are that the petitioner was enrolled in Indian Army as combatant member on the post of Sepoy on 12.08.1987. During his service tenure, he earned rank of Havildar. However, the petitioner was discharged on 31.01.2005 by the respondent Army authorities, on medical ground as he was placed under low medical category-BEE(P) vide Annex. 1. The respondent Army authorities recommended for grant of disability pension to the petitioner. While boarding out the petitioner on medical ground, the Army authorities found that the disability suffered by the petitioner is more than 20 percent for life and is attributable to military service and, therefore, his claim for disability pension was forwarded to the PCDA(P), Allahabad vide Signal (Records) letter dt. 20.05.2005 (Annex. R/3) and after adjudication of the disability pension claim of the petitioner, PCDA (P), Allahabad granted disability pension to the petitioner vide Pension Payment Order dt. 08.09.2005. The petitioner medical category was downgraded to

BEE(P) with effect from 28.02.1999. Thus, he was placed under low medical category (permanent) with effect from 12.10.2003. By an order Annex. 3 dt. 20.05.2004, the Commanding Officer, of the unit in which petitioner was serving did not recommend for petitioner for contained retention in service. In column No. 4 of order Annex. 3, the Commanding Officer recorded that the individual not recommended for contained retention in service, as the alternate appointment in conformity with his low medical category could not be found and his transfer to pension on discharge from service was recommended. Thus, according to the petitioner, he has been discharged from service on medical ground, as having been placed under low medical category permanently and was boarded out with disability pension as disability suffered by him was attributable to military service and, therefore, the petitioner claims entitlement to the disability benefit cover under the disability cover benefit scheme of Army Group Insurance Fund, which has been denied by the respondents; hence this petition.

3. I have heard learned Counsel from the parties.

4. It is contended by learned Counsel for petitioner that the petitioner was a member of Army Group Insurance Scheme and this Act has not been disputed by the respondent Union of India as also by respondent No. 2 and 3 i.e. the Managing Director, Army Group Insurance Fund etc. So far as case of the petitioner that he joined Army on 12.08.1987 and served up to 31.01.2005 the date on which he was medical boarded out on the ground that he was suffered permanent disabilities and has been placed in low medical category i.e. BEE. (permanent) and the disability suffered by the petitioner was assessed more than 20% and found to be attributed to military service and, therefore, he was granted disability pension since the disability suffered was more than 20 percent, have not disputed by the respondents in the reply filed by respondent No. 1. Further, it has not been disputed that the petitioner was placed under low medical category pertinently and he was recommended by the medical board for grant of disability pension and PCDA(P) sanctioned disability pension to the petitioner vide PPO dt. 08.09.2005 (Annex. R/2). Only the question requires to be examined is whether the petitioner is entitled for disability benefit cover under Army Group Insurance Scheme, the respondent came with the case that the petitioner was unwilling to service in any alternate appointment with the Army and, therefore, he is not entitled for disability pension.

5. The contention of the respondents can not be accepted in view of order Annex. 3 as also order Annex. R/4, since the order Annex. 3 and Annex. R/4 are one and same, dt. 17.05.2004, issued by the Commanding Officer of the unit to which petitioner lastly served. Thus, it can not be said that the petitioner did not accept alternate appointment or contained retention in service. As per order dt. 24.05.2003 as also Annex. R/4 filed by the respondent, it has categorically been mentioned by the Commanding Officer of the unit in which petitioner lastly served that the petitioner has not been recommended for contained retention in the service. The reason for not recommending in the alternate employment was

that alternative appointment in conformity with his low medical category could not be found. Thus, there being no alternative appointment in conformity with the low medical category of the petitioner was available and, therefore, he was recommended to be discharged with disability pension.

6. Under these circumstances, in my view, the respondent's were not justified in declining to grant the benefit of disability over as provided under the Army Group Insurance Scheme to which the petitioner was indisputably a member.

7. Consequently, the writ petition is allowed. The orders Annex. 8 dt. 03.05.2006 and Annex. 9 dt. 17.12.2005 are quashed and respondent No. 2 and 3 directed to grant benefit of disability benefit cover to the petitioner as admissible under the Army Group Insurance Policy, with interest at the rate of 9 percent per annum from the date the amount of such benefit became payable to the petitioner. The respondents No. 2 and 3 are directed to make payment of disability benefit cover with interest aforesaid within a period of three months from the date of producing certified copy of this order.

8. No order as to costs.

9. Since the writ petition is allowed, the stay petition also stands disposed off.