
(1998) 10 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 2409 of 1993

Bharat Giri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Pension Regulations — Regulation 173

Citation : (1999) 1 PLJR 740

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Rajendra Narain and Lakhan Chandra Maharaj, for the Appellant;
S.N. Pathak and Binod Murari Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—In this writ application under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for issuance of a writ of mandamus commanding the Respondents to pay disability pension to the Petitioner, who was discharged from the military service on the ground of suffering from neurosis and also for quashing the order, dated the 19th August, 1991 passed by the appellate authority rejecting the prayer for disability pension, a copy of which is made Annexure-6 to this writ application. Shortly stated, the case of the Petitioner is that he was appointed as a Signalmán in the Indian Army on 9.9.71 and was sent for training to 2, S.T.C. Marigaon, Goa and after the training, he was posted in Signal Regiment at Chandigarh. Subsequently, the Petitioner fell ill and was hospitalized in the Military Hospital where it was found that the Petitioner was suffering from Neurosis (300) and, accordingly, he was discharged from the Military Service on 18.7.1973. It is further alleged that the Medical Board found the Petitioner disabled to the extent of 20 percent and recommended for grant of disability pension, but the claim of pension was rejected by the authority. The Petitioner filed an appeal before the concerned authority, which was turned down being barred by limitation. Several

representations were sent to the Respondent authority and ultimately, the matter was considered by the appeal committee and rejected by order dated 19th August, 1991, as stated above.

2. In this case, a counter-affidavit has been filed on behalf of the Respondents 1 to 4 wherein, inter alia, it is stated that the Petitioner is not entitled to any relief at this belated stage when the cause of action arose in the year, 1973 itself. The Petitioner has served for a very short period i.e. one year 10 months 7 days in the Army Service out of which he remained on annual leave from 5th June, 1972 to 7th August, 1973 and remained in Hospital at Chandigarh from 23rd Dec. 1972 to 23rd April, 1973, for treatment of ailment of pain and gas in abdomen, frightening dream, interrupted sleep on account of domestic worries. The Petitioner was treated by a Psychiatrist Major Rajinder Singh, who found the Petitioner suffering from Neurosis (ICD-200). According to Psychiatrist, these ailments were manifestations of various complaints as painful distension of abdomen, frightful dreams and preoccupation with domestic trouble. The Petitioner did not respond to the treatment with drugs and psychotherapy. In view of the findings recorded by psychiatrist, Major Rajindar Singh, the Petitioner was examined by invalidating Medical Board. Ultimately, he was discharged from service with effect from 16.7.73. It is alleged that the invalidating Medical Board at Command Hospital (Western Command), Chandigarh, on 21st April, 1973 considered the disability as neither attributable to nor aggravated by military service. The Medical Board also considered and found the Petitioner suffering from constitutional disorder and not in any way, connected with service although the Medical Board found him disabled to the extent of 20 per cent for two years. It is further alleged that the entire matter was considered by the competent authority and rejected the claim of disability pension by order, dated 27th August, 1973 on the ground that the alleged disease is neither attributable to military service nor aggravated during the course of employment. However, the Petitioner was advised to prefer an appeal before the appellate authority within the time mentioned therein. A copy of the said order is made Annexure-"A" to the counter-affidavit. The sum and substance of the stand taken in their counter-affidavit is that the Petitioner is not entitled to such pension since the alleged disease is neither attributable to nor aggravated by military service.

3. Learned Counsel for the Petitioner has submitted that the order of the appeal committee whereby the prayer for disability pension has been rejected, firstly, on the ground that at the time of appointment in the military service, such alleged disease was not detected when the recruitment of the personnel is made on scrutiny by Medical Expert. The disease, which, later on found during the course of service will be deemed to have been attributed to the military service and or aggravated during the period while the Petitioner was in such service and, as such, the Petitioner is legally entitled to the disability pension. The second submission of the learned Counsel is that the Medical Board has assessed the disability of the Petitioner to the extent of 20 per cent, the Respondent authority is bound to sanction disability pension under the Rules and Regulations. In

opposition learned Counsel for the Union of India submits that the Respondent authority, after going through the materials on record, has categorically recorded a finding which cannot be interfered with by this Court in its writ jurisdiction. In order to appreciate the rival contention of the parties, the Regulation 173 of the Pension Regulation is to be noticed, which reads as under:

173. Unless specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above.

Further, the manner in which the question of attributability is ascertained and determined is laid down in Clause (c) of paragraph 423 of the Regulation, asunder Clause (c), the causes of disability or death resulting from a disease, which is attributable during the course of employment in the period. The cases in which it is established that service conditions did not determine or attribute to the set. of the disease but commenced subsequently in course of service such disease, which led to an individual's discharge will ordinarily be deemed to have arisen during service in the Armed Forces provided Medical Board holds, for the reasons to be recorded otherwise. In the light of the provisions aforesaid, the submission of the learned Counsel has to be considered with reference to the materials available on the record. From the facts stated above, it is apparent that the Petitioner has remained in the Army Service for less than two years out of which the substantial period of his service either he remained in hospital or on leave details of order have been mentioned above. As regards the first submission of the learned Counsel to the effect that once the Petitioner has been recruited for joining the military service, he is entitled, as a matter of course, for grant of disability pension on account of the disease subsequently detected in his service by the Medical Expert, has to be rejected taking judicial notice of the fact that the medical check up at the time of enrolment is carried out by the recruiting and the medical officer posted in different recruiting offices in routine manner. Such medical check up is not carried out by the medical specialist of a particular ailment. The paucity of time as well as no availability of the required instruments, it will not be possible to find out such diseases from which such recruits are supposed to be suffering. The disease like neurosis from which the Petitioner was suffering at the time of recruitment was not possible for the medical officer posted in different recruiting offices to find and ascertain such diseases. Such disease can only be detected after thorough check up and that too by a medical specialist of a particular disease.

4. In this case, from the materials on record that immediately after enrolment of the Petitioner, it was found by the medical expert including the psychiatrist that the Petitioner was suffering from such ailment. In support of his contention, learned Counsel for the Petitioner has relied upon an unreported decision of a Single Judge of the Punjab and Haryana High Court in the case of Madan Lal Yadav, Corps of Signals, Jabalpur v. Union of India and Ors. being Civil Writ

Petition No. 16728 of 1990 disposed of on 17th January, 1992 wherein, it has been held that the disability being 20 percent found by the Medical Board, the Petitioner was entitled to the disability pension in terms of Regulation 173, as quoted above. With great respect. I am not inclined to accept the reasons assigned by the learned Judge while allowing the claim of the writ Petitioner for grant of disability pension for the reasons stated above. The second submission of the learned Counsel is equally misconceived and has to be rejected as such. Though statement has been made in the writ petition to the effect that the Medical Board has found the disability to the extent of 20 per cent and has recommended for grant of disability pension, yet the Respondent authority has arbitrarily rejected the claim of the Petitioner. The averments made in the writ petition have been denied in the counter-affidavit filed on behalf of the Respondents and it is specifically stated that the Medical Board held on 21st of April, 1973 has considered the disability and has categorically opined that the alleged ailment was on account of constitutional disorder and not connected, in any way with the Military Service. The said statement made in the counter-affidavit has further found support from the order of the appellate authority as contained in Annexure-6 to this writ application where from, it appears that the constituted invalidating Board on consideration of the entire aspects of the matter has concluded that the alleged disease from which the Petitioner was suffering is neither attributable to nor aggravated by military service nor it is, in any way, connected with the military service and accordingly, the prayer of the Petitioner was rejected taking into consideration the findings of the Medical Board. Regulation 173 of the Pension Regulation quoted above clearly envisages that such pension could be granted to an individual, who becomes invalid on account of disability attributable to or aggravated by "Military Service and is assessed at 20 per cent or over. In the instant case, though the disability was assessed at 20 per cent, yet it has been found that such disability is neither attributable to nor aggravated by military service and, as such, the Petitioner is not entitled for grant of disability pension in terms of Regulation 173 of Pension Regulation (supra). The findings recorded by the medical experts, which were found to be correct after scrutiny of the materials on record by the competent authority and the same being a finding of fact, this Court, sitting in its writ jurisdiction, cannot interfere with the decision arrived at by the Respondent authorities.

5. In the result, this writ application fails and is dismissed, but without costs.