
(1999) 03 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16485 of 1997

Bhup Singh, Ex-Sepoy

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Entitlement Rules, 1952 — Rule 7

Citation : (1999) 123 PLR 285

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Ajit Singh, for the Appellant; Anil Malhotra, Addl. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner was enrolled as a Sepoy in the Army Supply Corps on 6.11.1965 after having been found physically fit as per the form of enrolment filled up at that time. The petitioner thereafter served at various locations as a motor Transport Driver from 6.11.1965 to 27.7.1974. He was, however, discharged from service on 27.7.1974 with the remarks "Services no - longer required" as he had been put in low category "CEE" permanent with effect from 18.12.1973. The petitioner was accordingly boarded out on the recommendation of the Medical Board vide discharge slip, Annexure P-2. The petitioner thereafter submitted a claim for disability pension to the Controller of Defence Accounts (P) Allahabad but this was rejected on the ground that the Release Medical Board had found that his disease was not attributable to or aggravated by military service. It appears from the written statement that the appeal filed by the petitioner was also dismissed. The petitioner nevertheless persisted with his claim and addressed communications dated 13.3.1996, 22.4.1996 and 10.6.1996, Annexures P-3 to P-5, claiming the benefit of disability pension. He was, however, informed vide Annexure P-6 dated 19.6.1996 that his claim for disability pension as also the appeal filed by him had already been

rejected and as such no further action could be taken on the fresh applications that he had made. The petitioner, however, still continued to raise a dispute and he was finally intimated vide Annexure P-8, dated 27.7.1996 that as his claim had already been rejected twice over, the decisions taken could not be altered. The petitioner thereafter filed various representations claiming that the orders rejecting his claim had not been supplied to him but having received no satisfactory reply, has come to this Court.

2. On notice of motion, a reply has been filed by the respondents. It has been pleaded that the petitioner had been boarded out of military service in low medical category "CEE" (Permanent) with effect from 18.12.1973 on the opinion of the Release Medical Board, Annexure R-1 dated 7.7.1974. It has also been pleaded that the petitioner's claim had been rejected by the Medical Advisor (Pension), Allahabad as the petitioner's disability was not considered attributable to or aggravated by military service. It has also been pointed out that the appeal preferred by the petitioner had been rejected in the year 1975 and a further appeal in the year 1980. It has also been pleaded that Paragraph 173 of the Pension Regulations for the Army, 1961 Part I (hereinafter called the Regulations), postulated that disability pension was to be granted to an individual, who had been invalided out of service on account of disability, which was attributable to or aggravated by military service and had been assessed at 20% or above and as the petitioner was suffering from Compound Hypermetropic Astigmatism LT, eye which was a constitutional disease, the said Regulation could not be applied to his case. The respondents have relied upon a large number of Judgments in their support. It has also been pleaded that the petitioner's claim was liable to be defeated on account of laches as the petitioner's claim for disability pension had been initially rejected in the year 1974 but he had chosen to come to this Court in the year 1997.

3. A replication has been filed by the petitioner controverting the respondents stand and reiterating his own.

4. Mr. Ajit Singh, the learned counsel for the petitioner, has argued that as per Regulation 173 of the Regulations, disability pension was to be granted to an individual, who had been invalided out of service on account of a disease, attributable to or aggravated by military service and assessed at 20% or above and the question whether the disability was aggravated by the military service was to be determined under the Rules. He then referred to Appendix 2 of the Entitlement Rules, 1952 (hereinafter referred to as the "Rules") and to Rule 7-A, in particular which drew certain presumptions in favour of an individual claiming disability pension, and has argued that as no note with regard to the presence of the disease had been recorded at the time of petitioner's enrolment in service, it had to be held that the onset of the disease was due to military service.

5. As against this, Mr. Anil Malhotra, the learned counsel appearing for the Union of India, has pointed out that the Release Medical Board in its proceedings, Annexure R-1, had held that the petitioner's disease was not connected with

military service as it was a constitutional disease. He has also urged that the opinion of the Release Medical Board was to be given pre-eminence as held by Supreme Court in *Union of India and Anr. v. Baljit Singh* 1997(1) S.L.R. 98 and by a Division Bench of this Court in *Gurdip Singh (Retd.) Subedar (Hony. Lt) v. Union of India and Ors.*, 1997(5) S.L.R. 341.

6. It will be seen that the decision of the case would rest on a reading of the Rules. Rule 7-B and 7-C of the Rules are reproduced below:

" 7(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 opinion 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.

7(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 disease and that the conditions were due to the circumstances of duty in military service."

7. A bare reading of the Rules clearly reveals that a presumption has been raised in favour of a claimant if no note was recorded with regard to the presence of the disease at the time of acceptance for military service. An exception has, however, been made which visualizes that if the Medical Board held that the disease could not have been detected on medical examination prior to acceptance for service, the disease would not be deemed to have arisen during service. Rule 4 makes the matter even more clear when it provides that while deciding the issue of entitlement, the benefit of reasonable doubt will be given to the claimant and more liberally to a claimant in field service cases.

8. It is the conceded position that no note was recorded with regard to the petitioner's disease when he had joined military service and the discharge slip, Annexure P-2 also does not indicate the exception visualized in Rule 7(b). A presumption must therefore, be raised that the onset of the disease could be attributed to military service.

9. Faced with this situation, Mr. Anil Malhotra, the learned Additional Standing Counsel for Union of India, has argued that the petitioner was suffering from a constitutional disease and as the Release Medical Board had so held, this Court could not substitute its Judgment as held by this Court in *Gurdip Singh's* case (*supra*). This argument is without merit. Appendix II of the Rules contains a list of diseases which could be caused or be aggravated by military service, and whereas Item "A" consists of those diseases, which could be directly caused by military service, Item "E" is a list of diseases, which would not "normally" be affected by military service. The petitioner's disease Compound Hypermetropic Astigmatism (370) falls in the latter category. This disease would, therefore, in normal situations could not be attributed to military service but abnormal

conditions could exist for its onset or aggravation. Moreover the question as to whether a constitutional disease could never be attributed to military service stands answered by a Division Bench of the Court in *Union of India and Ors. v. Ex. Sepoy Satwinder Singh and Anr.* 1998(4) R.S.J. 467. While considering the entire case law on the subject, this Court repelled the appellant's argument that Schizophrenia was a constitutional disease which did not entitle a person to claim disability pension. For arriving at this conclusion, the Division Bench referred to Regulation 173 as also the Rules reproduced above. In paragraph 10 of the Judgment, it has been held as under:

"A conjoint reading of the Regulations and the Rules contained in Appendix II shows that an officer who is retired on account of disability which is attributable to or aggravated by military service and which is assessed at 20 percent or more is entitled to disability pension in accordance with the Regulations. The question whether a disability is attributable to or aggravated by military service is required to be determined as per rules contained in Appendix II. A person who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above is also entitled to disability pension. Those who are placed in lower medical category (other than E) permanently and who are discharged because no alternative employment suitable to their low medical category could be provided are also entitled to disability pension. Rule 3 of Annexure-II postulates the existence of a casual connection between disablement and military service before attributability or aggravation can be conceded. In terms of Rule 4, direct as well as circumstantial evidence is required to be taken into account while deciding the issue of entitlement to disability pension and the benefit of reasonable doubt is to be given to the claimant. The competent authority is required to adopt a more liberal approach in granting benefit to the claimant in field service cases. First part of Rule 7(b) (re-numbered as 14(b) contains a deeming provision. It lays down that the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in the course of service if no note of it was made at the time of individual's acceptance for military service. However, the benefit of this deeming fiction is not available to the claimant if the medical opinion, for the reasons to be stated, holds that the disease could not have been detected on medical examination prior to the claimant's acceptance for service. Rules 7(c) (re-numbered as 14(c) lays down that if the 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 disease and that the conditions were due to the circumstances of duty in military service."

10. Mr. Malhotra's reliance on Baljit Singh's case (supra) is also to no avail as this matter dealt with an injury and not with a disease. The reliance of the appellant, Union of India, on Gurdip Singh's case (supra) was also repelled by the Division Bench as it did not take into account the Rules on the subject.

11. In the light of what has been held above, this writ petition is allowed, the

orders Annexures P-6 and Annexure P-8 are quashed, and the case is remitted for re-decision to the Release Medical Board in the light of the observations made above. The Board shall take its decision within 3 months from the date that a certified copy of this order is supplied to the respondents. Dasti order. No costs.