

(1997) 11 DEL CK 0086

In the Delhi High Court

Case No : Civil Writ Appeal No. 184 of 1997

B.R. Malhotra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-11-1997

Acts Referred:

Pension Regulations — Rule 50

Citation : (1997) 6 AD 1049 : (1998) 71 DLT 498 : (1998) 44 DRJ 337 : (1998) 1 ILR Delhi 74

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Rekha Pali, for the Appellant;

Judgement

Usha Mehra, J.

(1) Petitioner joined the Indian Military Academy in 1961. He got permanent commission in the Regiment of Artillery in June, 1963. In April, 1966 petitioner sustained Gun Shot Wound in both his knees. This happened while petitioner was operationally deployed in hi altitude area of NEFA. The Medical Board assessed his disability at 40% and opined that it was attributable to Military Service. However, the petitioner remained in military hospital for treatment and thereafter served in various staff appointments in the Indian Army as permanent Low Medical Category Officer. On 12th May, 1982 petitioner was sent on deputation to Bharat Electronics Ltd. (in short the BEL) as Manager (Personnel & Administration). The deputation was in public interest and not on his request. While working in the Bel a question arose whether the petitioner would be entitled to disability pension in the event of his permanently getting absorbed in BEL. In response to this query by the Bel, the Army Headquarters intimated and confirmed that the officer would be entitled to disability pension even if he gets permanently absorbed in BEL. After receipt of this letter on 17th December, 1983, the petitioner retired from the Army on 12th May, 1985. He got absorbed in the Bel after he was given post facto sanction by the President of India vide letter

dated 10th July,1985. On 13th August,1985 a Release medical Board was held at Army Hospital, Delhi Cantt. Medical report was forwarded to the Cda (Pension). The Cda (Pension) asked the authorities to arrange for medical board as earlier the hospital had sent medical proceedings on wrong form. Accordingly on 22nd November,1985 a fresh Medical Board was held which gave the same opinion as given by the earlier Medical Board held on 13th August,1985. After receipt of the Medical Board opinion, the Cda (Pension) sanctioned pro-rata pension at the rate of Rs.1,220.00 per month in favor of the petitioner beside capitalised value at Rs.96,835.00 based on 43% commutation. Beside Cda (Pension) sanctioned residual pension at the rate of Rs.696.00 per month. The Cda (Pension) also sanctioned commutation of pension based on age next birthday 43 and applying factor 15.15 for commutation.

(2) Petitioner felt aggrieved for having been denied disability pension and on account of wrong commutation and calculation of pension. He made representation to the Cda (Pension) indicating that he was entitled to pension at the rate of Rs.1,400.00 per month. That commutation was not acceptable as the basis of age next birthday was wrongly calculated. The first medical board was held before the petitioner attained the age of 42 years, Therefore commutation ought to have been on the basis of Medical Board held on 13th August,1985. It was no fault of his if the hospital authority sent the proceedings on a wrong form. That disability pension could not be arbitrarily withheld particularly when the injury was sustained by the petitioner while on duty and the same was attributable to military service. The Cda (Pension) did not agree with his contention. It summarily rejected his request. The petitioner made yet another representation to the Ministry of defense indicating all his grievances as pointed out above. His representation/ appeal was rejected hence being aggrieved the petitioner preferred this writ petition.

(3) The defense of the respondent is based primarily on the fact that after the petitioner voluntarily retired and got permanently absorbed in a Public Sector Undertaking like Bel, he lost his entitlement to claim disability pension. Absorption in Public Undertaking disentitled him of the disability pension. As regards capitalised value of pension age of birthday was correctly taken as 43 years. The period had been calculated by deducting the date of 29th August,1943 from the date of his absorption i.e. 14th May,1985. Moreover, the pension fixed at Rs.1,220.00 was in accordance with the Government of India's letter dated 10th April,1978. Pro-rata pension had been correctly sanctioned.

(4) I have heard Lt.Col. B.R. Malhotra, petitioner in person and Mrs. Rekha Palli for respondent and perused the record. Taking the first point raised by the petitioner regarding non-payment of disability pension, I find the defense raised by the respondent without substance. Pension is not a bounty nor an award. It is a deferred wage. Simply because the petitioner got absorbed in a Public Sector Undertaking and that too in public interest his deferred wage i.e. the pension earned by him could not be denied. The Supreme Court in the case of Smt.

Bhagwanti Vs. Union of India (UOI), , held that pension is paid on the consideration of past service rendered by a government servant. The pension is linked with past service and the avowed purpose of the Pension Rule is to provide sustenance in old age. Therefore, simply because petitioner was allowed to get absorbed in the Bel after getting retired from the Army his deferred wage for which he became entitled could not be deprived to him.

(5) Moreover, as contended by the petitioner he never went to Bel on his own. He was sent on deputation to Bel in public interest. This fact has been admitted by the respondent vide letter dated 10th July, 1985, Annexure-E, where the respondent while granting the sanction for the permanent absorption of the petitioner specifically mentioned that his absorption was in public interest and was to take effect from 12th May, 1985. Further conditions imposed in the letter while granting sanction show that petitioner even after absorption in Bel was to remain under the control of the respondent. He was asked to give undertaking to the effect that in the event of his service with the Bel being terminated at the instance of either Bel or of himself within two years of the date of his permanent absorption, the approval of the Government would be obtained by the officer before he takes up any private employment. This condition clearly carve out the control the respondents had over the petitioner even after two years of his absorption in BEL. This also lend support to the contention of the petitioner that he did not request for deputation nor the absorption. He was sent on deputation and was allowed to get absorbed in the said undertaking in public interest. The absorption was with a rider that in case he resigns or thrown out by the said Bel or he takes up private assignment he was to have the permission of the respondent. This shows that the respondent exercised the control over the career of the petitioner even after he got permanently absorbed in the BEL. In the sanction letter it was further stipulated that the respondent could recall the petitioner even after he was permanently absorbed in the BEL. That after leaving Bel for two years the petitioner could not take any private job without Government consent. These conditions clearly stipulates that petitioner was allowed to get absorbed in the Bel as per the terms and condition laid down by the respondent and at the behest of the respondent and not on his own request. Moreover, no such request made by the petitioner has been placed on the record. The very fact that the petitioner in public interest got absorbed in Bel does not mean he voluntarily retired from the Army service. After his permanent absorption in the Bel, the respondent cannot deprive him nor can make him suffer his rightful due to receive disability pension which accrued to him in 1966 when while on duty he suffered the injury attributable to military service. The fact that petitioner never voluntarily retired find further support from the letters exchanged between the Bel and the Army Headquarters which are reproduced as under:

The Assistant Adjutant General, Ps (4), Adjutant General's Branch, Army Headquarters, Sena Bhavan, New Delhi-110011. :12902/10/MA/GAD/PEKS 16th November, 1983. Sub: Deputation Of Army Officers To Public Sector

UNDERTAKINGS. Sir, From time to time Army Officers are sent on deputation to this Company and some of them get absorbed permanently in public interest. As per the present Government Rules, the Officers consequent to their absorption are entitled to draw Pension for the services rendered in the Army. Please confirm that those officers who have more than 20% disability due to causes attributable to the Military services prior to coming on deputation would also be entitled to the disability pension in addition to the retiring pension at the time of absorption to the Public Sector Undertakings in public interest. Thanking you, Yours faithfully, For Bharat Electronic Limited, sd/- Dy. Manager (Administration) Vayaktik Seva Nideshalaya (PS4) Adjutant General Shakha, That Sena Mukhalaya, Personal Services Directorate, Adjutant General's Branch, Army Headquarters, Dhq Po New Delhi-110011. 90001/AG/PS4/(d) 17th Dec.,1983 The Deputy Manager, Bharat Heavy Electronics Ltd., Bharatnagar, Ghaziabad-201008. Sub: Deputation Of Army Officers To Public Sector UNDERTAKINGS. 1. Ref to your letter No.12902/10/MA/ GAD/PERS dated 16.11.1983 2. As per Art 510-B of the Civil Services Regulations appearing on page 432 of Chaudhuri's Compilation of Csr Vol. I (1979), an Officer during his re-employment continues to receive the disability element of pension Along with the pay of the re-employed service and the continuation or termination of this Award is only subject to the conditions of the Award. On the same analogy the officers who are permanently absorbed in a Public Sector Undertaking should also continue to draw the disability element of pension during their absorption in the Public Sector Undertaking. sd/- (A. P. Mund) Cso Offg. AA: PS4 For Adjutant General

(6) The bare reading of the reply sent by the Army Headquarters dated 17th December,1983 establishes the case of the petitioner that he is entitled to receive disability element of pension even when he got permanently absorbed in the BEL. It was only after receipt of this letter dated 17th December,1983, that the petitioner did not object to his being permanently absorbed in the BEL. Now it does not lie in the mouth of the respondent to contend that since the petitioner got permanently absorbed in the Bel, he was not entitled to disability pension. Reliance by Mrs. Rekha Palli on Rule 50 which is reproduced below is of no help to her:-

"RULE50 of the Pension Regulation for Army: An officer who retires voluntarily shall not be eligible for award on account of any disability"

(7) As already stated above, it cannot be said that the petitioner retired voluntarily. Army Headquarter's letter dated 21st May,1985 show that he was allowed to retire for specific purpose and was allowed permanent absorption in Bel in public interest vide letter dated 10th July,1985. At that time when he was allowed to get absorbed petitioner still had nine years of his service in the Army. Had he been informed that by getting absorbed in the Bel he would loose this pension he might have taken a different decision. But after having made known to petitioner as well as Bel that petitioner's absorption would not deprive him his disability pension now respondent cannot be allowed to turn the table on his

face. Even otherwise also I find no justification to deprive an officer his disability pension simply on the ground that he sought voluntary retirement. If on account of disability army can invalidate an officer and throw him out of the service then why an officer is denied disability pension when he seeks voluntary retirement. I find no reason for this discrimination. People who become disable due to military service are a class apart, they cannot be discriminated nor denied disability pension on the ground of voluntary retirement. I see no justification nor any nexus in depriving this class of officers the disability pension merely because they sought voluntary retirement. The disability does not cease on voluntary retirement. Hence, to my mind, Rule 50 of the Pension Regulation is discriminatory. It cannot stand the test being arbitrary and bad in law.

(8) Now turning to the grievance of the petitioner with regard to the reduction of his pension. The petitioner had put in 21 years, 10 months and 11 days service in the Army. Out of this he had put in 9 months and 11 days in the substantive rank of Lt.Col. (Time Scale). It is an admitted case of the parties that petitioner had not put in 10 months as Lt.Col., Therefore, was not entitled to Lt. Col's pension. He was eligible for the pension payable to a Major i.e. at the rate of Rs.1,400.00 per month. However, his pension has been fixed at Rs.1,220.00 . This the respondent did on the basis of so-called deduction on account of weightage element. The deduction on account of weightage element is based on the orders issued by the Government of India dated 22nd August,1975 and 10th April,1978. It is petitioner's case that since these two circulars do not form part of the statutory regulations, Therefore, have no sanctity in law. Beside, these circulars deal with the concession granted to defense service officers who had put in less than 20 years service. The officers who had less than 20 years service and got absorbed in Public Sector Undertaking were not eligible for pension. By these circulars the Government extended pro-rata pensionary benefits to even those officers who had less than 20 years service. It was in such cases the deduction on account of weightage element was taken note of. However, in the letter without any reference Paragraph No. 1I to the following effect was added. According to the petitioner this was done mischievously and without reference to the subject of that letter dated 22nd August,1975.

PARA-II. "INthe case of defense Service Officers with 20 years service or more who may get permanently absorbed in the defense Puss after the date of issue of these orders also the pro-rata pension will be subject to deduction of the weightage element from the standard rate of pension. These instructions will not, however, apply in the case of such officers who may have been absorbed in the defense Public Sector Undertakings prior to the date of issue of these orders."

However, by subsequent letter of 10th April,1978, it was clarified in following terms:-

1.I am directed to refer to Ministry of defense Office Memorandum No.F/49/15/(6)/73-D (PS) dated 22.08.75 on the above subject and to say that the President has decided that the provisions contained therein will also apply to the service

officers who have been absorbed or may get absorbed hereafter in the civil public sector undertakings. 2. This will have effect from 08.11.1968 subject to the condition that no deduction on account of weightage element would be made from the standard rate of pension of these officers who have been permanently absorbed after 20 years of qualifying service in the civil public sector undertakings prior to the date of issue of this letter.

(9) Reading of the letter dated 22nd August, 1975 shows that Government was primarily concerned with defense Service Officers who had less than 20 years service and got absorbed in the Public Sector Undertakings. So far as the petitioner is concerned his pensionary benefits were to be regulated as per pension regulations. He had put in more than 20 years of service. Therefore, by this letter which had no statutory force his right to have full pension under the Pension Regulation which has statutory force could not have been taken away. So far as petitioner is concerned his pension had to be standardised on the rank held at the time of his retirement. The question of weightage element could not arise so far as petitioner is concerned. There is no rule nor any clause in the Pension Regulation allowing deduction on account of weightage element nor there is any provision excluding the officers who got absorbed in Public Sector Undertakings from the provision of the full pension. Finally the Government of India issued another letter dated 13th September, 1985 dealing with revision of retirement benefits of service officers as a result of merger of DA/ADA/Ad hoc DA up to the index level of 568 points with pay. There also no mention of weightage element was made. In fact the qualifying service prescribed for earning full pension is an in-built element of compensation on account of form of employment i.e. each year of service rendered by service officer is weighed as compensation when compared with each year of service rendered in other form of employment. There is no reason assigned nor any justification given for reduction in pension rate of defense Service Officers on account of weightage element in the standard pension rate and other retiring benefits. Since the petitioner qualified to get full pension as he had rendered more than 20 years of service and he was allowed to get absorbed in the Public Sector Undertaking Bel in public interest, Therefore, there was no question of deduction account of weightage element. In fact the petitioner is entitled to full pension because that payment is for the service rendered by him in the past. The wage earned by the petitioner in the past cannot be taken away or reduced arbitrarily by the respondent unless for the reasons mentioned in the regulation i.e. on account of misconduct or any such offence.

(10) I am in agreement with the contention of the petitioner that in the grant of pension there cannot be any discrimination between the persons who got absorbed in the Public Sector Undertaking and who did not. In fact there is no rationale in this discrimination nor any nexus from the objects sought to be achieved. Therefore, the deduction on account of weightage element applied in the case of petitioner is bad in law and cannot be sustained. Petitioner is, Therefore, held to be entitled to full pension of a Major.

(11) With regard to capitalised value (based on age next birthday) it is an admitted fact on record that on 13th August,1985 the petitioner was asked to appear before the Medical Board for the purpose of sanctioning commuted value of pension. The Hospital authorities sent the medical proceedings on a wrong form as a result of which the pensionary authorities declined to deal with his case. He was, Therefore, made to undergo another medical on 22nd November,1985. In the meantime, the petitioner attained the age of 43 years. When the first medical board was held he had not completed his 42 years, but by the time second medical was held on 22nd November he attained the age of 43 years. This happened for no fault of the petitioner. The respondent instead of taking the date of medical Board as 13th August,1985 took the date as 22nd November,1985 and thus applied the factor of 15.15 for commutation instead of factor of 15.40. As a result of this mistake on the part of respondent and of the hospital authorities, the petitioner suffered financial loss to the tune of Rs.36,924.00 . Petitioner rightly contended that filling of form was only a ministerial act on which he had no control. Merely, because the medical proceedings were sent on a wrong form filled by the hospital authorities, the petitioner cannot be made to suffer monetary loss. Moreover, filling of form was the duty of hospital authorities on which the petitioner had no control. The second medical board which was held on 22nd November,1985 reiterated the same report which was given on 13th August,1985. Nothing new was furnished. Hence, so far as the petitioner is concerned the date of medical board ought to have been taken as 13th August,1985 i.e. age next birthday ought to have been 42 instead of 43. Order accordingly. For the reasons stated above, it is ordered that the petitioner should be paid pension at the rate of Rs.1,400.00 per month which was admissible to him as a Major without deduction on account of weightage element. Finally petitioner's medical board should be treated as 13th August,1985 on the basis of age next birth day to be 42 years and not 43 years and quantum of capitalised value of pension should be worked out accordingly. Petitioner should also be paid disability pension at the rate of 40% disability as assessed by the Military Medical Board. Further directions are given that the benefits be paid to the petitioner within three months, failing which petitioner would also be entitled to interest at the rate of 18% per annum. With these observations the writ petition is allowed with no order as to costs.