
(2016) 02 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPASW No. 40 of 2010

Brij Lal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 14(b)

Citation : (2016) 1 JKJ 34 : (2016) LIC 2048 : (2016) 3 LLN 386

Hon'ble Judges : N. Paul Vasanthakumar, C.J. and Bansilal Bhat, J.

Bench : Division Bench

Advocate : Surinder Kour, Sr. Adv. with Davinderpreet Kour, Advocate, for the Appellant; R.S. Jamwal, Sr. Panal Counsel, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, C.J.—Heard Ms. Surinder Kour, learned senior counsel appearing for the appellant and Mr. R.S. Jamwal learned

counsel appearing for the respondents.

2. This appeal is preferred by the appellant challenging the order of learned single Judge made in SWP No.2639/2001 dated 01-01-2010,

rejecting the claim of disability pension of the appellant, who was boarded out due to medical disability by the respondents.

3. The case of the appellant is that he was appointed as Rifleman on 18.04.1988 and allotted No.9088903. He underwent training at JAKLI

Centre, Srinagar and on completion of the training he was posted in 13th JAKLI Jalandhar. The performance of the appellant was noticed as

efficient and honest to the satisfaction of the superiors and there were no adverse remarks against the appellant. While in active service the

appellant suffered disability and came to be boarded out on medical grounds on

29.01.1990. The disability of the appellant was assessed by the Medical Board as 60%. The appellant claimed disability pension which was rejected by the Chief Controller of Defence Accounts by order dated 10.09.1990. The Medical Board found that the appellant was suffering from ""PARTIAL G 6 PD DEFICIENCY-281"". According to the appellant, he was medically found fit by the Board of doctors and the appellant was enrolled 'AYE' category which means that the appellant was in good health. The disability was caused due to stress and strain of military service and therefore, the appellant is entitled to get sanction of disability pension as his disability was assessed more than 20% which is the prescribed eligibility for getting disability pension. The appellant preferred appeal against the order of rejection of his disability pension and the same was dismissed by the Ministry of Defence by order dated 21.10.1991. Again the appellant filed another appeal and an order was passed on 31.08.2001. The appellant preferred writ petition before the writ Court and challenged the order rejecting the disability pension dated 21.10.1991 and further order dated 31.08.2001 and prayed for sanctioning and release of disability pension from the date he was boarded out from service on medical ground and pay all pensionary benefits with arrears and interest. The said writ petition was dismissed by the writ Court by accepting the reasons stated by the respondents that the disability of the appellant being an inherited genetic disorder, not arisen due to military service, which was failed to be detected by the medical board at the time of his initial recruitment and the writ petitioner, is not entitled to get the disability pension.

4. Against the said order of the writ Court, this appeal is preferred by contending that the appellant's case cannot be rejected as it is not coming under the ambit of the Pension Regulations of the Army, 1961 as no note was made at the time of initial recruitment of the appellant by the Medical Board about the genetic disorder of the appellant. As per Appendix II, Rule 14(b), if the disease was not detected at the time of enrolment then the disease is presumed to be arisen during service.

5. This Court as well as Hon'ble the Supreme Court in similar circumstances allowed the disability pension to lot of military personnel as there was no disability found by the Medical Board at the time of initial recruitment and the disability assessed being more than 60%, the appellant is entitled

to get disability pension. The learned single Judge has not properly appreciated the facts as well as the law and went on to presume to justify the rejection of disability.

6. Learned counsel for the respondents fairly submitted that the disability/any genetic disorder was not found during initial recruitment by Medical

Board and there was no laxity on the part of Medical Board which examined the appellant and sometimes the genetic disorder could not be easily

found particularly when the appellant was recruited in the year 1988 and during those days, diagnosis was not so efficient as on today in the

medical field and within two years of his entry into service 60% disability was noticed by the Medical Board and therefore, the appellant was

boarded out. It is contended that the learned single Judge has properly appreciated the factual aspects and appeal deserves to be dismissed.

7. The point arises for consideration in this appeal is as to whether the appellant is entitled to disability pension as he was boarded out due to 60%

disability during his employment in military service. It is not in dispute that the appellant participated for selection in the year 1988 as Rifleman and

he was selected and appointed as Rifleman on 18.04.1988 and allotted No.9088903. He was also deputed for training at JAKLI Center,

Srinagar. At the time of selection and during the training period also no disability was noticed by the respondents or Medical Officers attached to

the training camp. On successful completion of training, the appellant was posted in 13th JAKLI at Jalandhar and he also discharged his duties

efficiently and without any adverse remarks and these facts are not in dispute. During the medical examination at the time of his enrolment, the

Medical Board examined the appellant on all aspects and endorsed in their report as "AYE" category which means that the appellant was in good

health and only in the year 1990, the Medical Board found that the appellant was suffering from "PARTIAL G 6 PD DEFICIENCY-281".

According to the appellant, the said medical disability occurred due to stress and strain of military service. The appellant was discharged from

military service on 29.01.1990. His claim for medical disability pension was rejected on the ground that he had not sustained the medical disability

due to military service and the disability was inherited genetic disorder. The relevant provisions for considering the claim of disability pension under

the Pension Regulations of Army, Regulation 173 of the Pension Regulations of the Army 1961 reads thus: -

173. Primary conditions for the grant of disability pension: Unless otherwise specifically provided a disability pension may be granted to an

individual who is invalided from service on account of a disability which is attributable to or aggravated by Army service and is assessed at 20 per

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

8. Under Rule 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982, it is clearly stated that if a disease which has led to an

individual's discharge 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

Army service. The exception is in the event of medical opinion supported by the reasons that the disease would have been detected on medical

examination prior to acceptance for service, whereupon it would be deemed that the disease has not arisen during service.

9. Even though in the medical report, based on which the appellant was boarded out, it is stated that the disability of the appellant was neither

attributable nor aggravated by the military service. It is not stated that the said inherited genetic disorder could not be found by the Medical Board

at the time of initial recruitment. In the absence of such endorsement by the Medical Board, learned counsel for the appellant is justified in

contending that the appellant is entitled to get disability pension. Even though a vague plea raised in the counter affidavit that constitutional diseases

or disorder in fledgling state cannot be detected and symptoms thereof would only be detected either during the extensive examination by the

specialist doctors or when the disease become chronic/symptomatic, nothing prevented the Medical Board or the doctors who examined the

appellant to refer the appellant to such medical examination and the appellant was boarded out within a period of one and half years.

10. Similar issue was considered by Hon'ble the Supreme Court in the decision reported in (2013) 7 SCC 316 : (AIR 2013 SC 2840)

(Dharamvir Singh v. Union of India and others) and AIR 2015 SC 2114 (Union of India & others v. Manjeet Singh). In the decision

reported in (2013) 7 SCC 316 : (AIR 2013 SC 2840) while interpreting the Regulation 173 as well as Rule 14 and Rule 423, Hon'ble the

Supreme Court held that the benefit of reasonable doubt regarding disability, if there is no concrete proof would go to individual and a disease

which had led to the individual's be treated to have been arisen in service, if no note of it is mentioned at the time of entry into Army. If the disease

could not have been detected on medical examination prior to acceptance of service and the disease will not be deemed to have been arisen during

military service and the Board is required to state the reasons for the same. In this case, even though some reason is recorded by the Medical

Board based on which the appellant was discharged, no specific reason as to why the doctor/Medical Board which examined the appellant at the

time of his enrolment has not been stated. Hon'ble the Supreme Court in the said decision rejected the plea of the Army in similar circumstance and

directed to pay disability pension. In fact in the said case, learned single Judge allowed the writ petition, which was reversed by the Division Bench

by setting aside the order, Hon'ble the Supreme Court restored the order of the writ Court with a direction to pay the pension within three months.

11. In the decision reported in 2015 (2) SCALE 371 (Union of India and Ors. v. Rajbir Singh), Hon'ble the Supreme Court held that the very

fact that a person was found fit, who served in the Army shall raise a presumption that he was disease free at the time of his entry into service. That

presumption continues till it is proved by the employer that the disease was neither attributable nor aggravated by military service. In the said case

also, Hon'ble the Supreme Court dismissed the appeal preferred by the Union of India and affirmed the order of the High Court giving directions to

pay disability pension.

12. In the decision reported in AIR 2015 SC 2114, the Hon'ble Supreme Court following the earlier decisions dismissed the appeal preferred by

the Army and upheld the directions to pay disability pension, which was ordered by the High Court in similar circumstance where a person

recruited on 06.04.1999 being awarded medical category of ""AYE"", was discharged on 01.01.2002 based on Medical Board's report in putting

the respondent in the category from 'AYE' to 'GEE' temporarily w.e.f April, 2000.

13. Applying the principles mentioned in the said judgments and the respondents having not disproved the presumption which is applicable to the

appellant's claim and the disability pension being a benevolent provision welfare

legislation which should be interpreted liberally, in the given circumstances, we are of the view that the order of the learned single Judge in upholding the order of respondents in rejecting the disability pension to the appellant cannot be sustained and the appeal deserves to be allowed.

14. Consequently, the Letters Patent Appeal is allowed with a direction to the respondents to sanction the disability pension to the appellant from

30.01.1990. The arrears of disability pension from the said date are directed to be calculated and paid to the appellant within a period of three months from the date of receipt of copy of this order. No costs.