
(2007) 05 AHC CK 0285
In the Allahabad High Court

Brijendra Nath Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Citation : (2007) 7 AWC 6763

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Vijay, learned Counsel for the petitioner and Sri Anoop Kumar appearing for the respondents.

2. By this writ the petitioner has prayed for quashing the order date 9th June, 1987 and the order dated 23rd May, 1986 refusing grant of disability pension to the petitioner and the order dated 10th September, 2001. A writ of mandamus has also been sought for grant of disability pension to the petitioner.

3. Brief facts necessary for deciding the writ petitioner are:

The petitioner was recruited as gunner in Artillery on 21.1.1980. Petitioner was sanctioned leave on 4.10.1984 for two months. After expiry of the leave the petitioner was to report on 6.12.1984. Petitioner fell ill on 4.10.1984 he was referred to Military Hospital, referred to Military Hospital, Allahabad and thereafter to Jalalpur. The petitioner was subsequently admitted in Command Hospital, Lucknow where he received an order dated 30th September, 1985 intimating that he has been invalidated from service with effect from 26th June, 1985 and discharge certificate was sent along with the letter.

4. The claim of disability pension was refused by letter dated 23.5.1986. The petitioner filed an appeal to the Central Government which too, was rejected by the letter dated 9th June, 1987. On 20th September, 1999 petitioner again moved a representation to the respondent No. 2 for grant of disability pension on

the basis of news paper report dated 14.9.1999 to the effect that the army men who have not even completed ten years service and have been removed due to physical disability, are entitled for disability pension. The said representation was again rejected by letter dated 14th October, 1999. By letter dated 14.10.1999 the petitioner was intimated that he was already informed many times that the disability is "hysterical reaction" which resulted in his invalidation from the Army was not viewed either attributable or aggravated by military service hence the claim of disability pension was rejected. Petitioner, thereafter again represented and same reply was received by letter dated 10th September, 2001. Thereafter this writ petition was filed in the year 2001. A counter affidavit and the supplementary counter affidavit has been filed by the respondents in which it has been stated that the Medical Board assessed cause, nature and degree of disability of the petitioner on 7th May, 1985 at Command Hospital, Central Command, Lucknow and had viewed that disability was neither attributable or aggravated by military service and opined that it as constitutional disease not connected with the service. The report of the Medical Board has been brought on record as Annexure-1 to the supplementary counter affidavit. It opined that "it is a constitutional disease and not connected with service". The disease for which the petitioner was invalidated was mentioned as "hysterical reaction"-300(b). Counter affidavit has also taken a preliminary objection that the claim of disability pension being rejected on 23rd of May, 1986 the writ petition is barred by delay and laches. The counsel for the respondents submitted that the petitioner has been invalided out from service with effect from 25th June, 1985, thus the writ petition was filed after lapse of sixteen years and is barred by delay and laches.

5. Learned Counsel for the petitioner challenging the action of the respondents contended that the disease was not detected at the time when the petitioner entered into service hence the disease has to be treated having surface during service and attributable to military service,. Learned Counsel contended that when the petitioner was posted in Assam for three years which caused onset of disease. Replying the preliminary objection raised by the learned Counsel for the respondent, it is contended that the petitioner having represented the matter time and again the writ petition is not barred by laches. He submitted that the claim of disability pension is not liable to be dismissed on the ground of delay and laches and the Court may, of course, confine the liability from the reasonable period in the event the writ petition is allowed. Learned Counsel for the petitioner has placed reliance on several judgments of this Court being the judgments reported in 1997 (1) E.S.C. 477 (All.) Mahavir Singh Rawat Vs. Union of India and others, Mahavir Singh Rawat v. Union of India and Ors. (1997) 2 UPLBEC 1179 Shiv Murti Rai v. Union of India and Ors. (1999) 3 UPLBEC 2010 Inder Jang v. Union of India and Ors. (1996) 2 UPLBEC 761 Anil Kumar Mishra v. Union of India and Ors. (1998) 1 UPLBEC 708 Yashpal Singh Mehra v. Union of India and Ors. 2003 Lab I C 1704 Ranjeet Singh v. Union of India and Ors. (Punjab and Haryana High Court) A.I.R 2007 . SCW 1487 Shiv Pass v. Union of

India and Ors.

6. Learned Counsel appearing for the respondents has also placed reliance on the several judgments of the apex Court and this Court in support of his submission. Reliance has been placed on judgment of the apex Court reported in Union of India (UOI) and Another Vs. Baljit Singh, Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair,

7. I have considered the submissions of learned Counsel for the parties and perused the record.

8. Before proceeding to consider the rival contentions of the parties it is necessary to dispose of the preliminary objection raised by the learned Counsel for the respondents. Learned Counsel for the respondents contends that the disability pension had been refused on 23.5.1986 and the writ petition has been filed in the year 2001 i.e. after fifteen years which is highly barred by time and liable to be rejected. Learned Counsel for the petitioner replying the preliminary objection contended that the petitioner filed appeal and thereafter submitted representation after coming to know that the disability pension can be sanctioned even to army personnel who has not completed ten years of service which fact he came to know only in the year 1999 after reporting of judgment in a news paper to that effect, from the materials brought on record it does appear that the petitioner submitted representation in the year 999 which was duly replied on 14.10.1999 and thereafter again in 2001 which was replied on 10.9.2001. It is thus clear that the petitioner has pursued his remedy. The judgment relied by the learned Counsel for the petitioner in Shiv Dass's case (supra) do support his contention. The apex Court observed that in the case of pension the cause of action actually continued to month to month but that, however, cannot be a ground to over look the delay in filing the writ petition It would depend upon the fact of each case. Following was observed in paragraph 10 of the judgment:

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

9. From the materials which have been brought on record it is clear that the petitioner has been pursuing his remedy bona fide and after receiving the reply of his representation in 2001 he filed the writ petition. I am satisfied that the present is not a case which can be thrown lout on the ground of delay in approaching the Court. Thus the preliminary objection raised by the counsel for the respondents is overruled.

10. Before proceeding to consider the submission of the parties of entitlement of

disability pension it is necessary to look on the relevant provisions regulating the grant of disability pension. Regulation 173 of Pension Regulation regulates the disability pension. Regulation 173 is quoted as below:

173. Unless otherwise 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 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix "II".

Relevant portion in Appendix II is as follows:

2. Disablement or death shall be accepted as due to military service provided it is certified that--

(a) The disablement is due to wound, injury or disease which--

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by--

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note: The Rule also covers cases of death after discharge /invaliding from service.

3. There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.

11. Thus according to regulation 173 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 percent or above. For grant of disability pension necessary condition which has to be established is that the disability is attributable to or aggravated by military service. In the present case the report of the Medical Board which assessed the disability and submitted detailed report is on the record as Annexure-1 to the supplementary counter affidavit. The Medical Board has opined about the cause of disease as constitutional disease not connected with service. On the column whether it is attributable to service during peace or under field service

conditions, the answer given is "No". Further, on the column as to whether it has been aggravated there by and remains so the answer again is "No". Diagnosis-Neurosis ("hysterical reaction") 300 (b). The nature of disease is also referred to as Neurosis in the case history of the petitioner. It is relevant to note that for the first time the disease came into light when the petitioner was availing two months' leave at his home town Ghazipur and before two days of expiry of the leave he was admitted at the District Hospital, Ghazipur for treatment. The apex Court in Union of India and Ors. v. Baljit Singh (supra) while considering the regulation 173 made following observations in paragraph 6

6.... It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from Clauses (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder require to be observed. Clause (c) provides that 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. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per Superintending Engineer is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service.

12. Thus the condition which has to be fulfilled is that the said disease arose in military service and attributable to or aggravated by military service. In the present case even if it is accepted that the disease arose during the military service, the further condition that it was attributable or aggravated by military service has to be necessarily established. The judgment of the apex Court in Controller of Defence Accounts (Pension) and Ors. v. S. Balchandran Nair 's case (supra) is a case almost on similar facts. In the above case, the Army personnel was boarded out on illness "anxiety neurosis". The claim of disability pension was rejected on the ground that the disability of the respondent was not attributable to military service. The writ petition was filed in the High Court which was allowed holding that the respondent had been working in field service/active service areas and the said military service was the sole cause of illness. The Division Bench also affirmed the order of the learned Single Judge allowing the writ petition. Following was laid down by the apex Court in paragraphs 11 and 12:

11. The position was again reiterated in Union of India and Ors. v. Dhir Singh

China, Colonel (Retd) 2003 (2) SCCC 382. In para 7 it was observed as follows:

7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and accorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly, therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted

12. In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent made by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.

13. Another judgment relied by counsel for the petitioner is Division Bench in Special Appeal No. 586 of 2006 Union of India and Ors. v. Ex. No. 3970363 Sep. Dan Singh where the claim of disability pension was allowed by the learned Single Judge of this Court. The Division Bench (of which I am also one of the member), allowed the appeal and made following observations:

Although high altitude posting is known to be a cause of mental disorder such posting had taken place several years before the onset/ Even if the greatest of consideration is shown to be discharged original writ petitioner and it is assumed according to rules and regulations that ordinarily all disability is to be treated as attributable to service even then the reasons given by the Medical Board clearly carve out an exception and so if why, according to the doctors, his disability was not attributable to, and was not aggravated either by, any service condition. The writ Court cannot sit in appeal over the decision of the Medical Board. The doctors' opinion might be given in a very brief manner but it is nonetheless quite authoritative.

14. The judgments relied by the counsel for the petitioner are now to be considered. In case of *Ram Niwas v. Union of India and Ors.* (supra) the learned Single Judge relied on paragraph 7 (b) of Appendix II of the Rules. Paragraph 7(b) provided that 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. Following was laid down in paragraph 21:

21. ...Be that as it may though a case has been sought to be made out that the disease was constitutional, nothing has been produced to this court to show either by production of any record or otherwise, particularly, the opinion of the medical board that the disease was constitutional. The order of discharge refers to the opinion of medical board. Even if it is so recorded therein the same would have been the best evidence in favour of the respondents. But the respondents had never produced the same and thereby have withheld the best evidence leading to a presumption adverse to the case of the respondents. Therefore, I am unable to accept the contention of Sri Sinha on this question as well.

15. The Court did not accept the submission of the respondents in the said case that the disease was constitutional since the opinion of the Medical Board was not produced before the Court. In the present case the opinion of the Medical Board has been produced before the Court.

16. Another judgment of this Court in *Mahavir Singh Rawat v. Union of India and Ors.* (supra) was also the case of Neurosis Anxiety. The learned Single Judge also referred to Rule 7 Clause (b) of the Rules. Following was laid down in paragraph 10 of the Judgment:

10. Sri Gopal Chandra Saxena learned Counsel for the respondents placed reliance on certain observations made by the apex Court in the case of *Union of India and Anr. v. Baljeet Singh* 1997 (8) S 87, I have thoroughly studied the aforesaid decision and find that the observations made in the said case are not of universal application and should be confined in the set of circumstances of that case alone. The order of disability pension which was allowed by the High Court of Himanchal Pradesh was maintained by the apex Court though it was observed that the view of the High Court was not totally correct in reaching at that conclusion. In my view, emphatic reliance on the stay observations made in the aforesaid decision is misplaced. As a matter of fact, there are a number of decisions of this Court which fortify the conclusion that if at the time of acceptance of a person for enrolment in the Army service he was not found to be suffering from any ailment, and the opinion of the Medical Board is conspicuously missing on the point that the illness leading to the disability could not have been detected at the time of enrolment by reason of the latent nature of the disease, the disability pension to an invalidated employee cannot be denied. A reference may be made to the decision in *Gurnam Singh v. Union of India* 1992 Lab. I.C. 1594, as well as the decisions in *Civil Misc. writ Petition No. 12162 of 1991*, *Sardara Singh v. Union of India*; *Gurdas Singh v. Union of India* 1994 Lab. I.C.

217 ; Jagdamba Prasad Dubey v. Union of India and Ors. Civil Misc. Writ Petition No. 22139 of 1990; decided on 26.9.1995; and Ram Niwas v. Union of India and Ors. 1997 (1) U.P . Electricity Supply Code 2002 477 (All). There is also a recent celebrated decision of Karnataka High Court in the case of M. K. Joseph v. Union of India and Ors. 1999 (1) U.P. Electricity Supply Code 2002 675 (Kar.). The gamut of all these decisions is that the disability pension cannot be refused merely on the ground that the impaired physical capacity or illness is not attributable to military service. If there is a finding that the disability is attributable to military service, the petitioner was entitled to grant of disability pension as contemplated under the rules. It is well settled proposition of law that award of pension is not a bounty from the employer of an act of charity. It is the indefeasible right of the employee who has earned the privilege by reason of his having been disabled while in service. In my view, the claim of the petitioner for disability pension has been rejected in an arbitrary and capricious manner. According to the rules, the petitioner is entitled to disability pension.

17. In the above case the learned Single Judge relying on the (b) of Rule 7, took the view that since no note was made at the time of entering the individual in service and he suffered from such disease a presumption shall arise that it caused during the military service and the rules governing disability pension have to be incorporated in favour of the employee. There cannot be any dispute to the proposition and if no note could be made at the time he entered into service, it will be ordinarily deemed to have arisen in service. However, after Rule 7 (b), Rule 7 (c) and 7 (d) are also relevant which provide that 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. Rule 7 is extracted below:

7. In respect of diseases, the following rules will be observed :

(a) Cases, in which it is established that conditions of military service did determine or contribute to the onset of disease but influenced the subsequent course of the disease, will fall for acceptance, on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have been arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical 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.

(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.

(d)....

18. The judgment of the learned Single Judge in the case of Shiv Murti Rai v. Union of India and Ors. (supra) is also a case where regulation 173 and relevant rule of Appendix II were considered. The said judgment also relied on Rule 7 (b), even after accepting that disease arose while in military service since no note was made at the time entering in service it must also be established that the conditions of military service determined or contributed to the onset of the disease. To the similar effect was other judgment passed by the learned Single Judge in the cases Inder Jung v. Union of India and Ors. and Anil Kumar Misra v. Union of India and Ors. (supra) relied by the counsel for the petitioner. Another judgment relied by the petitioner's counsel passed in writ petition No. 47465 of 2002 Ex. Recruit Babu Ram v. Union of India and Ors. (supra) need to be noted. That was also a case where the petitioner was boarded out. The learned Single Judge after considering the submission recorded positive finding that after perusal of the psychiatric report that the onset of the petitioner's problem was during the training period when he felt himself to be a misfit and was ill treated by his superiors, which led to a depressive mood and strong demotivation for the service. Due to above reasons the Court held that the disease was aggravated by military service.

19. The judgment of the apex Court in Controller of Defence Accounts (Pension) and Ors. v. S. Balchandran Nair (supra) as noted above, considered the similar issue. The apex Court also noticed Regulation 423.

20. The opinion of the Medical Board is to be normally accepted with regard to cause of disease unless there are very strong reason for not relying on the said Medical report. There are no sufficient reasons given by the petitioner on the basis of which the report of the Medical Board holding that the disease was not attributed or aggravated to the military service, can be discarded.

21. The judgment of the apex Court in Controller of Defence Accounts (Pension) and Ors. v. S. Balchandran Nair (supra) fully cover the issue raised in the present writ petition and in view of the law laid down by the apex Court in the said judgment the petitioner is not entitled for any relief in the writ petition.

22. The writ petition lacks Merit and is dismissed. Parties shall bear their own costs.