
(1998) 11 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10249 of 1997

B.S. Rana

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Air Force Pension Regulations, 1961 — Regulation 153

Citation : (1999) 121 PLR 490

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Manjeet Dalal, for the Appellant; Anil Rathee, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner was enrolled as an Airman (under training) in the Indian Air Force on 1.2.1988. On the completion of his training, he was subjected to another medical examination and having been found fit by a competent Medical Board, was attested as an Airman on 27.6.1989. The petitioner was, thereafter, posted at a Unit in Dinjan (Assam) and remained there for more than three years. While so posted, the petitioner was referred to the Air Force Hospital at Jorhat for treatment of "non-organic psychosis" and as his disease was found to be incurable, he was discharged from the Air Force after having put in a little more than six years in service. A copy of the Discharge Certificate dated 4.2.1994 has been appended as Annexure P-1 to the petition. The petitioner, thereafter, laid a claim to disability pension which was recommended by the Commanding Officer on the ground that his disability was to be attributed to the harsh service conditions under which he had served. The petitioner's case was considered by a Medical Board at Bombay but his claim was declined on the ground that his disease was not attributable to Air Force Service. The findings of the Board were confirmed by the C.G.D.A. (P) Allahabad and this information too was conveyed to the petitioner vide Annexure P-2 dated 31.3.1995 by the Air Force Record Office. An appeal preferred by the petitioner

before the Central Government was also dismissed vide Annexure P-4 dated 15.11.1996, on the ground that his disability had commenced in November, 1990 when he had been posted in a peace area and had not been aggravated on account of pressure of work or the nature of service rendered by him subsequently in a field area. The petitioner has impugned Annexures P-2 and P-4 by way of this writ petition.

2. Mr. Manjeet Dalai, the learned Counsel for the petitioner has argued that as per Regulation 153 of the Pension Regulations for the Air Force, disability pension was to be granted to an individual invalidated out of service on account of disability which was attributable to or aggravated by Air Force service and assessed at 20% or more and that the question whether the disability was attributable or aggravated by that service was to be determined under Annexure I with Appendix II of the Entitlement Rules here-in after called the "Rules". He has urged that Rule 4 of the Rules clearly stipulated that in deciding the issue of entitlement to a disability pension, all evidence both direct and indirect was to be taken into account and if there was a doubt with regard to the claim, the benefit thereof ought to accrue to the claimant. He has also urged that Rule 7(b) of the Rules clearly stipulated that a disease which had led to an individual's discharge or death would ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for air force service, but if medical opinion held for reasons to be stated, 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. He has urged that it was evident from the narration of facts given above that the petitioner had been examined by a Medical Board not only at the time when he was enrolled as an Airman under training in the year 1988 but also at the time of his attestation in the year 1989 and on both occasions, he had been found to have been medically fit. He has, accordingly, urged that In the light of a Division Bench judgment of this Court in *Union of India v. Gurnam Singh*, 1998(2) Judicial Reports (Labour & Services) 191, a presumption had to be drawn that the petitioners' disease was attributable to Air Force Service.

3. As against this Mr. Anil Rathee, the learned Counsel appearing for the respondents-Union of India has relied on *Union of India v. Baljit Singh* 1997 (1) S.L.R. 98, *Ashwani Kumar, Ex. Havaladar v. Union of India* 1997(1) R.S.J. 277 and *Gurdip Singh (Retd.) Subedar (Hony. Lt.) v. Union of India and Ors.* 1997 (5) SLR 341.

4. I have heard the learned Counsel for the parties and have" gone through the file.

5. It is evident from the facts narrated above that the petitioner had been found fit when he had been first enrolled and then attested into Air Force Service. In view of this position, the observations of the Division Bench of this Court in *Gurnam Singh's Case* (supra) become relevant. They are quoted below: -

"A bare reading of paragraph 7(b) shows that in the absence of any note recorded at the time of individual's acceptance for military service, the disease which has led to the individual's discharge will ordinarily be deemed to have arisen in the course of service. The only exception to this rule is that the competent authority holds an opinion for the reasons to be recorded in writing that the disease could not have been detected on medical examination prior to acceptance for service. In the case in hand, no note was made at the time of the respondent's entry into service that he was suffering from epilepsy and no record was placed before the learned Single Judge to show that the competent authority had formed an opinion, on the basis of the reasons recorded on the file, that the disease with which the respondent suffered was such that it could not be detected on medical examination prior to his acceptance for service." In the light of the above, the other judgments cited by Mr. Dalai do not need any further elaboration. The judgment cited by Mr. Rathee, do not apply to the facts of the case in hand Baljit Singh's case (supra) pertained to an injury and not to a disease and is, therefore, distinguishable from the case in hand. Gurdip Singh's case (supra) a D.B. judgment of this Court pertained to a case of "myocardial infraction." The D.B. held that as this was a constitutional disease, it could not be attributed to military service. Ashwani Kumar's case is likewise distinguishable on facts.

6. This aspect must be looked at in another way. The fact whether a disease could or could not be attributed to military service must take its colour from Rule 7(b) and Annexure-I with Appendix II of the Rules And when read together, it transpires that a disease must fall within the Annexure in order to earn a disability pension. The disease "psychocis" does find mention therein and "non-organic psychosis", is as per Butterworths Medical Dictionary a species of psychosis. From the facts given in the petition as also from the record produced in Court by Mr. Rathee, it is apparent that the petitioner had been suffering from a Psychiatric problem since 1990 i.e., after his attestation and he continued having manifestations of the disease right up to the date of his discharge as would be evident from the Medical Board proceedings and other relevant record that has been produced in the present proceedings as well.

7. For the reasons recorded above, the present petition is allowed, Annexure P-2 and P-4 are quashed and a direction issued to the respondents to pay to the petitioner disability pension to the extent of his disability which has been assessed at 40%. The payment would be made to the petitioner within a period of six months from the date that a certified copy of this order is supplied to the respondents. No order as to costs. Dasti order.