

(2000) 11 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Peitition No. 12279 of 1992

Capt. S.K. Duggal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 11 P&H CK 0040

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.S. Randhawa, for the Appellant; Mr. A. Mohunta, for the Respondent

Judgement

R.L. Anand, J.—Captain S.K. Duggal, has filed the present petition under Article 226 of the Constitution of India for the issuance of a writ quashing the order of the respondents invalidating out of the petitioner from service on medical grounds as the grouse of the petitioner is that the order has not been passed by the Central Government which alone is competent in this matter. The petitioner further prayed that he should be reinstated in service with all consequential benefits. In the alternative, the petitioner made a prayer that directions be given to the respondents to grant him the disability pension as he was boarded out from the service on medical ground.

2. Before I proceed further, it may be stated here that the learned counsel Shri R.S. Randhawa, appearing on behalf of the petitioner stated at the very outset that the petitioner is not interested to pursue his first relief. Rather, he confines his relief to the disability pension only.

3. Some facts can be noticed in the following manner. The petitioner joined the Indian Army Academy in January 1987. He was granted Commission on 11.6.1988. He was boarded out from the service on 5.2.1992 on medical ground and his disability was assessed at 30%. The name of the disease suffered by the petitioner is "Schizoid Personality Disorder".

4. The short stand of the respondents who filed the written-statement is that the disease suffered by the petitioner is not attributable to the army service nor it was aggravated when the petitioner was serving the military and this stand is evident from Annexure P-4 besides from the written-statement filed by the respondents.

5. I have heard Shri R.S. Randhawa, learned counsel appearing on behalf of the petitioner and Shri A. Mo-hunta, learned counsel appearing on behalf of the respondents and with their assistance have gone through the records of this case.

6. In this case the facts are not much disputed. From Annexure P-4, it is clear that Under Secretary to the Government of India, wrote a letter to the Chief of the Army Staff, New Delhi on 6.7.1992 that the disease viz; "Schizoid Personality Disorder" from which the above named officer was found suffering at the time of invalid out of service, should be regarded as neither attributable to nor aggravated by his military service being a constitutional disease".

7. The sole point for determination is as to whether this disease was constitutional or it has been suffered by the petitioner when he was serving the army ?

8. The learned counsel appearing on behalf of the petitioner submitted that at the time of medical examination of the petitioner, he was found fully fit by the Medical Board. He submits that there are deeming provisions from which reasonable inference can be drawn that the disability suffered by the petitioner is attributable to the army service. In support of this contention he has drawn my attention to para No. 7(b) of Appendix-11 of Pension Regulations, which states as follows:

"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".

The reading of the above would show that no note was made by the authorities at the time when the petitioner was admitted into military service.

9. On the contrary, learned counsel for the respondents submitted that the petitioner has not filed any appeal or second appeal, therefore, his writ is premature. It was also one of the contentions raised by the learned counsel appearing on behalf of the respondents that the disability has not been assessed by the Medical Board.

10. I do not subscribe to the argument raised by the learned counsel for the respondents. The petitioner has specifically alleged in the writ petition that the disability suffered by him was 30% and he was boarded out from the service on account of disability. In this case the petitioner is claiming the benefit of disability

pension. It is not obligatory on his part to make an appeal before the appellate authority because he is not challenging the extent of this disability. The claim of disability pension of the petitioner was declined by the respondent authority mainly on the ground that the disease suffered by the petitioner is not attributable to the army service.

11. I have also reproduced above the relevant deeming provisions from which it can reasonably be inferred that the disease "Schizoid personality disorder" is attributable to the army service and, therefore, the petitioner is entitled to the benefit of the military service. The petitioner was boarded out from service on 5.2.1992. He did not lose any time in filing the present writ petition, which was filed in the year 1992.

In these circumstances, the writ petition is allowed and directions are given to the respondents to release the benefits of the disability pension to the petitioner within three months from today, failing which, the petitioner will be entitled to get 12% interest from the respondents. The petitioner shall appear before the Re-Survey Medical Board as and when called upon by the respondent-authorities.

12. Petition allowed.