

(2004) 05 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 524 of 1999

Chamel Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2004) 2 ShimLC 149

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : Dushyant Dadwal, for the Appellant; Baldev Singh, Additional C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Admitted facts of this case are that the Petitioner joined Indian Army and was enrolled in the Regiment of Artillery in the year 1956. Total service rendered by him is 25 years 7 days. He was placed in lower medical category AYE. He had disability of "ISCHEMIC HEART Disease". He was declared invalid after having been examined by the Medical Board constituted for the said purpose, at Military Hospital, Amritsar. In the words of the Respondents as detailed in para 1 of the brief facts of their reply...."had viewed the disability as aggravated by military service and assessed degree of disablement at 40 per cent for two years."

(Emphasis supplied)

2. Case set-out by the Petitioner for the grant of disability pension to him, is that he is entitled to the same from the year 1981 till date and further as per Rules governing it. Record also reveals that appeal of the Petitioner was also dismissed.

3. Respondents when put to notice, have admitted the facts relating to the Petitioner's enrolment as well as his discharge. It is also admitted by them that the Petitioner rendered more than 25 years of service, as noted hereinabove.

However, his claim has been contested because of delay and laches on the basis of the decision of the Supreme Court of India in *Union of India v. Baljeet Singh* 1997 (1) SLR 93, and in the case of *Sardar Ram Singh v. Union of India* of the Punjab and Haryana High Court, Annexure R-1, with the reply.

4. After having taken note of the pleadings in the reply and also keeping in view the fact that It is not the case of the Respondents that when the Petitioner joined Indian Army, he was suffering from the disease as noted hereinabove. In this behalf it may also be appropriate to note that at the time of his recruitment, if the Petitioner had suffered from any disease whatsoever which was a disability within the meaning of Recruitment Rules, he would not have been enrolled in the first instance. Alternatively, if the disease was such which did not hamper his recruitment, atleast at that time it would have found mentioned in his service record. Nothing in that behalf has been brought to the notice of the court at the time of hearing. On the other hand, as already noted, disease on the basis whereof Petitioner was invalidated can safely be held attributable to the military service and also having been aggravated there. Thereafter admittedly Petitioner has not been got medically examined till date by the Respondents so as to decline him the benefit of disability pension on account of the same having been reduced below the permissible limit.

5. Mr. Dushyant Dadwal, Advocate, at this stage pointed out that his client is in a sorry state of health because of this ailment. He however, maintained that with the aging process disability of the Petitioner has aggravated. In these circumstances to say that disability is not attributable to the army service and/or to deny the grant of disability pension to the Petitioner cannot be justified in any circumstances whatsoever.

6. It is very strange that the authorities, particularly Respondents No. 3 and 4 have taken upon themselves the role of expert, so as to disentitle the Petitioner from the grant of disability pension. Had he been got examined by any of the Respondents after the date of his discharge till date, situation would have been different and then the Petitioner could make grievance, if any, against his such examination; if it was found that the disability had decreased below the permissible limit.

7. In view of the aforesaid discussion stand of the Respondents declining the disability pension to the Petitioner in no circumstances can be upheld either in law or in the peculiar facts and circumstances of this case as well keeping in view the nature of ailment he is suffering from. Nothing could be pointed out by Mr. Singh, on behalf of the Respondents to justify/ sustain the action of his clients to decline the disability pension to the Petitioner.

8. In cases where a person had joined Army service and was found not suffering from any disease at the time of his initial recruitment and no disease having been mentioned in the service record of such a recruitee at the time of his enrolment, claim of disability pension had been generally allowed. See Subhash

Chand v. Union of India and Ors. CWP No. 948 of 1996, decided on 28th April, 2003; Sudarshan Kumar v. Union of India and Ors. CWP No. 249 of 1999, decided on 2.12.2003; Ran Singh Jaggi v. Union of India, 1995 (2) SLJ 991; Piar Chand v. Union of India 1995 (2) SLJ 1230; Dila Ram v. Union of India and Ors. CWP No. 288 of 1999, decided on 14.11.2003.

9. Now coming to the argument based on delay and laches on behalf of the Respondents for dismissal of this writ petition. So far claim of pension is concerned, it is a recurring cause of action which accrues every month to a person found entitled to it.

10. Also it is by now well settled that pension is neither a bounty nor a concession given by the employer. It is property within the meaning of Article 300A of the Constitution of India. It is earned by an employee having given best part of his life to the service. As such it cannot be declined to a person, like Petitioner simply on the ground based on delay/laches as was urged by the Respondents in the present case. Only consideration material in such situation would be, as to from which date pension should be allowed in the event of writ petition being decided in favour of the Petitioner. I am of the view that three years prior to filing of the writ petition is the date from which the pension needs to be allowed, and not to a date prior to it, i.e. w.e.f. 28.10.1996.

11. No other point is urged.

12. In view of the aforesaid discussion this writ petition is allowed and it is ordered that the disability pension w.e.f. 28.10.1996 released in favour of the Petitioner by the Respondents. Respondents No. 3 and 4 are directed to complete all the codal formalities and thereafter they shall ensure that pension payment order is issued in favour of the Petitioner by them with utmost expedition and despatch and in no case later than 30th September, 2004. No costs. Direction regarding time frame is preemptory. Respondents No. 3 and 4 will file affidavit reporting compliance with this part of the judgment. And this case is ordered to be listed in the first week of October, 2004 for the limited purpose of filing of affidavit.