

(1999) 10 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13496 of 1997

Dalbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2000) 124 PLR 507

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : G.K. Mann, for the Appellant; Ashutosh Mohunta, Senior Standing Counsel, Central Govt., for the Respondent

Judgement

Swatanter Kumar, J.—The petitioner was enrolled as a Driver (MT) in the Indian Army on 29.5.1989. He served as a member of the force till 30.11.1995, when he was medically invalided and resultantly discharged "as not upto the prescribed Military Physical Standard" on 30.11.1995. Initially the petitioner waited for grant of disability pension to him but having failed to get the same, he made a representation on 14.2.1996 but the same was rejected by the respondents vide letter dated 17.3.1996. The petitioner served a notice through his counsel dated 24.2.1997, which was replied to by the respondents on 30.6.1997 finally rejecting the request of the petitioner on the ground that disability resulting in the discharge of the petitioner from the Army was neither attributable nor aggravated by the military service. It was further stated that it was a disability of constitutional nature and unrelated to the conditions of service of military. The petitioner aggrieved from this order of the respondents, copy of which is annexed to the petition as Annexure P-5, has filed the present writ petition under Articles 226 and 227 of the Constitution of India praying for quashing order dated 14.2.1997 (Annexure P-2) and order dated 5.3.1997 (Annexure P-2A) and for a direction to the respondents to pay disability pension to him.

2. Upon notice, the respondents have filed detailed reply taking more or less the

same stand as has already been stated in annexure P-5 and prayed for dismissal of the writ petition.

3. There is no dispute to the effect that the petitioner was put to a medical examination before his enrolment in the Army and at that time no adverse remark was noted in his joining report or service record in relation to his health or otherwise. It is also not disputed that the petitioner was discharged from the Army after recommendation of a Medical Board which declared him unfit to continue to the Indian Military Service. A photocopy of the opinion of the Medical Board (Part-HI) has been placed on record. It will be relevant to refer to the following columns of the said form, which reads as under

"1. Did the disability/ties exist before entering service? No

2. (a) In respect of each disability the Medical Board on the evidence before it will express its view as to whether :

- i) it is attributable to service during peace or under field service conditions; or
- ii) it has been aggravated thereby and remains so; or
- iii) it is not connected with service.

The Board should state fully the reasons in regard to each disability on which is opinion is based. Disability A B C

Generalised	NO	Yes
NOSeizure(345)----- b) In		
respect of each disability shown as attributable under A, the Board should state fully the specific condition and period in service which caused the disability.		

c), In respect of each disability shown as aggravated under B, the Board should state fully,

- i) The specific condition and period in service which aggravated the disability. Yes due to stress and strain of service.
- ii) Whether the effects to such aggravation still persist. Yes.
- iii) If the answers to (ii) is in the affirmative, whether effect of aggravation will persist for a material period. Yes.

d) In the case of a disability under C, the Board should state what exactly in their opinion in the cause thereof.

3. (a) Was the disability attributable to the individual's own negligence or misconduct? If so, in what way? NA

(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? No

xx xx xx xx xx 4. What is present degree of disablement as compared with a

healthy person of the same age and sex? (percentage will be expressed as Nil or as follows:-

1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.

Disability as numbered % age of Probable Composite in question I Part II disablement duration this assessment degree of (all disabilities) disablement Generalised 20% (Twenty Two 20% (Twenty Seizure (345) percent) Years percent)

4. The bare reading of the above remarks recorded by the Medical Board shows that the petitioner had 20% disability, as recorded in Column No. 4 of the afore-referred form and such disability was aggravated due to stress and strain of service and was in no way attributed to the negligence or misconduct on the part of the petitioner. In this regard reference can be made to Regulation 173 of the Pension Regulation for the Army, 1961, Part-I, which reads as under:-

"Primary conditions for the grant of disability Pension:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service is non-battle casualty and is assessed at 20 per cent or over.

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

5. Appendix II attached to the said regulations and instructions dealing with the entitlement rules for casualty pensionary awards, 1982, and onus of proof thereof, reads as under:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-
PRIOR TO AND DURING SERVICE

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-

(a) the disablement is due to a 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. This will also include the precipitating/hastening of the onset of a disability.

(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.

7. Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

8. Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.

ONUS OF PROOF

9. The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

6. The claim of the petitioner must be examined in the light of the above statutory provisions, regulations and instructions which are binding on the parties to the proceedings. The petitioner's primary onus to plead facts justifying the claim for such a pension is fully discharged in the present case. The petitioner relies upon the documents of the respondents and mainly on the report of the Medical Board. The onus obviously shifts on the respondents and it is for the respondents to establish as a matter of fact supported by appropriate and cogent evidence, that the petitioner was not entitled to such a claim or the subsequent events to the discharge of the petitioner had cured the disability below 20%.

7. In these circumstances, the respondents are obliged to put to the petitioner to Re-medical Survey Board, which admittedly has not been done so far in the case of the petitioner. The respondents in their reply to paragraph 7 have summed up their total defence against the petitioner. Paragraph 7 of the reply submitted by the respondents reads as under: -

"7. That this para is denied being wrong. The petitioner is not entitled to grant of disability pension as per the Pension Regulations for the Army, 1961 (Part-I) (for short "The Pension Regulations". His claim in this respect was submitted to the Chief Controller of Defence Accounts (Pensions), which is the delegated final authority of the Government of India for deciding upon grant of disability pension. After considering all the services and medical documents and proper application of mind the Chief Controller of Defence Accounts (Pensions) reached a conclusion that the petitioner's disability was neither attributable to nor

aggravated by Military Service. Hence his claim was rejected which was duly communicated to him vide letter dated 5th March, 1997."

8. It is not even averred in the counter affidavit that the report of the Medical Board before notice was subjected to any Appellate Medical Board in accordance with the instructions and regulations framed by the respondents themselves. The Chief Controller of Defence Accounts (Pensions) per-se would have no authority to sit over the judgment of the Medical Board. The findings recorded by the Medical Board can only be upset by the Appellate Medical Board constituted under Instruction No. 27 Under the head of "Functions and Responsibilities" of Appendix II of the regulations. That too after granting opportunity to the petitioner to appear before the Medical Board. Upon discharge from Army on medical ground, once conditions stated in Regulation 173 and other ancillary rules are satisfied, a legitimate right accrues in favour of the concerned member of the force. The petitioner could be deprived of such a right only for valid and cogent reasons recorded by the competent authority. In the counter affidavit, there is nothing to show that any competent authority had found the petitioner medically fit or the disability not being aggravated by the Army service. It will be appropriate to refer the judgment of the Division Bench of this Court in the case of Jarnail Singh Vs. Union of India (UOI) and Others, , where the court observed as under:-

"11. Para 173 afore-mentioned is the substantive enabling provision which provides for grant of disability pension to a member of the force subject to the condition of disability being more than 20 per cent and is attributable to or aggravated by Military service. Para 175 must be read in conjunction with para 173 which is the principle regulation controlling the subject. The scheme of these regulations shows that para 175 is in aid to para 173. The case for claim of disability pension must satisfy the ingredients stated in para 173. It is then alone that para 175 would become operative. Para 175 only elaborates the application of para 173 by providing that even negligence or misconduct on the part of a member of the armed forces may not frustrate the claim by such person under Rule 173. Upon the harmonious construction of these two provisions meaningful interpretation would be that the remote nexus to the attributability and aggravation of disability by military service even if accompanied by the element of negligence or misconduct on the part of the member of the force would not by itself frustrate the right of the member to raise such a claim. However, the authority in discretion may apply cut or reduce the amount of disability pension within the limited scope of para 175.

12. Clause 9 of the Appendix II even does not place onus on the claimant to prove the condition of entitlement and any benefit of reasonable doubt would accrue in favour of the applicant and not against him. xx xx xx "

9. Learned counsel appearing for the Union of India strenuously contended that generalised seizure or Epilepsy is not the disease which can be attributed or aggravated to Military service. This is the disease which is constitutional in

nature and thus cannot attract the provisions of Regulation 173 of the said Regulations. On the other hand, learned counsel appearing for the petitioner contended that once the disease was not noticed at the time of entry into the Military service, a rebuttable presumption arises in favour of the petitioner that the disease is attributable to or was aggravated by Military service. She also contended that various judgments of this Court have already taken the view that such disease would be normally covered for a claim of disability pension.

10. In view of the various judgments cited and for obvious reasons, I would be inclined to accept the contention raised on behalf of the petitioner. A candidate, who wishes to join Indian Army, can offer himself for a medical examination as per the strict standard prescribed by the Army and which are ought to be adhered to by its Medical Officers/Medical Board. Obviously there is also an obligation upon the petitioner to disclose all correct facts within his knowledge. Once the petitioner had done so, no fault can be found with his conduct. As already noticed, nothing depicts from the entire service record of the petitioner that he had been ailing from this disease prior to 1995. In the case of *Om Parkash v. Union of India*, C.W.P. No. 14106 of 1996 decided on 18.4.1998, the Court in a case of discharge on the ground of Epilepsy from the Board Security Force held as under:-

"The confidential proceedings of the Medical Board reveal that the petitioner was suffering from Grand Mal Epilepsy and was unfit for further service. In column 2, it finds clear mention that the disability had been contracted while in service though it could not be directly attributable to service conditions. In column 6, however, it has been categorically stated that although the disease was not directly attributable to service, it had been aggravated by the stress and strain of service conditions. While dealing with rule 14 of the Pension Regulation for the Army, 1961 (earlier rule 7), which is couched in exactly the same terms as guideline 5, it has been held in *Mohan Lal v. Union of India* and Ors. 1995(5) S.L.R. 183 and *Union of India v. Shyam Lal Malhotra* 1995(6) S.L.R. 405, that if a disease had not been noted at the" time of the claimants initial entry into service, the presumption which was, however, rebuttable, was that the disease has been contracted during service. The case of the petitioner is on a better footing as the Medical Board clearly opined that the petitioner"s disease had been aggravated by the stress and strain of service conditions."

11. It is conceded before me by the learned counsel for the parties that LPA being No. 359 of 1998 preferred by the Union of India in the case of *Om Parkash* (supra) was dismissed by the Division Bench of this Court and the judgment has attained finality. Reference can also be made to another Division Bench judgment of this Court in the case of *Union of India v. Gurnam Singh* 1998(2) R.S.J. 478.

12. The above referred judgments are of the Division Bench and are binding on this Court.

13. The cumulative effect of the above discussion is that the respondents have

not been able to show how the claim of the petitioner is not sustainable. The rejection of the claim of the petitioner is totally unjustified as per the record of the respondents themselves. Disability pension is legitimate right of a member of the Armed Force, which has been invalidated on medical grounds and the respondents are under obligation to discharge their duties of considering the cases of such invalidated members as expeditiously as possible to avoid double hardship to the members of the force.

14. The contention of the learned counsel for the respondents needs to be noticed that the petitioner did not subject himself to any Re-survey Medical Board. Firstly, this was an obligation of the respondent to direct the petitioner to appear before Re-survey Medical Board. In fact the respondents had proposed to do so, as is clear from order, Annexure P-2A to the writ petition, letter of rejection dated 12.6.1996, where in the concluding paragraph it was stated "your re-survey medical board will be arranged during the month of...." Neither that month came nor thereafter the petitioner was directed to appear before a Medical Board. Thus, the respondents have even failed to discharge that obligation to subject the petitioner to a Re-survey Medical Board, if they thought that the petitioner was not entitled to the claim on the basis of the earlier Medical Board's opinion. However, the respondents are still at liberty to subject the petitioner to a Re-survey Medical Board and to give effect to the same prospectively. 15. For the reasons aforestated, the writ petition is accepted to the above extent. Order dated 14.2.1997 (Annexure P-2), order dated 5.2.1997 (Annexure P-2A), reply dated 30.6.1997, Annexure P-5 and letter of rejection dated 12.6.1996 are quashed. The respondents are directed to compute and pay disability pension to the petitioner in accordance with rules from the date of his entitlement, Liberty to the respondent to direct the petitioner to appear before the Re-survey Medical Board as per instructions. However, there shall be no order as to costs.