
(2006) 12 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition No. 1524 (S/S) of 2005

Devendra Prasad Joshi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Air Force Pension Regulations, 1961 — Regulation 153
Air Force Rules, 1969 — Rule 15

Citation : (2007) 2 UC 916

Hon'ble Judges : M.M.Ghildiyal, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; Pradeep Joshi, Learned Standing Counsel for Union of India, for the Respondent

Final Decision : Allowed

Judgement

M.M. Ghildiyal, J.—Heard Sri S.K. Posti, learned Counsel for the Petitioner and Sri Pradeep Joshi, learned Standing Counsel for Union of India on behalf of Respondents.

2. By means of this writ petition, the Petitioner has prayed for the following reliefs:

I. Issue a writ, order or direction in the nature of Certiorari quashing the order dated 12-07-2005 passed by Respondent No. 1 (Annexure No. 2 to this writ petition) and order dated 28-03-1988.

II. Issue a writ, order or direction in the nature of Mandamus directing the Respondents 1 and 2 to grant the disability pension to the Petitioner.

III. Issue any other suitable writ, order or direction, which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

IV. Award the cost of the petition in favour of Petitioner.

3. The case of the Petitioner is that he was recruited in Indian Air Force and was

posted as Air Frame Technician and joined his services on 22-08-1978 at Air Force Station, Tambaram, Chennai. After serving about 15 months, Petitioner at Tambaram, Chennai, Petitioner was sent to Flying Instructor School, Tambaram, Chennai and again was sent to Belgaon, in the State of Maharashtra, for the course of Assistant Instructor Basic Physical Training Course.

4. After completing the aforesaid course, the Petitioner was sent for advance training of Hindustan Jet Trainer and Hindustan Trainer at BRD, Sulur, in the State of Kerala and again was posted to Air Force Station, Tambaram, Chennai.

5. In the year 1983, when the Petitioner was posted at Air Force Station, Tambaram, Chennai, he was suffering with disease known as malaria. When the disease could not be cured by doctors at Air Force Station, Tambaram, Chennai, Petitioner was referred to Military Command Hospital at Chennai (Madras) and again was referred to Command Hospital, Bangalore. However, the disease could not be cured.

6. Petitioner was, thereafter, sent before medical board and the medical board found Petitioner unfit for the Air force services and thereafter, Petitioner was discharged from service on medical ground vide order dated 18-03-1984 after completion of about 6 years services.

7. Petitioner applied for disability pension, however, no heed was paid by the Respondents. The Chief Controller Defence Accounts (Pension), neither allowed nor rejected the representation of the Petitioner for disability pension. Consequently, Petitioner wrote letter directly to the Ministry of Defence, Appellate Authority and the Appellate Authority vide order dated 12-07-2005 informed the Petitioner that his appeal has already been rejected vide order dated 28-03-1988.

8. Petitioner has submitted that he has never received rejection order dated 28-03-1988 and now by this writ petition he has challenged the order dated 12-07-2005 passed by Respondent No. 1 which is Annexure No. 2 to the writ petition.

9. Respondents have filed counter affidavit. In para 3 of the counter affidavit Respondents have submitted that Petitioner was enrolled in Indian Air Force on 22-08-1978 and was discharged on 18-03-1984 on the recommendation of Medical Board invaliding him under the provision Air Force Rule 1969 Chapter III Rule 15 Clause 2(c) on having been found medically unfit for further service in Indian Air Force for the disease Schizophrenia. He had rendered five years and 210 days of service at the time of his invalidation.

10. In para 21 of the counter affidavit, Respondents have submitted that Psychiatrist has opined that Petitioner was unfit for retention in service. He was invalided out from service vide AFMSF 16 dated 13 December 1983. The percentage of disability awarded by IMB proceedings was 30% for two years. The disease was neither attributable to nor aggravated by service.

11. Learned Counsel for the Petitioner has submitted that Petitioner was

recruited in Indian Air Force after thorough examination by doctors and at the time of recruitment of Petitioner to Indian Air Force, he was found absolutely fit.

12. Learned Counsel for the Petitioner has placed reliance on the judgment passed by Allahabad High Court in the case of Shiv Murti Rai v. Union of India reported in 1997 (2) UPLBEC 1179 wherein the court has held that the report of medical board shows that while joining the service, Petitioner was hale and hearty and had no disease. Refusal of disability pension to the Petitioner is unjustified. Direction was issued for payment of disability pension along with its arrear and interest at the rate of 6% per annum.

13. Learned Counsel for the Petitioner has further placed reliance on the judgment passed by Allahabad High Court in the case of Anil Kumar Mishra v. Union of India and Ors. 1996 (2) UPLBEC 761 wherein the court has held that Petitioner is entitled to get disability pension as at the time of recruitment no disability was found, as such, no other inference can be drawn that Petitioner suffered from Schizophrenia during the course of his duties when he was in service. Thus, Petitioner is entitled for getting the disability pension.

14. Counsel for the Petitioner has further placed reliance on the judgments passed by this Court in writ petition No. 3094 (MS) of 2001 Mohan Singh v. Union of India and Ors. and writ petition No. 296 (SS) of 2004 Aan Singh v. Union of India and Ors.

15. In para 27 of the counter affidavit, Respondents have submitted that under Regulation 153 of Pension Regulation for Indian Air Force, 1961, the primary condition of the grant of Disability Pension is as follows:

Unless otherwise specifically provided, pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by air force service and assessed at 20% or more.

16. For earning of pension under the aforesaid Regulation two conditions are required to be fulfilled. First, that the disability is attributable or aggravated by Air Force Service and the second that disability must be assessed at 20% or more than 20%.

17. It is not disputed by the Respondents that the disability of the Petitioner at the time of discharge was assessed by medical board at 30%. This is admitted by the Respondents in para 21 of the counter affidavit. So far as first condition is concerned whether the disease Schizophrenia from which the Petitioner was suffering, was attributed to or aggravated by Air Force Service or not. It is admitted fact that at the time of entry of the Petitioner in the Air Force no note that Petitioner was suffering from any disability was made and also no note recorded by the Medical Board by subsequent date that the disease in question was such as could not have been detected at medical examination before the Petitioner had joined the service. On the contrary from the report it is clear that when the Petitioner was recruited to Air Force, he was hale and hearty and in

view of this fact it is presumed that disease from which the Petitioner, which had led to his discharge, had arisen during the service and as such, the same is attributable to Air Force service.

18. The plain reading of this provision would show that the cause of disability which led to the person concerned being discharged from service will be deemed to have arisen in service, if, no note of it was made at the time of his entry in the Air Force service that he was suffering from such disability or unless a note recorded at a subsequent date that the disease in question was such as could not have been detected by medical examination before he had joined service.

19. Admittedly, neither any such note exists, namely, either at the time when the Petitioner joined service, that he was suffering from such disability or that after his medical examination preceding his discharge from service on the ground of medical disability, that it was such as could not have been deducted during medical examination, at the time of entry into service.

20. Further, the disability of the Petitioner was assessed to 30%. This being so the requirement of Regulation 153 clearly stood fulfilled.

21. For the reasons recorded above, writ petition is allowed. Orders dated 28-03-1988 and 12-07-2005 are hereby quashed. Respondents are directed to make payment of disability pension to the Petitioner with effect from the date when he was entitled to get the same along with arrears and interest at the rate of 6% per annum within a period of three months from the date of production of certified copy of this order. Stay application No. 8722 of 2005 is disposed of accordingly. No order as to costs.