

(2002) 03 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3150 of 2001

Dhanpat Rai (Ex. Ptr)	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

Citation : (2002) 03 P&H CK 0029

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Azad Singh, for the Appellant; Ranjna Sahi, General Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Amar Dutt, J.—Dhanpat Rai has filed the present petition for issuance of a writ in the nature of certiorari quashing the order dated 23.1.2001 Annexure P4 by which rejection of his claim for disability pension by respondent No.3 was communicated to him by the Record Officer, Abhilekh Parachute Regiment, Records The Parachute Regiment, Bangalore.

2. Brief facts relevant for the decision of this case, as narrated in the petition, are that when the petitioner was enrolled in the army on 7.12.1962, after medial examination he was found to be fit and his medical category was "A". He continued to serve in the army and upon being selected as Para-Trooper, he joined 9 para Commando at Gwalior. During one of para-jumps in August, 1970, the petitioner suffered fits, which was diagnosed as Epilepsy. On account of this malady, he was placed in medical category "EEE" and according to the Re-survey Medical Board, his disability was assessed at 60% and, therefore, he was recommended: for discharge from service on medical ground. His grouse is that the disability element of his pension was withheld by the Chief Controller of Defence Accounts (Pension) Allahabad (in short the CCDA) for no valid reason. He further states that his application for the grant of disability pension having been rejected he has no option but to approach this court.

3. In the written statement filed by the respondents, the factual matrix as laid out in the petition is not disputed. It is, however, submitted that the disability pension in the case of the petitioner had been withheld on account of the fact that the Epilepsy is a constitutional disease which was not attributable to military service nor was there any possibility of this being aggravated by the military service.

4. I have heard both the sides and have gone through the record of the case.

5. The petitioner's counsel relied upon judicial precedents, wherein the epileptic fits have been held to be attributable to military service in the cases where at the time of enrolment for service in the army, no such disease was detected. To defend the stand taken by the respondents, their counsel merely relied upon the circumstances that Epilepsy has been shown by the medical authorities of the army to be a constitutional disease which was neither attributable to nor aggravated by the military service and, therefore, this petition which is devoid of merit should be dismissed.

6. I have given my thoughtful consideration to the rival contentions and am unable to appreciate the stand which has now been taken before this Court by the respondents counsel in spite of the judicial precedents available against them.

7. In *Ashwani Kumar Ex-Havaldar v. Union of India* 1997(1) R.S.J. 277. It has been held by a Division Bench of this Court as under:-

"There is no controversy between the parties that at the time of petitioner's entry in the service he was subjected to medical examination and there is no mention of any disease in the record prepared at the time of petitioner's enrolment in military service. It is also borne out from the record that the medical board or any other competent authority has not recorded any reasoned conclusion that the disability disease suffered by the petitioner is such which could not have been detected at the time of his entry in the service. Therefore, we find merit in the contention of the learned counsel that the petitioner is entitled to the benefit of presumption contained in first part of Rule 7(b), namely, that the disability should be deemed to have been arisen during the course of the service and is attributable to military service."

8. In *Union of India v. Gurnam Singh* 1998(2) R.S.J. 478, a Division Bench of this Court after taking into consideration the provisions of Regulation 173 of the Army Pension Regulation 1961 and Para 7 (b) of Appendix II thereof came to the following conclusion :-

"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 hold 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 notice 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. Along with the appeal also no such material has been produced."

9. A similar conclusion was drawn in the cases of *Union of India and Ors. v. Ex.Hav. v. CLK Wishwa Nath* 2000(2) R.S.J. 342 and *Karam Singh v. Union of India* 2001 (3) R.S.J. 46. From a perusal of these judgments, the only inference which can be drawn is that in case where from the circumstances brought out on the record, it is apparent that the armed personnel was found fit when he first entered the military service and the disease for which he was ultimately invalided out was not traceable at that point of time, the only inference which can be drawn is that the same was attributable to military service. Any other cause for the disease emerging when the petitioner was living for ten months in the sanitised atmosphere of Cantonment where any abnormality, if detected in his physical conditions, would get immediate treatment cannot be inferred.

The second ground, on which the relief sought for, is being assailed is the delay after which this petition has been moved. Turning to the second point I see no reason why the relief sought for should be denied to the petitioner merely on account of the fact that the present petition has been filed after a lapse of 20 years. This delay may disentitle him to get all the arrears which would become due and limited relief can be given to him for a period of 38 months prior to the date on which the petition was presented but the same cannot be made a ground for denying him the relief to which he has been found to be entitled.

10. For the reasons recorded above, this petition is allowed and the petitioner would be entitled to the pension from the date of discharge but would be entitled to arrears for only 38 months prior to the filing of the petition. Respondents are directed to pay the arrears so worked out within one month from the date of the fixing of the disability pension, which exercise would be completed within two months from the date of this order. In the event of their failure to do so, the petitioner would be entitled to interest at the rate of 9 per cent per annum from the date of the arrears become due.