
(2009) 05 J&K CK 0029
In the Jammu And Kashmir High Court

Dwarka Nath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Citation : (2009) 2 JKJ 764 : (2010) 1 SLR 460

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—The petitioner stood boarded out from the Army on 25-5-1988 on medical grounds. He was invalided from service on

account of disability which was about 20% by invoking Regulation 173. He was denied disability pension on account of disability which was not

attributable to or aggravated by military service. It impelled the petitioner to file writ petition before this Hon'ble Court. The Hon'ble; court directed

the respondents to grant disability pension to the petitioner. Vide Order dated 12-8-2002, disability pension was granted to the petitioner after

assessing the same at 30%. It seems that the Review Medical Board was constituted to reassess the disability of petitioner. The said Review

Medical Board recommended that disability of petitioner was 00%, as a result of which respondents issued order on 23-2-2004 rejecting his claim

for disability pension for life. It is this order, which is the subject matter of challenge before this Court.

2. I have heard Learned Counsel for the parties and perused the record. Before advertng to the controversy involved in this writ petition, this

Court vide its order dated 17-7-2008 directed that the petitioner be examined

and medically checked up from a civil Medical Board and

accordingly the matter was referred to the Superintendent, Government Medical College, Jammu, who constituted the Medical Board for

reexamination of the petitioner.

3. In pursuant to the aforesaid direction of the court, Medical Board has submitted its report on 30-12-2008. Report of the Medical Board reveals

that the petitioner requires investigation by the Neurologist and Radiologist/Clinical Psychologist who decide the exact disability percentage and the

status. History and clinical report of the petitioner has also been perused by the board members. They have shown their inability to submit their

opinion regarding diagnosis and determination of disability. In essence, the Medical Board has stated that unless the opinion is given by Neurologist

and Psychologist, it is not possible to assess the disability of the petitioner. This is the one aspect of the matter.

4. The other aspect of the matter, is the power of the respondents to subject a person to Review Medical Board after his disability is assessed by

the board constituted by the respondents. Army Regulation 173 provides as under:

173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a

disability which is attributable to or aggravated by military service and is assessed at 20 percent or over.

5. Reading of Regulation 173 reveals that a person can be invalided from service after the disability incurred by him is attributable to or aggravated

by the military service and the disability is more than 20%. Disability pension is payable on that count. At any stage if it is found that the person has

incurred disability attributable to the Army service, he is liable to be boarded out. Disability pension is denied to a person where disability is not

attributable to or aggravated by military service. The power to seek review of the disability has the effect of disentitling a person of disability

pension, if it is stated that the disability is less than 20%. In that eventuality, there is no option to reinduct an employee into service who has been

boarded out on account of disability Only consequence is that he is denied disability pension without seeking his re-induction in service. In some

cases the disability pension is paid to a person who is boarded out from service

on account of having incurred disability attributable to the Army

Service. There are instances where the persons who are boarded out from service on account of disability and have not been re-inducted into

service, also dis-entitles them to receive service pension as they lack requisite service for that. Once the respondents exercise the power to seek

review of the medical opinion, it should correspondingly also seek re-induction of such persons in the service. Otherwise the person who has been

boarded out from service is put to disadvantageous position, as he suffers on both the counts. He is boarded out because of disability and once the

disability ceases to exist after review, consequently he has no right to be inducted in service. A similar issue has arisen before the High Court of

Gujarat, in which the Division Bench in judgment titled *Kanaya Lai Dahyabhai Patel v. Government of India and Ors.* reported as 2004 LAB IC

2253, held as under:

...Although we do not understand the rationale behind the same, because the petitioner was relieved of his duties as he was afflicted with disease

contracted during service. Moreover, even if the petitioner is declared to have less than 20% degree of disease, he is not restored in service. We

think, once a person is boarded out of service, disability pension should continue for life, since he cannot get back into service. However, making

the observation, to be considered by competent authority and without saying anything finally on the rationality and reasonableness of their action,

we proceed to deal with the case on different parameters.

6. Analyzing the import of the aforementioned judgment, it clearly points towards the fact that the person once boarded out of service, disability

pension should continue for life, since he cannot get back to service.

7. In the present case, petitioner was denied disability pension on account of examination conducted by the Review Medical Board on 23-12-

2002. The Board has reported that there is 0% disability: The said assessment of Resurvey Medical Board appears to be doubtful as the

percentage of disability may be 0% and the same cannot be said to be permanent. No opinion can be expressed in this regard even by a specialist

doctor that the disease from which an individual suffered and has recovered at any stage cannot develop the same in future.

8. Prima facie, the opinion of the Medical Board seems to have been based on

conjectures and cannot be accepted, unless reasoning from the specialist indicating that there is no chance of this disease getting revived, is given.

9. There is no dispute that the opinion of the Medical Board has to be accepted and no fault can be found with it, but the power of the court to

exercise judicial review is restricted only to the extent regarding the manner in which the opinion has been framed. The report of the Medical Board

also does not reveal that the petitioner was examined by Neurologist. It however, states that he was examined by a General Line Specialist in

Psychiatric. While giving the opinion, the specialist has stated that the petitioner has recovered from his disability. There is no opinion given by the

doctor that this disease cannot be revived. In the context of the controversy involved in the present case, the doctor had to discount this fact that

the disease cannot be revived. His recovery from the disability had denied him the disability pension. Consequently revival of disease should entitle

him to disability pension. This aspect has not been taken note of.

10. Report of the Civil Medical Board reveals that the petitioner is required to be examined by Neurologist and Clinical Psychologist and in view

of the fact that no Neurologist is available in the GMC, Jammu, he cannot be examined. It has also been stated that Clinical Psychological testing

material is not available in GMC, Jammu for disability percentage measurement.

11. For what has been stated hereinabove, this Court is of the opinion that the impugned order takes away the right of petitioner for grant of

disability pension on account of disability having been decreased to 0%. There is no provision for re-inducting the petitioner in service on account

of loss of disability and such an order cannot sustain.

I, therefore, quash the order impugned and direct the respondents to pay disability pension to the petitioner from the date it has been withheld. The

respondents are at liberty to refer the petitioner to Medical Board consisting of Neurologist and having Clinical Psychological testing material.

Petition allowed.